

The complaint

Mr S says that a default was recorded on his credit file later than it should have been. As a result, it will remain on his file for some time after it should have been removed. Mr S says NewDay Ltd is responsible, for reasons which I shall explain.

What happened

Mr S had two credit cards, an Aqua card and a Marbles card. Both were issued and administered By NewDay.

By around March 2017 Mr S had fallen behind with payments on both cards. NewDay agreed payment arrangements, by which Mr S would pay just under £20 a month on one card and just over £10 a month on the other. Payments were made in March and May 2017, but no payments were received in April. A default notice was issued on one of the cards – that is, a notification that the agreed payment had not been made, with information about what Mr S needed to do to rectify things.

In July 2017 NewDay assigned both debts to a different company, which I'll call L. L defaulted the accounts in 2018. It later amended the date of default to July 2017. It says that NewDay told it that the accounts had been defaulted at that time – that is, around the time of the assignment. Mr S thought that NewDay should have defaulted the accounts earlier.

Initially, one of our investigators considered Mr S's complaint. He did not believe that NewDay had defaulted either account before it sold the debts to L. He thought however that, given the low level of payments being made, it should have done. He noted however that L had backdated the defaults to July 2017 on the basis of information provided by NewDay. Mr S's credit file had been amended to reflect that, but the investigator recommended that NewDay pay him £100 by way of compensation.

NewDay did not accept Mr S's recommendation and asked that an ombudsman review the case. One of my ombudsman colleagues did that and, because he was minded to reach a different conclusion from that reached by the investigator, issued a provisional decision.

Like the investigator, the first ombudsman concluded that NewDay had not defaulted the accounts before assigning them to L. However, he did not believe it should have done. The payments that were being made under the payment arrangement were more than token payments. And, because the defaults had, in effect, been backdated, Mr S was not disadvantaged by any confusion about that issue.

Mr S did not accept the provisional decision. He noted that the ombudsman had said that a default notice had been sent in May 2017 in respect of one of the accounts – indicating that at least one account had been defaulted but that the default had not been recorded when it should have been. The ombudsman explained that the Default Notice did not register a default; rather, it was a step that NewDay was legally required to take before it could default the account.

The original ombudsman is not in a position to carry out a final review of the case, so it has

been passed to me to do that.

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.

Having done so, I have reached the same overall conclusions as the first ombudsman did in his provisional decision, and for similar reasons.

Mr S does not dispute that he owed money to NewDay over two credit card accounts or that he was having difficulty repaying what he owed. He says that NewDay, with which he had agreed repayment plans, should have taken more robust action than it did – specifically, by defaulting the accounts. Had it done so, defaults would have been registered sooner than they were and would also therefore be removed that much sooner.

I am satisfied that no defaults were registered before the debts were assigned to L. The default notice sent to Mr S in May 2107 was sent to comply with sections 87 to 89 of the Consumer Credit Act 1974. Until it had been sent, NewDay could not, for example, end the credit agreement or demand early payment. It also gave Mr S a period in which to pay the arrears due. If Mr S had made that payment, the effect of section 89 would have been that his breach of the repayment agreement would have been treated as if it had not occurred.

Relevant guidelines issued by the Information Commissioner's Office (ICO) say that, for recording purposes, token payments should be treated in a similar way to debts where no payment is being made. The guidelines say that a default may be recorded after three months and that the ICO would expect one to be recorded after no more than six months of arrears.

In this case however, I agree with the first ombudsman that the payments being made were not simply token payments. Whilst they were small in comparison to the sums owing, they would over time have had an impact on the amounts outstanding. And the different sums that were agreed reflected the amounts owing on each account. For that reason, I do not believe that I can fairly say NewDay should have registered a default.

As the first ombudsman noted, there was some confusion about the sequence of events here. NewDay told L, incorrectly, that it had defaulted the accounts. The result of that was however that L backdated its default registration to July 2017.

That error on the part of NewDay did not cause Mr S any financial loss. He owed the same, whether the default was registered in July 2017 or at a later date. Arguably, it may even be to Mr S's advantage, since the default will be removed from his credit record earlier than would otherwise have been the case.

Nor does it seem to me that the error caused Mr S any material distress or inconvenience. He believed in any event that defaults had already been registered. When he found out that was not the case, he argued that they should have been. So, whilst NewDay appears to have provided incorrect information to L, I do not believe it would be fair to require it to pay Mr S any compensation in respect of that.

My final decision

My final decision is that I do not require NewDay Ltd to take any further steps to resolve Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 September 2021.

Mike Ingram
Ombudsman