

The complaint

Mr G complains NewDay Ltd trading as Aqua have unfairly defaulted his credit card account.

What happened

In November 2020 Mr G contacted NewDay to explain he was having financial difficulties. He says he was told he could make no payments for the next five months and this wouldn't impact his credit file. More recently, Mr G was looking to apply for a mortgage, and found NewDay had reported a default, so he complained.

In September 2023 NewDay said they could see Mr G first contacted them in November 2020, where they ran through an income and expenditure process – before deciding to put him on a plan where he paid nothing for five months as he couldn't afford any repayments. Though they couldn't listen to the call, they said they'd sent him a letter. And, in this letter, it said as Mr G wasn't making payments his account would continue to be overdue – and they'd let the credit reference agencies (CRAs) know. While they appreciated Mr G had told them of his financial difficulties, they said they're required to report factually accurate information to the CRAs. So, as Mr G hadn't maintained payments on his account, he'd accrued arrears. This led to them sending a Default Notice on 19 December 2020 saying he needed to clear the arrears by 9 January 2021. Then, because he hadn't, they terminated the account on 13 January 2021 and said they'd be registering the default with the CRAs on 7 April 2021.

NewDay went on to say they understood Mr G had been making payments of £5 a month through a debt charity since July 2021, and none of these payments had been missed. But they could only prevent default action if Mr G had maintained payments of at least 1% of his balance.

Unhappy with this Mr G asked us to look into things – saying he'd acted correctly and in line with what NewDay had told him and he was being punished.

One of our Investigators considered things and found NewDay had fairly applied a default to Mr G's account but thought it should be backdated to 9 January 2021 when the Default Notice expired.

NewDay said it's not in line with their processes to apply a default before someone has reached 180 days' worth of arrears – so they'd correctly applied the default.

Mr G also didn't agree, saying he didn't think it fair this would impact him until 2027 given he didn't do anything wrong.

Because an agreement couldn't be reached, the complaint's been passed to me to decide.

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 understand Mr G is saying he's done everything he should, and I agree, he has. But I'm afraid that doesn't mean a default can't or shouldn't be applied.

I do have a significant amount of sympathy for the situation Mr G finds himself in – and my role is to decide whether the default was applied correctly. If I'm satisfied it was, then I can't reasonably ask NewDay to remove it – as they also won't have done anything wrong.

As a starting point, the terms and conditions of Mr G's account require him to make monthly payments every month – either the minimum payment, the full balance, or something in-between. If Mr G doesn't at least make the minimum payment, his account goes into arrears immediately.

Mr G's August 2020 statement shows an outstanding balance of £1,229.83, with a minimum monthly repayment of £48.99 due.

His statements for September-December 2020 show no payments were made during this time. The minimum payment of £48.99 was due by 31 August 2020 – and by November 2020 the minimum payment due was £61.29.

During, and just after, this time NewDay did send the letters they told Mr G they did when responding to his complaint:

- 16 November 2020 – confirmation of the payment plan Mr G had entered into, which said if Mr G continued to miss payments this would be reported to the CRAs
- 19 December 2020 – Default Notice which said £61.29 was due by 9 January 2021 otherwise his account would be terminated, and if they did that they may report this to the CRAs
- 13 January 2021 – Termination Notice to say the full balance is now due of £1,219.74
- 7 April 2021 – letter to tell Mr G they're going to report his defaulted account to the CRAs

So, at face value, NewDay have fairly registered a default – though I'll come back to the date of the default.

That's because I'm aware Mr G disputes that a default should be applied at all – as he says he was told one wouldn't be recorded.

NewDay have told Mr G and our service they don't have the call recording from 14 November 2020 when his plan was put in place. I don't find this overly surprising, given it was close to three years since this call at the point Mr G complained.

Where information is incomplete, as it is here, then I'll decide the outcome based on information I do have – which, here, includes NewDay's notes about the call.

These notes don't show they told Mr G about the impact on his credit file. I don't think this immediately means they *didn't* tell him about the impact with the CRAs, but it also doesn't show they did.

I don't think this, ultimately, makes a significant difference – and this is the key bit from Mr G's perspective. Even if I was satisfied NewDay made an error, which I'm not, I'd need to be satisfied that error had led to some kind of detriment on Mr G's behalf.

The notes show Mr G was, unfortunately, not in a position to pay anything towards his debt because he didn't have an income coming in at the time. I don't doubt this wasn't his fault, but equally it's not NewDay's fault.

NewDay have requirements to help people in financial difficulties – and I can see they did that by helping Mr G with plans of him not having to pay for a period of time and refunding some interest (which shows on Mr G's December 2020 statement). But they also have a requirement to report true and accurate information to the CRAs.

Mr G wasn't able to clear the arrears he'd built up since 31 August 2020, so it was right NewDay defaulted the account. I've found no evidence he was told this wouldn't happen, but even if he was, I couldn't look to make incorrect information true. And, by that, I mean I've found NewDay have fairly defaulted the account, so even if they'd told him they wouldn't in error, it doesn't mean I could, or should, tell them to remove the default.

I do agree with our Investigator they've recorded the default too late.

I'm sure NewDay are aware of the Information Commissioner's Office guidance on reporting defaults – which is a default is usually applied when an account is three to six months in arrears.

Here, Mr G went into arrears as of 31 August 2020 as a result of not making the minimum payment of £48.99. The Default Notice required a payment of £61.29 to be made by 9 January 2021 and none was. At this point, Mr G's account had been in arrears for between three and six months – so I'm satisfied this is a reasonable time to backdate the default to.

My final decision

For the reasons I've explained above, I require NewDay Ltd trading as Aqua to backdate Mr G's account to show as in default from 9 January 2021.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 April 2024.

Jon Pearce
Ombudsman