

The complaint

Mr M complains that NewDay Cards Ltd (NewDay) defaulted his account and marked his credit file.

What happened

Mr M is very ill and is represented by his wife, Mrs M. But I will refer to Mr M as the complainant in this provisional decision.

Mr M had a branded credit card supplied by NewDay. In February 2021, the limit was £3,150 and the balance was £2,927. Payments were up to date and were made by direct debit. Because of Mr M's serious illness, Mrs M called NewDay on 5 February 2021 to ask for help – as he could no longer afford to make the minimum payments, which were about £120 per month. A payment hold was agreed with no payments, interest, or fees. No payments were made in March 2021, April 2021, or May 2021. On 5 February 2021, NewDay wrote to Mr M to say the monthly direct debit had been cancelled. On 16 April 2021, NewDay sent a Notice of Default which asked for payment of £58.56 by 7 May 2021. The account was defaulted in May 2021 after three missed payments. A total of five missed payments were recorded at the credit reference agencies (CRAs).

Mr M complained. He said that when Mrs M called NewDay on 5 February 2021, they didn't say the direct debit would be cancelled and therefore he was surprised when payments were missed as a result; and the account was then defaulted. He said he hadn't received the letter dated 5 February 2021 which said the direct debit was cancelled. He said that wasn't fair. He wanted to renew his mortgage and was concerned that higher interest rates would be applied because of the default.

NewDay said that on the call on 5 February 2021, Mrs M was advised that the account would fall into arrears if payments weren't made and this would affect Mr M's credit file. The direct debit was cancelled as a medical hold was placed on the account, and no payments were needed. They said their call handler advised Mrs M that a default would take six months to register on Mr M's credit file. They agreed that Mrs M should've been advised that the direct debit was to be cancelled, and she wasn't. For that, they paid compensation of £15. NewDay also refunded a £12 overlimit fee. NewDay rejected the rest of Mr M's complaint.

Mr M brought his complaint to us. Our investigator said NewDay acted reasonably. On the call on 5 February 2021, NewDay advised Mr M that a statement would be sent every month which required payment of the minimum balance – 1% of the balance outstanding. NewDay said that missed payments would be advised to the CRAs and arrears would accrue. They also said a default would usually be recorded if six months' payments were missed. A default would also be recorded if there was a medical write off. She agreed that the cancellation of the direct debit wasn't mentioned, but NewDay wrote to Mr M twice to say that would happen. If the letter didn't arrive at Mr M's address, NewDay couldn't be held responsible for that. On the call, NewDay's call handler said Mr M's credit file would be affected because of the payment hold – and he was advised to read the letters that would be sent.

The call handler also said that missed payments would be noted at the CRAs, and a default would be noted on Mr M's credit file after six missed payments. Five payments were then missed (between March 2021 and July 2021). A Notice of Default was sent on 7 May 2021. The next payment received was £163.14 on 2 August 2021.

Mr M didn't agree and asked that an ombudsman look at his complaint.

I reached a first provisional decision where I said:

This is a finely balanced provisional decision, with valid arguments on both sides. But on balance, given the content of the call on 5 February 2021 (which I have closely listened to), I believe that NewDay should amend Mr M's credit file and remove the default; but leave in place the missed payments that are recorded.

I can see that NewDay agreed a payment hold during the call on 5 February 2021. Because of Mr M's serious illness, he couldn't afford to make the minimum payments any longer. Interest and fees were set to zero and no payments were required. I don't dispute that NewDay sent to Mr M most of the necessary paperwork to advise him what was going on; on 5 February 2021, they sent a letter to say that the direct debit was cancelled. NewDay told us this was sent twice (although I'm not sure why that would be). Mr M has said he wasn't aware that the direct debit was to be cancelled – but since, on the call, it was agreed that payments would stop, it was clearly necessary to stop the direct debit – otherwise payments would still be made. So – I don't think that the issue of the stopped direct debit is very relevant here.

NewDay sent statements which showed no payments were made between March 2021 and July 2021. But – each statement showed that a minimum payment was due and arrears were building up as a result – in July 2021, the arrears were £134.13. This was part of what was agreed with Mr M on the call – that statements would still be generated and arrears would build up. NewDay also sent a Notice of Default on 16 April 2021 which asked that a payment of £58.56 was made by 7 May 2021 – and it wasn't.

But for me, it is the content of the call on 5 February 2021, which is important and this, taken with the context of what happened, persuade me that Mr M's complaint is upheld.

On the call, Mrs M (representing Mr M) explained that Mr M was seriously ill and as a result, the payments couldn't be made. Mrs M was clearly looking for guidance and help – and was dealing with the effect of Mr M's illness as regards advising NewDay (and other lenders) for the first time. I think it's reasonable therefore to say that she was depending on NewDay to give her the right information on the call.

A payment hold was agreed with no payments, and zero interest and fees. The call handler also discussed with Mrs M the possibility of a medical write off – and explained to her the process for applying for that. While initially, the call handler proposed a payment hold for 12 months, it was agreed that it would be put in place for three months – in order that she could consider Mr M's situation and get the documents together to apply for a medical write off.

Mrs M was given the clear direction that while missed payments would be notified to the CRAs, a default would not be made during the three-month period of the hold.

NewDay's call handler said that interest and fees would be stopped, and Mr M's credit file would be impacted, and said he should read the letters that were sent – that was correct and what we would expect to hear. But he went on “...for the time being (we'll) put a hold on

for now but going forward you can ask for a medical write off". Mr M was clearly concerned about the effect on Mr M's credit file and asked about it several times. I heard the call handler say that *"arrears will build, minimum payments are still required"* – which was also correct. But he also said (in response to a further question from Mrs M about the effect on the credit file *"I don't think there is anything that can happen but will check"*). He then said (after checking) *"(the) hold will not affect your credit file. What affects your credit file is statements generated (which say) minimum payments due...credit file could potentially say payments missed"*. So, to that extent – he said that missed payments would be advised to the CRAs – which was correct.

But he then went on to say *"a default would be added after six months' of missed payments...so it takes a while for default to be applied...the medical hold will not affect your credit file...it's just when the minimum payments get generated...default gets registered after six months of missed payments"*.

Mrs M then asked *"so if we stop it (the payments) for four months, then it won't go on the credit file?...and we can then consider what to do on the medical write off...(it will) give us time to get medical evidence together"*. The call handler replied *"yes, you can put on a three/four month hold only."*

Mrs M asked again *"if we put it on hold for four months won't it affect credit file?"*. The call handler said, *"if you put it on for three months to give you time to get the medical evidence to us"*.

Mrs M asked *"you say it takes six months (to default)...so hold for four months?"*. The call handler replied, *"credit file will show missed payments (but) default will be added at the six-month mark"*. He went on *"the CRAs will be advised of missed payments but that's not a default"*.

The guidance for dealing with defaults is laid down by the Information Commissioner's Office (ICO). This says when a consumer is at least three months behind with their payments then a default may be registered. And it would expect a default to be registered by the time the consumer is six months behind with their payments. It is the business' responsibility to put an entry on the credit file. This cannot be taken off unless it is an error. And so – NewDay could register a default after three missed payments – which is what they did.

But for me - it's clear that while Mrs M was advised that missed payments would be advised to Mr M's credit file, she was told that a default might only happen after six months – and so she agreed to a three month hold on that basis. And in this case, a default was registered after three months of missed payments – which is not what NewDay's call handler said would happen.

Against this, I must consider the letters that NewDay sent to Mr M. I noted that a letter was not sent to Mr M to confirm the detail and terms of the payment hold – if such a letter had been sent, it might well have set out the effect on his credit file and the potential for default. The Notice of Default in April 2021 said that if the payment wasn't made *"We'll terminate your credit agreement with us, close your credit card account and ask you to pay the full account balance immediately. If we terminate your credit agreement, we may sell your account to a third party. We will also share details of the status of your account with credit reference agencies which may make it harder for you to get credit in the future."* So – while the letter was correct and was in the format laid down by the regulators and said that information would be sent to the CRAs, it didn't say a default would, or could follow. Mr M could well have considered that it referred to missed payments rather than default – given what he was told on the call in February 2021.

It looks like once Mr M realised what had happened, he paid the NewDay account up to date in August 2021 – with a payment of £161.14. So, I'm persuaded that it's likely that had he been aware of the potential for default, he could've avoided that by paying in enough money in preceding months.

And so – on balance, and in the circumstances of this complaint, I am persuaded that the default should be removed from Mr M's credit file. But – as the statements and the contents of the call were clear that there would be missed payments accruing; and the call said they would be advised to the CRAs, it's reasonable that the five missed payments should remain on Mr M's credit file. While it is for individual lenders to interpret what they see on a customer's credit file, it is fair to say that a small number of missed payments aren't seen as serious as a full default – and so Mr M should be aware of that.

Responses to the first provisional decision:

NewDay said they'd realised that a full default hadn't been registered. But missed payment markers had been advised to the CRAs.

Mrs M (on behalf of Mr M) argued strongly that the missed payment markers should be removed - because NewDay weren't clear that the direct debit would be cancelled, and it was. In support, she described, in detail, the deteriorating health of her husband during the period between February 2021 and June 2021. This left him in a vulnerable position, and unable to deal with financial matters.

I considered these comments and issued a second provisional decision:

I said in the first provisional decision that the default should be removed. NewDay have now told us that in fact a default wasn't registered – but that contradicts what they told us before. So – I am still proposing to issue a decision which ensures that if there is a default on Mr M's credit file, it is removed.

I have thought about what Mrs M has said to us. She is arguing that all missed payment markers should also be removed. I looked at this again and there were five missed payment markers added to Mr M's credit file in 2021. But the payment hold agreed by NewDay for the months of March 2021 to May 2021 was for three months. It seems reasonable to me that the missed payment markers must remain in place for those months. Even though Mr M wasn't told on the phone call that the direct debit would be cancelled – he was advised of that in a letter sent in February 2021. And it's also clear that for payments to be suspended for three months – the direct debit had to be cancelled. I don't believe there was any other way of doing that. That had to be part of the payment hold that NewDay agreed.

But because the direct debit was cancelled, what then happened was that a further two months payments were missed – beyond the payment hold period. And so, for me, and with reference to Mr M's vulnerability - it seems unreasonable that Mr M's credit file should be so marked for those two months. And as the provisional decision said, he paid off the arrears in August 2021 – after he realised what had happened. And so – I propose that two months' missed payment markers are removed but the three markers for the period of the payment hold must remain in place.

Responses to the second provisional decision:

New Day didn't respond. Mrs M (for Mr M) did – she reiterated her previous points – that she and her husband were in a poor state of health and were vulnerable; and she wasn't advised the direct debit would be cancelled. But – she said she reluctantly accepted the provisional decision.

I now need 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.

As Mrs M (for Mr M) accepted the provisional decision, and NewDay didn't respond, my final decision is as set out in the second provisional decision.

Putting things right

Therefore - NewDay Cards Ltd must:

- Ensure that no default was registered on Mr M's credit file; and if there was, remove it.
- Remove two missed payment markers from Mr M's credit file – the months of June 2021 and July 2021.

My final decision

I uphold this complaint. NewDay Cards Ltd must:

- Ensure that no default was registered on Mr M's credit file; and if there was, remove it.
- Remove two missed payment markers from Mr M's credit file – the months of June 2021 and July 2021.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 February 2023.

Martin Lord
Ombudsman