

The complaint

Mrs S complains that her account with NewDay Ltd (NewDay) was unfairly defaulted.

What happened

Mrs S had a retailer branded credit card from NewDay. She was taken ill in 2017. Her husband had to give up his job to care for her. She ran into financial difficulties. In April 2019 she told NewDay she couldn't afford to make the payments. On 3 June 2019, NewDay issued a default notice. On 26 June 2019, they sent a termination notice. In June 2019, Mrs S sent an income and expenditure form to NewDay. They agreed to suspend payments for six months and wrote to Mrs S on 15 June 2019. They sent a default notice on 18 September 2019. The default was registered on 31 October 2019.

Mrs S complained that New Day had agreed to suspend payments and so the default couldn't be right. When she called them in September 2019 she was told "not to worry". If she'd known about the default, she would've repaid the amount due. So – she now had a default registered on her credit file which was stopping her from moving to a new house. This, coupled with her illness, was causing her a lot of worry and stress.

NewDay said they sympathised with Mrs S' health problems. But – the correct action had been taken. In April 2019, following her call to them, Mrs S' account was put on hold – no payments were to be made and interest and fees were not charged. They asked Mrs S to complete an income and expenditure form – this was returned in June 2019. On 3 June 2019, a default notice was sent – as there were arrears of £77.69. This was because – even though there was a payment plan agreed, Mrs S was contractually in arrears. On 26 June 2019, a termination notice was sent with the balance £859 debit. Interest and charges remained suspended. On 18 September 2019, a default notice was sent to say a default would be registered on Mrs S' credit file – this could be avoided if the account was brought up to date within 28 days. Mrs S called NewDay at that point to say she was unhappy. Later in September 2019, she complained to NewDay – and they made a goodwill payment of £85. The default was registered on 31 October 2019. But they said their default processes had been properly followed.

Mrs S brought her complaint to us. Our investigator looked at what had happened. He said Mrs S had been told not to worry – and in July 2019 had been told she didn't need to make any payments for six months. The call made by Mrs S in September 2019 wasn't available – but he came to the view that it was plausible that she was told not to worry about the default notice. And – the conversation overrode what had been put in writing to Mrs S. Also, the default notice had been applied prematurely – as he expected NewDay to give Mrs S six months before going down that route. He could see that Mrs S had enough money in her bank account to pay the arrears of £774 in October 2019 – he'd seen her bank account statements and salary slips. If things had been explained clearly to her, and the six-month period allowed to run – then he felt she would've paid off the arrears. He said NewDay should remove the default from Mrs S' credit file and pay £400 compensation. New Day didn't agree and asked that an ombudsman review Mrs S' complaint.

I reached a provisional decision where I said:

I'm afraid I take a different view to our investigator. I have every sympathy with what Mrs S had gone through in recent times and I have fully reviewed what happened. I can decide against NewDay if they've made errors or acted unfairly. But, on balance, I don't think they did - and I will explain why.

It's important to note that under a credit agreement, the minimum monthly payments must be made – otherwise, cardholders are judged to be in arrears. And if payments are missed for at least three months, a lender considers them to be in default and can register a default on their credit records. Here, the Information Commissioner's (ICO) guidance is that a default can be registered after three missed payments, and certainly must be after six missed payments. All lenders have an obligation to notify credit reference agencies of accurate data on borrowers.

And – even when a payment plan is agreed – as was the case here, as NewDay agreed that payments could be stopped – customers are still considered to have broken the terms of the credit agreement and therefore be in default.

Therefore, for me, the key issues here are what Mrs S was told – in writing and on the phone when she called NewDay.

In April 2019, and then in July 2019, NewDay came to an arrangement with Mrs S for her to suspend payments. No interest or charges were to be applied. In July 2019, NewDay wrote to Mrs S and said *"we will hold the above account from further collection activity until 15 January 2020. During this time we will accept a reduced payment per month and suspend all interest and charges....you will continue to receive statements which will request the overdue payments on the account...please ignore these requests for payment. We would like to make you aware that making reduced or no payments may affect your future credit rating and your ability to obtain credit in the future. It could mean a default is registered against you."* So – Mrs S was told that she didn't need to make any payments – but she was also told that even so - defaults could be registered.

I've looked at other correspondence sent to Mrs S. The statements sent to her do show the amount of the arrears each month – and warned of what might happen if payments weren't made. For example, in April 2019, the statement shows arrears of £26.03 and says, *"You have failed to make a minimum payment...failing to make your minimum payment...result in us taking legal action against you..."*. To be fair to Mrs S – she was told in NewDay's letter in July 2019 – that she could ignore the requests for payment on the statements, so I can see why she didn't pay the amounts due – and ignored any warnings on them.

But - In July 2019, Mrs S was sent a Notice of Sums in Arrears, with the balance at £859.17 debit. This said *"Doing nothing could make things worse...the lender could take legal action against you..."* There had also been a Notice of Sums in Arrears sent in May 2019 – with the same text. And the Default Notice dated 3 June 2019 said *"You must pay £77.69 by 24th June 2019...What will happen if I don't pay before the date shown? We'll terminate your credit agreement with us, close your credit card account and ask you to pay the full account balance immediately. If we terminate your credit agreement, we may sell your account to a third party. We will also share details of the status of your account with credit reference agencies which may make it harder for you to get credit in the future"*. So – the letters Mrs S were clear – that legal action could take place and credit reference agencies notified.

When Mrs S called NewDay in September 2019, she says she was told "not to worry". And she therefore thought that she didn't need to do anything. At that time, she was on an agreed plan with NewDay – to make no payments for six months from July 2019 until

January 2020. Mrs S thought that this also meant that no legal action would take place. The call isn't available for us to listen to. So, we cannot be sure what was said. The call handler might have said – not to worry about making *payments* – which would've been correct. But – that doesn't mean to say that a default wouldn't be registered. I've seen the notes of the call in July 2019 and they say “6 month hold for six months 15.7.19-15.1.20” – so they don't help, but they don't say that any legal action should be stopped either.

Looking at the timing of the default notices. Mrs S last made a payment in April 2019. The default was registered on 31 October 2019 – after six months of missed payments - so NewDay acted within the rules here. NewDay didn't register the default ahead of when they could have.

I have every sympathy with Mrs S' situation. I can see she acted with all good intentions. She says that had she realised what would happen, she could've found a way to pay off the arrears. But - I must take a decision based on the balance of evidence here. And – I have to say that given the letters and notices that Mrs S was sent, she should've been aware that a default would be registered. And – NewDay have followed their processes and acted correctly.

We've discussed Mrs S' situation with NewDay. As they've acted correctly, the default has to stay on Mrs S' credit file. But - NewDay have told us that they don't intend to pursue Mrs S for the outstanding balance, which may help with her financial situation. That's not to say NewDay or any agents they appoint to deal with the debt won't ask her for payment in the future. It's just that at the present time, they've told us they're not actively seeking payment of the debt. But if Mrs S' situation changes, then she should contact NewDay about this. So – I hope this gives Mrs S some help at the present time.

Responses to the provisional decision:

Mrs S argued strongly that:

- She had made all payments to NewDay over the period she had the card, without fail, and showed us evidence of that.
- My provisional decision showed that procedures are more important than her personal situation.
- She repeated that NewDay told her she could ignore requests for payment, and she didn't realise this meant that a default would be registered. She said the letter dated 15 July 2019 gave her false hope.
- She referred to her call to NewDay on 21 September 2019 – when she was told not to worry, and no payments were needed and (in Mrs S' words) “*overriding also the request for payment to prevent the default from being registered.*”
- She referred to her call to NewDay's complaints department in August 2020 – she said they'd listened then to the call made in September 2019 and “*they confirmed that in the recording I was very upset and reassured by Customer Care Officer that I should not worry about the default notice.*”

NewDay said:

- The calls covering September 2019 have been deleted – they showed evidence that they'd searched their records for them.
- The content of what was discussed between Mrs S and the complaints department in August 2020 was contained in their letter which was sent following the call – on 1 October 2020. This said *"Our CCT received a call on 25 September 2019, because you had received the letter of 18 September 2019. You were unhappy that a Default was going to be recorded on your credit file. It was explained that this was in line with our usual process."*
- NewDay showed us again the complaint department's notes of that call – they had listened to it - and recorded that it said *"She was unhappy that a Default was going to be recorded on her credit file. It was explained that this was in line with our usual process"*.
- The default was registered correctly – and they must record accurate information of payment history.
- NewDay said that apart from the call in question, Mrs S has been sent at least three letters which said that a default could be registered. So, she should've been aware that it could happen.

So – I now need to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I really do have every sympathy for Mrs S' situation, but I have to reach a decision based on the balance of evidence and what I think was said to her on the call in September 2019.

I agree with NewDay that Mrs S had received several letters which said a default might be registered.

I can see that Mrs S interpreted the letter dated 15 July 2019 as only meaning that she could make reduced payments – but it also said, *"We would like to make you aware that making reduced or no payments may affect your future credit rating and your ability to obtain credit in the future."*

It's unfortunate that the call from September 2019 has been deleted – but equally, NewDay listened to that call at the time of their discussion with Mrs S in August 2020 and noted its content in their final response – and said it said that a default might be registered. I can't make a finding against NewDay just because they've deleted the call. I did find a note in NewDay's records to say they intended to retain the call – but this didn't happen. It is very disappointing NewDay no longer has the call recording, particularly given its records show it has noted the importance of the call and it should be retained in order to help any investigation from this service. But – notwithstanding this, I must make a decision based on what I think was said and on the overall balance of evidence.

On balance, I still tend to the view that the call handler probably tried to reassure Mrs S – given her illness - and said – not to worry about payments which were being put on hold, and not to worry about the letters she might get – but this is a different thing to stating that a default wouldn't be registered.

And – all lenders, including NewDay, have an obligation to record accurate information at credit reference agencies. They can only change these if there's been an error. And in fairness here, I cannot say that NewDay made a mistake. And so, the default must remain on Mrs S's credit file.

NewDay have told us that they won't be asking Mrs S to make any more payments to her debt, and nor will her debt ever be sold to a third party for collection – so I hope that helps Mrs S in some way.

So - I know Mrs S will be very disappointed by my final decision – but I'm not going to ask NewDay to do anymore here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 28 July 2021.

Martin Lord
Ombudsman