

The complaint

Mrs L complains that NewDay Ltd trading as Debenhams Mastercard unfairly filed a default with credit reference agencies about her account.

What happened

Mrs L had a credit card account with NewDay. She says she purchased an item in July 2019 using her card. She wasn't satisfied with the item. She returned it and raised a dispute with NewDay. NewDay applied a temporary refund to her account in October 2019 but later reversed that refund.

Mrs L complained to NewDay about what happened (the First Complaint). It upheld her complaint. It said it should've sent her documentation received from the merchant and it hadn't passed the case to the team which dealt with complaints raised under s.75 of the Consumer Credit Act. It agreed to pay her £50 by way of compensation and refunded four £12 charges which had been applied to her account. NewDay's final response letter was dated 19 March 2020.

NewDay issued a default notice on 11 May 2020. It said that Mrs L had to pay the amount outstanding by 16 May 2020 otherwise her account would be defaulted. Mrs L complained to NewDay about this (the Second Complaint). It issued a final response letter dated 15 June 2020.

The final response letter referred to the previous letter of 19 March 2020. It said it was still awaiting a response from the s.75 team and she would be contacted by that team. But, it said in the meantime she'd still have to pay the monthly payments and regulatory letters would still be issued to her.

Mrs L was sent a further letter dated 12 August 2020. It said the default was going to be filed with credit reference agencies. She says she phoned NewDay about this letter and it told her it was a mistake. She says she heard nothing further from NewDay.

In June 2021 Mrs L says she applied for credit to purchase a car. Her application was refused and she was told about the default registered by NewDay. Mrs L complained again to NewDay (the Third Complaint).

NewDay investigated her complaint. It sent its final response letter on 22 July 2021. It said that in its response to the First Complaint it had agreed to refund four £12 charges to her account – but it hadn't told her it would remove any negative information recorded on her credit file. In its response to her Second Complaint it had reminded her that she still needed to pay the minimum monthly payments to her account. She hadn't done that. It said it was obliged to report factually correct information to credit reference agencies. In the circumstances, it said it couldn't remove the default that had been filed.

Mrs L wasn't satisfied with this response. She complained to our service in July 2021.

Our investigator looked into her complaint. He thought that our service couldn't consider the First Complaint or the Second Complaint because Mrs L hadn't referred either of those complaints to our service within six months of the date of the final response letters sent by NewDay. He also considered whether there were any exceptional circumstances which prevented Mrs L from referring her complaints within the six-month period. But, he said he hadn't been told about any exceptional circumstances. So, he said that all he could consider was whether the default had been fairly applied.

Our investigator reviewed the statements for the account. He was satisfied Mrs L had been behind with her payments for a considerable time. He said we'd generally expect a default to be added where three to six months of arrears had built up. So, he didn't think NewDay had done anything wrong when it had filed the default. He considered what Mrs L had told us about NewDay informing her the default was a mistake. He thought NewDay had given her incorrect information when it told her this. He didn't uphold the complaint.

Mrs L didn't agree. So, the complaint was passed to me to decide.

NewDay gave this service its consent to investigate the First, Second and Third Complaints.

I issued a provisional decision in which I said:

What I've provisionally 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.

As mentioned above, NewDay has now given our service consent to consider the First, Second and Third Complaints. So, I can consider all of those complaints in this provisional decision.

The account entries

I've reviewed the statements of account and related correspondence sent to Mrs L. The statements show that the balance in the account, at December 2019, after the temporary refund was reversed was just over £189. After her First Complaint was referred to NewDay it made certain adjustments to her account – including crediting the £50 it had given her by way of compensation. This left the balance at just over £137.

Along with her April 2020 statement Mrs L was sent a "Notice of Sums in Arrears." This notice informed her that her account was in arrears and she needed to take action to avoid having to pay more in interest and charges. She was also told that missed payments could affect her credit rating.

Mrs L didn't make any payments and a further Notice of Sums in Arrears was issued in June. It was at this time that Mrs L raised her Second Complaint. She said she didn't want to be sent any further demands or letters in relation to payments. The final response letter made clear NewDay wasn't upholding the Second Complaint. It said that although the disputed payment was still being considered under s.75 of the Consumer Credit Act –

"you still have to pay the contractual minimum payment to maintain the account, as per the terms of your credit agreement."

Further statements were issued to Mrs L. And further Notices of Sums in Arrears were sent to her. She didn't make any further payments to the account.

NewDay sent her a letter in August 2020 informing her that it was going to register the default with credit reference agencies. Mrs L says she contacted NewDay at this time – I'll comment further about that below. She didn't make any payments to the account and the default was registered in September 2020.

Having looked at the statements and the correspondence sent to Mrs L, I'm satisfied, on balance, NewDay had made it clear to her she needed to continue to make the monthly payments to avoid a default being registered.

When thinking about whether, in light of everything that happened here, NewDay acted fairly and reasonably when it decided to go ahead and register the default, my provisional finding about the information in the correspondence sent to Mrs L needs to be considered together with the comments I've made below about the telephone contact between NewDay and Mrs L. A default has a significant adverse impact on a consumer's credit file.

*The telephone call Mrs L says she made to NewDay in August 2020
I've thought about what Mrs L told us about a telephone call she says she made to NewDay in August 2020. NewDay hasn't been able to provide a copy of this call recording. It says it only retains call recordings for twelve months. So, I've had to rely on the notes it made on its systems about what was said during this call.*

Mrs L had been in touch with NewDay on several occasions in 2020. I can see a record of a telephone conversation in March. Mrs L told NewDay about certain personal matters which affected her health and wellbeing. She also explained that she didn't want to get any more letters because she'd been advised by the fraud team that while the dispute was outstanding she'd not be sent any further letters. The records state:

"Advised customer that letter was dated same day as when customer called and got confirmation of the letters no longer being sent. Did not discuss any QA as customer advised of several occasions she cannot deal with this as it is causing her stress ...

Does not want any impact on credit file.."

There were further calls in April and May. There is also a note of a call in August 2020. The note states:

"CH (customer) is very angry at the fact that she has received a default notice ... and is disputing that balance on the account. The account is closed and U blocked – completed the out of hours complaints form."

The records don't indicate that Mrs L was told the letter dated 12 August had been sent in error. But, having read all of the notes here, I can understand why Mrs L would've thought that her complaint was still being

investigated or would be progressed further. There's no indication that after completing its out of hours complaint form, NewDay made contact with Mrs L again.

So, having thought about the information on NewDay's records, the sequence of events and Mrs L's own testimony here, I can understand why she would've thought NewDay was going to look at everything again – including the default it had told her it intended to register with credit reference agencies.

The balance outstanding on the account

It is the case that the balance outstanding on Mrs L's account was made up of the amount of the disputed transaction, less the compensation payment of £50.

In its final response letter dated March 2020, NewDay accepted it hadn't given Mrs L a copy of the documentation it had received from the merchant. I've looked at that documentation. I can see that the merchant offered to settle Mrs L's dispute by refunding £70 to her. That offer was made by the merchant on 21 October 2019 in its response to the chargeback request. NewDay has confirmed to our service it hasn't shared this piece of information with Mrs L. It was important information and I don't think NewDay acted fairly and reasonably when it didn't copy this information to Mrs L for her consideration.

I've also noted that NewDay told Mrs L, in its letter dated July 2020, it was still considering the s.75 aspect of the disputed payment. From what I've seen that information was incorrect. NewDay's records show it had already decided in January 2020 not to progress the s.75 aspect of the complaint. So, it provided her with incorrect information in its letter dated June 2020.

Having considered everything, I'm satisfied on balance, Mrs L may have acted differently here, if she'd been told about the £70 offer from the merchant and the fact that her s.75 claim couldn't be progressed.

In these circumstances, despite the fact that NewDay sent Mrs L statements of account and other notices, I currently don't think it was fair and reasonable to record a default with credit reference agencies.

What needs to be done to put things right

In order to put things right, I think NewDay needs to remove the default and any adverse information its recorded with credit reference agencies. It should also pay Mrs L £70 and credit that amount to her account with effect from the date the merchant made that offer (21 October 2019). It should then re-work the account – including making any refunds and payments it's already offered to make as set out in its final response dated March 2020. No interest or charges should be added after 21 October 2019.

The revised statement of account should be provided to Mrs L. She should be given a period of one month from the date of that statement to settle the account or to agree a repayment plan with NewDay. If the amount outstanding is not repaid in full or if a repayment plan is not agreed with NewDay then NewDay can follow its usual process to deal with accounts in arrears.

I've considered whether NewDay should also be required to pay Mrs L compensation for any distress or inconvenience she's experienced. She's told us about her embarrassment when her application for credit was declined. And, I can also see that Mrs L had informed NewDay about her personal circumstances which included details about her health and wellbeing. In these circumstances, I think NewDay's actions here have caused additional distress for Mrs L. She's also been embarrassed when an application for credit was declined. And, she's been inconvenienced by having to raise these matters with NewDay over a protracted period of time.

Having considered everything here, I think NewDay should pay Mrs L £200 by way of compensation for the distress and inconvenience she's experienced as a result of what's happened.

My provisional decision

For the reasons given above my provisional decision is that I intend to uphold this complaint about NewDay Ltd trading as Debenhams Mastercard.

I intend to require NewDay Ltd trading as Debenhams Mastercard to take the following action:

- *Remove the default and any adverse information it's recorded with credit reference agencies about Mrs L's account;*
- *Credit £70 to Mrs L's account with effect from 21 October 2019;*
- *Re-work the account, applying any refunds it's already agreed to make as set out in its letter dated 19 March 2020, and provide the updated statement to Mrs L;*
- *Give Mrs L a period of one month to settle the account. If the account is not settled within the period of one month and/or Mrs L has not agreed a repayment plan with NewDay Ltd by the end of the period of one month, NewDay Ltd can commence its usual arrears collection process; and*
- *Pay Mrs L £200 by way of compensation for the distress and inconvenience she's been caused as a result of what's happened.*

Mrs L accepted my provisional decision. She reiterated that she'd experienced distress and inconvenience because of what happened. She said she just wanted NewDay to leave her alone and stop calling her or sending her debt collection letters.

NewDay disagreed with my provisional decision. It made the following comments:

- Mrs L had breached the terms and conditions for the account when she hadn't made any payments after December 2019. In these circumstances, NewDay had acted fairly when it recorded the default with credit reference agencies
- NewDay said it didn't accept that Mrs L may have acted differently if she'd known about the merchant's offer. It said the notice of default was issued in February which was prior to the date of its final response letter.
- NewDay said the merchant had indicated Mrs L hadn't responded to its offers. So, there was nothing to indicate she would've acted differently even if NewDay had shared that information with her.
- NewDay said its notes about the phone call in August 2020 hadn't stated it told Mrs L the notice of intention to file a default was a mistake. And, it said it was very unlikely its collections team would have told her that.

- NewDay accepted it hadn't raised a complaint following the call in August 2020. It offered its apologies for that but it said that even if a complaint had been raised at that time the default would still have been filed.

So, I now have 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.

I've carefully considered everything NewDay has said here. But, it doesn't change my view that this complaint should be upheld. I'll explain why.

In my provisional decision, I said that NewDay had sent Mrs L correspondence about the default. It had sent her the notice of default in February 2020 and a notice in August 2020 telling her it intended to register the default. But, I also said that these notices needed to be considered together with the comments I made about the telephone contact between NewDay and Mrs L.

I remain of the view that the notices need to be considered in context.

Mrs L disputed a payment that'd been taken from her account. NewDay had raised a chargeback but it hadn't been successful. Mrs L complained about that and NewDay accepted in its letter dated March 2020 it hadn't sent her the documents it had received from the merchant. But, even at that stage, it still didn't send her the documents so that she could read them for herself. NewDay's records indicate that Mrs L continued to raise complaints with it throughout the period after March 2020 – in April, May and again in August.

The telephone call in August was in direct response to the letter Mrs L had received notifying her that NewDay intended to register the default. As I said in my provisional decision NewDay's records didn't indicate it had told Mrs L the letter it had sent her was a mistake. But, having read all of the notes on her file, I was persuaded, on balance that Mrs L would've thought her complaint was still being investigated and would be progressed further. I remain of that view.

NewDay acknowledges now that it didn't progress her complaint at that time. It says that wouldn't have made any difference to its decision to register the default. But, I'm not persuaded that given the opportunity to look at everything again, the outcome wouldn't have been different. And in any case, NewDay would've been able to inform Mrs L about the outcome of her complaint if it had been progressed. As I said in my provisional decision, I can understand why Mrs L would've thought her complaint was still being investigated or would be progressed further.

I've also thought about what NewDay says about Mrs L not having responded to offers which the merchant made to her. It says, because she didn't respond to those offers, there's no reason to believe she would've done anything differently if NewDay had shared the merchant's documents with her.

But, having read the merchant's comments in the chargeback response it is clear that whilst some previous offer(s) may have been made by the merchant, the offer of £70 hadn't been. The merchant stated:

“Now we decide to refund the buyer £70. If the buyer agree with it, please refund him £70 directly; if he denies it, please let the buyer keep the items in original condition and mail back via Royal mail only...”

So, I'm satisfied NewDay should've made Mrs L aware of this “new” offer. It didn't.

NewDay also accepts it didn't make Mrs L aware it had decided not to progress her s.75 claim.

Having considered everything again, I haven't changed my view that Mrs L may have acted differently had she been made aware of the merchant's offer and the fact that her s.75 claim wasn't going to be progressed.

NewDay could've provided the merchant's documents, which included details of the £70 offer, in November 2019. It provided Mrs L with incorrect information in June 2020 when it told her the s.75 claim was still being progressed. NewDay also had the opportunity when Mrs L complained in August 2020, to look at everything again, before it proceeded to register the default – but it accepts it didn't do that. So, I don't think, taking everything into account, NewDay has acted fairly and reasonably here.

I've noted what Mrs L told us about the distress she's experienced because of everything that's happened. She says she doesn't want any more debt letters from NewDay.

In order to resolve matters, I asked both Mrs L and NewDay to comment on whether any amount outstanding on Mrs L's account could be deducted from the compensation payment I had provisionally decided should be paid to her. Neither NewDay nor Mrs L raised any objection.

In my provisional decision I said that no interest or charges should be added to the account after 21 October 2019. So, I asked both Mrs L and NewDay for their comments if I was to direct that the complaint should be resolved in the following way. This was set out in an email from our service dated 22 February 2022:

The complaint would be upheld and NewDay would be required to take the following action:

- *remove the default and any adverse information its recorded with credit reference agencies about Mrs L's account.*
- *Credit £70 to Mrs L's account with effect from 21 October 2019;*
- *Re-work the account, applying any refunds NewDay has already agreed to make as set out in its letter dated 19 March 2020, and provide the updated statement to Mrs L; and*
- *Pay Mrs L £200 by way of compensation for the distress and inconvenience she's been caused as a result of what's happened. NewDay may deduct the amount outstanding on Mrs L's account, after it has been re-worked, from this amount of £200 before it is paid to her. If the amount outstanding is greater than £200, NewDay should write that amount off and mark the account as settled and closed. If the amount outstanding is less than £200, NewDay should pay the difference to Mrs L.*

I said it wasn't clear what the outstanding balance would be after the account was re-worked. But, in light of everything Mrs L had told us about her circumstances, I thought that if the debt was greater than £200 it should be written off and the account marked as settled and closed. That would mean Mrs L wouldn't receive any more debt letters from NewDay.

Mrs L raised no objection to this. NewDay didn't provide any further comments.

Putting things right

Having considered everything here, I've decided that NewDay should be required to take the following actions to resolve this complaint:

- remove the default and any adverse information its recorded with credit reference agencies about Mrs L's account.
- Credit £70 to Mrs L's account with effect from 21 October 2019;
- Re-work the account, applying any refunds NewDay has already agreed to make as set out in its letter dated 19 March 2020, and provide the updated statement to Mrs L; and
- Pay Mrs L £200 by way of compensation for the distress and inconvenience she's been caused as a result of what's happened. NewDay may deduct the amount outstanding on Mrs L's account, after it has been re-worked, from this amount of £200 before it is paid to her. If the amount outstanding is greater than £200, NewDay should write that amount off and mark the account as settled and closed. If the amount outstanding is less than £200, NewDay should pay the difference to Mrs L.

My final decision

For the reasons given above I uphold this complaint about NewDay Ltd trading as Debenhams Mastercard.

I now require NewDay Ltd to take the following action:

- Remove the default and any adverse information it has recorded with credit reference agencies about Mrs L's account;
- Credit £70 to Mrs L's account with effect from 21 October 2019;
- Re-work the account, applying any refunds NewDay Ltd has already agreed to make as set out in its letter dated 19 March 2020, and provide the updated statement to Mrs L; and
- Pay Mrs L £200 by way of compensation for the distress and inconvenience she's been caused as a result of what's happened. NewDay Ltd may deduct the amount outstanding on Mrs L's account, after it has been re-worked, from this amount of £200 before it is paid to her. If the amount outstanding is greater than £200, NewDay should write that amount off and mark the account as settled and closed. If the amount outstanding is less than £200, NewDay should pay the difference to Mrs L.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 19 April 2022.

Irene Martin
Ombudsman