

## **The complaint**

Mr D complained to NewDay Ltd that they'd recorded a default on his credit file as a result of his financial problems due to the global pandemic.

## **What happened**

Mr D has an Aqua credit card account with NewDay. In July 2020, he contacted them to explain that his financial circumstances had been impacted by the global pandemic. He asked NewDay to agree a payment deferral on his account with them. NewDay agreed to his request and said the payment freeze would operate immediately until early October 2020. They wrote to Mr D to confirm this.

Mr D contacted NewDay again at the beginning of October as his financial situation hadn't improved. NewDay agree to extend a payment holiday on his account until January 2021. Again, they wrote to Mr D to confirm this.

Mr D contacted a debt management company about his financial problems. They reviewed his financial circumstances and agreed to contact NewDay on his behalf.

The debt management company wrote to NewDay in December 2020 providing a breakdown of Mr D's income and expenditure. They offered monthly payments of £1 towards the amount Mr D owed to NewDay. NewDay replied confirming they'd set up a repayment plan for £1 per month and wouldn't charge any interest on the debt owed. NewDay also said they'd "*...let credit reference agencies know that your client has missed payments...*".

The debt management company complained to NewDay in January 2021. They thought the negative impact on Mr D's credit file was unfair. They said he'd had no previous missed payments reported and said Mr D had requested that NewDay issue a notice of correction on his credit file.

NewDay sent a default notice to Mr D in March 2021. They said his account was in arrears and they required a payment of £8.30 by 13 April 2021. NewDay did acknowledge the repayment plan. Mr D didn't pay the arrears amount requested by NewDay.

In April 2021, NewDay responded to Mr D's complaint. They didn't agree they'd done anything wrong. They said payments they'd received from Mr D were for less than the contractual minimum. Because of this, arrears had accumulated, and adverse data had been recorded correctly.

Mr D wasn't happy with NewDay response to his complaint. So, he referred matters to this service so that we could investigate the circumstances.

Our adjudicator didn't think NewDay had done anything wrong. She thought they'd correctly reported the situation on Mr D's account to the credit reference agencies. So, she didn't think NewDay needed to do anything more.

Mr D didn't agree with our adjudicator's findings. He said there'd been a lack of government help and there was a broader problem with the Financial Conduct Authority's regulations. So, he asked for his complaint to be passed to an ombudsman to issue 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.

The Financial Conduct Authority (FCA) issued guidance to lenders on 2 April 2020 which explained what it expected from businesses during the exceptional circumstances arising out of the global pandemic. It provided guidance asking businesses to consider payment deferrals of up to three months under regulated credit agreements.

The FCA said their guidance applied where consumers were already experiencing or reasonably expect to experience temporary payment difficulties as a result of the pandemic. The FCA also said that *“firms should ensure that there is no negative impact on the consumer’s credit file because of the payment deferral”*.

Further guidance issued by the FCA on 1 July 2020 extended these measures, and where consumers were still struggling due to the global pandemic, businesses were advised to freeze or reduce their payments for a further three months.

NewDay’s letter of 9 July confirms their original agreement to a payment freeze for three months. They said it wouldn’t be treated as a missed payment by credit reference agencies meaning there would be no negative impact. So, NewDay appeared to have complied with the FCA’s guidelines here.

Following Mr D’s request for a further payment holiday, NewDay wrote to him on 1 October 2020 with the terms of the payment holiday. They said Mr D would need to start making at least the minimum monthly contractual payments once the payment holiday ended. So, this also appears to have complied with the FCA’s guidance.,

The key point here is that the FCA’s guidance applies in the circumstances of temporary payment difficulties. In Mr D’s case, it appears his financial problems were longer term. This was confirmed to NewDay when the debt management company wrote to them in December 2020. They said Mr D could only afford to pay £1 per month going forward. As NewDay had already applied the FCA’s guidance, they needed to consider Mr D’s offer within the context of the account’s terms and conditions. Mr D’s offer suggested that he couldn’t comply with them.

NewDay accepted the payment offer under a payment arrangement in a letter they sent dated 9 December 2020. But they did make it clear that they would let the credit reference agencies know that Mr D had missed payments. And I think they were entitled to do that here.

The Information Commissioner’s Office (ICO) were involved in drawing up the Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies. They explain what’s required from a lender in these circumstances. Section three of the principles says *“If your lender does not agree a reduced or revised payment with you because the amount you offer to the lender is not acceptable, for example, a very low or token payment, the account will not be reported as an arrangement or a debt management programme negotiated by a third party. Any payments you make will be reflected in the current balance, arrears will continue to accrue, and a default may be recorded”*.

NewDay have explained that because Mr D’s monthly payment offer was for less than 1% of the amount owed, arrears continued to build. So, the arrangement wasn’t considered acceptable as a longer-term solution. As a result, NewDay say they were required to report the situation to the credit reference agencies. I agree with NewDay on that point as it’s important that the information recorded is an accurate reflection of Mr D’s account with them. So, I can’t reasonably say that NewDay did anything wrong here.

NewDay issued a default notice as the terms of the card agreement hadn’t been complied with. And I think they were within their rights to do that. Ultimately, the agreement was terminated and NewDay offered to provide support to assist Mr D in finding a solution. Again,

I think this was the right approach in these circumstances as it would ensure that Mr D's situation didn't get any worse.

I appreciate that Mr D's financial circumstances were as a direct consequence of the impact of the global pandemic. Mr D has expressed concern about ongoing government support and the regulations and guidance issued by the FCA. This service is not able to instruct either the UK Government or the FCA on matters regarding their support or guidance. But it is this service's role, as an Alternative Dispute Resolution Service (ADR), to provide mediation in the event of a dispute. So, I'm only able to consider Mr D's complaint to NewDay within the context of the guidance and rules at the time.

Having done so, I can't reasonably say that NewDay have done anything wrong or acted unfairly in Mr D's circumstances. I appreciate Mr D will be disappointed, but it wouldn't be fair or reasonable for me to ask NewDay to do anything more here.

### **My final decision**

For the reasons set out above, I don't uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 February 2022.

Dave Morgan  
**Ombudsman**