

## **The complaint**

Mr P is unhappy that NewDay Ltd won't remove two defaults which were applied to his account.

## **What happened**

Mr P held two credit card accounts with NewDay. In 2016 Mr P was unable to make payments because of his medical condition. Mr P says he thought he'd reached an agreement with NewDay to pay a nominal amount each month, but that despite this, defaults have been registered on his credit file. Mr P complained to NewDay and asked for the defaults to be removed.

In response, NewDay said it hadn't entered into a payment agreement with Mr P on either of his accounts. It said that recorded defaults when the accounts fell into arrears and that the accounts had now been sold to a third party.

Our investigator didn't uphold the complaint. He said he couldn't see anything in the records provided by NewDay to suggest that a payment agreement had been reached and said that NewDay hadn't done anything wrong in recording the defaults on Mr P's credit file.

Mr P didn't agree so I've been asked 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.

Where arrears reach three months, a lender can register a default, even if an arrangement to pay has been agreed. The Consumer Credit Act 1974 says that a lender must issue a notice of default setting out what the consumer needs to do to bring the account back up to date and tell the customer the date by which this needs to happen.

In this case, I can see that Mr P had two accounts. It looks like arrears accrued because Mr P's direct debit was cancelled. I can see that when both accounts reached three months in arrears, NewDay issued a default notice. I'm satisfied that NewDay acted in line with the terms and conditions of the account when it did this. I'm also satisfied that it acted in line with relevant legislation.

I've looked at the system notes and template letters which NewDay sent to Mr P about his account. I've also listened to a call recording from June 2016. Based on what I've seen, I'm satisfied that NewDay took reasonable steps to advise Mr P that his account was in arrears, and of what he needed to do to bring the accounts up to date.

In the telephone call between Mr P and NewDay, Mr P acknowledged that he'd missed some payments. The adviser explained to Mr P that he needed to bring both accounts up to date and asked Mr P if he was struggling to pay. Mr P didn't say that he was experiencing financial difficulties but said to the adviser that he would look into why the payments hadn't

been made and would call back the following week. I can't see anything to indicate that Mr P called back.

Based on what I've seen, I'm satisfied that Mr P's accounts were in arrears. Although Mr P made some nominal payments to his accounts, I can't see anything to suggest that a payment arrangement was agreed. Even if a payment arrangement was agreed, both accounts were three months in arrears, so I can't say NewDay did anything wrong by recording the defaults on Mr P's credit file.

Mr P has said that he thinks that NewDay should've treated him as a vulnerable customer. He's said that because of his medical condition, it was unlikely that he would be able to repay the accounts and NewDay should've written them off.

I've reviewed all of the available information, but I can't see anything to suggest that Mr P told NewDay about his medical condition. I don't think it's fair to expect NewDay to treat Mr P as a vulnerable customer if it hadn't been made aware of his vulnerabilities. And I can't see that it was made aware. Because of this, I'm unable to say that NewDay acted unfairly or unreasonably in its handling of Mr P's accounts.

### **My final decision**

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 February 2022.

Emma Davy  
**Ombudsman**