

The complaint

Mrs G complains that NewDay Ltd trading as Aqua should have recorded a default on her account when she entered a debt management plan.

What happened

Mrs G had a NewDay branded credit card. In 2014, she suffered financial difficulties, which resulted in her entering a debt management plan, through a debt management charity in January 2015. This avoided a default as she maintained the debt management plan payments, even though they were reduced payments. NewDay later decided to sell the loan to a debt collection company in July 2016.

Mrs G noticed that her credit report showed the account had defaulted in February 2020. This was reported by the debt collection company. Mrs G made a complaint to NewDay and she said that the default date should show, as per the Information Commissioner's Officer (ICO) rules, to a date no later than 3-6 months after she missed her first payment towards this debt and no longer met the terms of the credit agreement. She said she would like the default date changed to a date no later than 1 February 2015, which is the date she entered into the debt management plan through the debt management charity.

NewDay did not uphold Mrs G's complaint. They explained that when they sell a debt, it is the debt collection company who then report payment activity to the Credit Reference Agencies (CRA's) and the information on her credit file relating to the default was not provided by NewDay. They said if she believed the information on her credit file was incorrect, then she should contact the debt collection company.

Mrs G brought the complaint to our service. She had also complained to the debt collection company about the date they registered the default. The debt collection company agreed to backdate the default to October 2017, as they wrote to Mrs G to ask her to pay arrears to avoid a default in October 2017, but as they couldn't see the arrears were cleared then, they agreed to backdate the default to October 2017.

Our investigator did not uphold Mrs G's complaint against NewDay. He said that although Mrs G correctly pointed out that the ICO say a default can be recorded once someone is in three months of arrears, and normally by six months at the latest, the ICO guidance also says that if NewDay agrees to accept lower or reduced payments, and the terms of that agreement isn't broken, that a default shouldn't be recorded. Our investigator said that while a default was later recorded by the debt collection company, that wasn't NewDay's responsibility.

Mrs G asked for an Ombudsman to review her complaint. She said that she would have been better off not paying anything in 2015 and letting the account default then. Mrs G added that she felt she was being penalised for responsibly seeking help in the way of a debt management plan and continuing to pay off her debt. She said that by not applying the default at the time, that this had not benefited her.

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 want to be clear to Mrs G that I can only look into the actions of NewDay here and not what the debt management company did by registering a default. This is because the complaint I'm looking at here is against NewDay only.

NewDay have not registered a default at any point on Mrs G's credit file, nor have they instructed the debt collection company to do so, therefore I can't ask NewDay to backdate a default they haven't registered. Instead, I'll be looking at if NewDay should have registered a default, which in turn, would mean the debt collection company wouldn't have registered a default at a later date.

Our investigator has explained to Mrs G the ICO guidance, so I won't repeat that here. But in summary, as an agreement was made with the debt management charity and NewDay to accept lower payments, the debt management plan would show on Mrs G's credit file and while arrears may accrue and increase, a default would not be recorded while Mrs G made the agreed payments.

A default should be recorded when the relationship between the borrower and the lender appears to have broken down and is usually a last resort. But here, Mrs G used a debt management charity to agree a debt management plan with NewDay, so I can't say that the relationship appeared to have broken down when she has been proactive in trying to come to an arrangement, which could and did prevent a default here.

I've looked at Mrs G's credit card statements. I can see that she made a payment to NewDay on 18 November 2014, but then she missed her following payment which was due by 24 December 2014. So I can't agree with Mrs G that a default should have been recorded when she made agreed a debt management plan with NewDay, as she would have been about five weeks in arrears at the she went to the debt management charity.

I've considered what Mrs G has said about what would have happened if she didn't make payments in 2015 and she would be better off now. She also said she was being penalised for continuing to pay the debt. While I have sympathy for her situation, I'm not persuaded this is the fault of NewDay. I say this as NewDay did not register a default, the debt collection company did. NewDay acted upon her instruction to make a payment arrangement with Mrs G, without negatively affecting her credit file in the form of a default.

I would not have expected NewDay to have registered a default when they agreed to accept a debt management plan to avoid a default. I'm satisfied that NewDay acted fairly and responsibly to work with Mrs G and to stop interest and fees on the outstanding debt, which would have helped her at the time to focus on repaying the outstanding debt, as part of the debt management plan. As I'm satisfied NewDay were fair to not register a default on the account, for the reasons I've already explained, it follows that I won't be asking NewDay to take any further action.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 21 June 2022.

Gregory Sloanes
Ombudsman