

The complaint

Mr L complains NewDay Ltd added a default to his credit file unfairly.

What happened

Mr L held a credit card with NewDay, and the card fell into arrears on three separate occasions. NewDay sent default notices the first two times the card fell into arrears and Mr L was able to clear the arrears and avoid the default.

The third time the card fell into arrears NewDay didn't send a default notice. A default was added to Mr L's credit file and the outstanding debt was sold to a third party debt collector.

Mr L paid off the balance, and complained to NewDay as he felt the default was unfair. Mr L said he was never sent default notices so he couldn't avoid the default. NewDay responded to say it had followed its processes correctly and Mr L was in arrears on his card.

Unhappy with that response Mr L brought his complaint to this service and an investigator looked into things. The investigator thought Mr L's complaint should be upheld as he hadn't been warned about the default.

The investigator also thought Mr L's previous ability to clear the arrears, following a default notice, meant it would have been fairer for NewDay to send Mr L a third default notice.

The investigator thought NewDay should remove the default and pay Mr L £50. NewDay disagreed and said it recorded a default because of the credit card was in arrears. NewDay said it would only remove the default if it made an error as it was obliged to record it.

Unable to resolve things Mr L's complaint was referred to an ombudsman to decide things.

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.

The circumstances of this complaint aren't in dispute. NewDay has told this service it didn't send a default notice the third time Mr L fell into significant arrears. And because the arrears weren't paid off NewDay defaulted Mr L's credit card.

The agreement between Mr L and NewDay is regulated by the Consumer Credit Act 1974 (CCA). In this act there's sections, 87, 88 and 89, which specifically explain what NewDay has to do if it wants to default Mr L's credit card and why it needs to do this.

The CCA says consumers should be warned about an impending default and given the opportunity to avoid it. And, if a consumer remedies the breach – in Mr L's circumstances paying the arrears on his credit card – it should be like the breach never happened.

NewDay didn't warn Mr L of the default or give him the opportunity to fix things. Mr L had previously avoided a default by remedying things – paying off his arrears. If NewDay had sent Mr L a default notice the third time I'm persuaded Mr L would have paid them off again.

NewDay says Mr L was in arrears and by reporting the credit card in default it's abiding by its obligation to report the account's true position. But I don't think NewDay's followed the correct process for defaulting Mr L's credit card, so I don't think it's fair to report the default.

NewDay sold Mr L's outstanding balance to a debt collector, who contacted Mr L for payment. Mr L's since paid the amount off in full. And this is important, there's no longer an outstanding balance owed so NewDay can't restart the default process.

But the sale of Mr L's debt, and the default itself, did cause Mr L some inconvenience. I have to balance this with the support NewDay gave Mr L when it knew about his difficulties in repaying his debt.

NewDay hadn't charged interest on Mr L's credit card for some time, and this is a very positive step for NewDay to take. Overall, I think the £50 payment for distress and inconvenience is a fair amount.

My final decision

My final decision is NewDay Ltd must:

- ensure the default registered for the NewDay credit card is removed
- pay Mr L £50

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 November 2021.

Chris Russ

Ombudsman