

The complaint

Mr B is unhappy with the standard of service he received from NewDay Ltd, trading as Aqua, following him informing them that he had mental health issues and that he was struggling financially, including that NewDay recorded a default on his credit file.

What happened

Mr B had a NewDay account that was in arrears. In January 2020, Mr B called NewDay and advised that he was suffering with mental health issues and was struggling financially.

In February 2020, Mr B called NewDay again and explained that he was now able to make payments on the account. However, Mr B was told at that time that his account had been passed to a debt collection company. Mr B wasn't happy about this, so he raised a complaint.

NewDay looked at Mr B's complaint, but they felt that they'd followed the correct process following Mr B not making payments to the account, so they didn't uphold Mr B's complaint.

Mr B wasn't satisfied with NewDay's response, especially as a default was later reported by NewDay to Mr B's credit file in relation to this account, so he referred his complaint to this service. One of our investigators looked at this complaint. But they also felt that NewDay hadn't done wrong either in how they'd managed Mr B's account or in how they'd recorded a default on his credit file. So, they also didn't uphold this complaint.

Mr B remained dissatisfied, so the matter was escalated to an ombudsman for 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 issued a provisional decision on this complaint on 12 November 2021 as follows:

It's evident that Mr B did call NewDay in January 2020 and did inform them at that time that he was struggling with mental health issues and struggling financially. In such circumstances, what this service would expect would be that NewDay would react positively toward Mr B and offer appropriate forbearance.

NewDay appear to have done that here. They placed a 30-day 'breathing space' hold on collections activities to enable Mr B to either rectify his position or to contact NewDay's Customer Care Team. And NewDay tried to contact Mr B by telephone shortly afterwards, and then sent a letter to Mr B when the attempted telephone contact was unsuccessful which invited Mr B to contact their Customer Care Team who could help arrange a suitable repayment plan if necessary.

Mr B did contact NewDay again on 7 February 2020, and NewDay's system notes record that Mr B advised that he was able to make payments towards the account once again. NewDay's system notes also record that a six-month payment plan was agreed at that time and that Mr B made the first payment against this plan.

Additionally, NewDay have also provided this service with a copy of the letter sent to Mr B on this date, which confirms that a payment plan had been set up, and which also states that one potential consequence of Mr B not making the payments required by this plan would be that his account could be passed to a debt collection company.

Mr B didn't make any further payments required by the payment plan. However, Mr B did call NewDay again on 11 March 2020 – which was after the second scheduled payment due date on 7 March 2020 had been missed – and explained to NewDay that he had missed the scheduled payment because of mental health issues he was struggling with.

NewDay later terminated the six-month payment plan. And I can understand why they would have done this, given that the agreed payments hadn't been made. But NewDay also then proceeded to transfer Mr B's account to a debt collection company, and I don't feel that it was reasonable for them to have taken this step, given that Mr B had advised them of his continuing mental health issues and the distress that the transfer of an account to a debt collection company can cause.

The account was later recalled from the debt collection company, and so I'm satisfied that the appropriate corrective action has already been taken. However, Mr B continued to not make payments towards the account, and on 31 July 2020 NewDay recorded a default on Mr B's credit file as a result of this.

While I appreciate that Mr B will disagree, NewDay's recording of this default feels fair to me, and I note that NewDay had previously sent a default notice to Mr B, dated 31 January 2020, advising Mr B that his account was at risk of being defaulted for non-payment. And while Mr B did enter into a payment arrangement in February 2020, he didn't meet the terms of that arrangement and didn't make any alternative payments towards the account.

And, while I acknowledge that Mr B informed NewDay that he was struggling with mental health issues, it doesn't follow from this that NewDay shouldn't make accurate reports to the credit reference agencies about the ongoing arrears status of the account, or that they shouldn't have defaulted this account when the arrears on the account grew to a level where a default was warranted – as was the case in this instance.

All of which means that, while I'm satisfied that NewDay didn't act unfairly or unreasonably in how they managed the arrears on Mr B's account, including the default that NewDay recorded in regard to this account, I do feel that the information that Mr B gave to NewDay about his mental health issues meant that it wasn't reasonable for NewDay to have transferred Mr B's account to a debt collection company when they did. And I feel that Mr B incurred an amount of distress as a result of this.

It follows then that I'll be provisionally upholding this complaint in Mr B's favour as it relates to the passing of his account to a debt collection company only, and I'll be provisionally instructing NewDay to make a compensation payment of £100 to Mr B because of this.

I also note that NewDay's 7 February 2020 letter to Mr B, which confirmed the payment arrangement agreed at that time, confirmed that no charges would be applied to the account during the payment arrangement period, but that £36 of charges was applied on the March 2020 statement, including a charge dated for February, shortly after the payment plan was set up. As such, my provisional instruction will also be that NewDay should reimburse these £36 of charges to Mr B's account.

In my provisional decision letter, I gave both Mr B and NewDay the opportunity to provide any comments or further information that they might wish me to consider before I moved to a final decision. Neither Mr B or NewDay provided any further submissions to this service, and so I see no reason not to issue a final decision upholding this complaint in Mr B's favour on the basis described above.

Putting things right

NewDay must make a payment of £100 to Mr B to compensate him for the trouble and upset he incurred because of NewDay transferring his account to a debt collection company. This payment must not take the form of a credit to Mr B's NewDay account unless Mr B gives his permission for it to do so.

NewDay must also reimburse £36 of charges to Mr B's NewDay account.

My final decision

My final decision is that I uphold this complaint against NewDay Ltd, trading as Aqua, on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 January 2022.

Paul Cooper
Ombudsman