

The complaint

Miss B complains NewDay Ltd have unfairly defaulted her credit card account and sold it to a debt purchaser.

What happened

Miss B says she was making payments to NewDay but despite this they defaulted her account and passed it over to a debt purchaser. Miss B sent her statements to NewDay to prove she'd been making her payments, and said the issue was due to them giving her two different payment references which were wrong.

NewDay said they'd checked their records and couldn't find any of these payments. They said when Miss B spoke to an adviser the correct reference wasn't used. To locate the payments, NewDay said they needed more information from Miss B – but also needed her to make up the payments in the meantime, as they're still due.

Unhappy with this, Miss B asked us to look into things. As part of our standard process, we asked NewDay for their file of evidence. They replied, making an offer of £100 for their complaint handling.

One of our Investigators let Miss B know about the £100 offer, which she accepted and I understand has since been paid, so I won't mention it again. But the Investigator felt NewDay had told Miss B about making payments to the account using the correct reference and she hadn't used that. Because of that, she didn't uphold the complaint.

Miss B didn't accept that, saying she'd tried to resolve this issue with NewDay on multiple occasions. She also quoted a law which she says means NewDay have broken the contract and means she doesn't owe the money anymore. So, 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.

My role is to take into account the law and regulations, regulators rules, guidance and standards, codes of practice and what I consider to be good industry practice. But, ultimately, I'm required to decide things on a fair and reasonable basis.

I can't make a legal finding on whether NewDay have broken the law Miss B quoted. Ultimately though, the outcome of this case hinges on whether I'm satisfied Miss B was given two payment references as she says she was by NewDay. If I am satisfied NewDay made the error, then I'd uphold the complaint, and if I'm not, then I won't. Even if I do uphold this case, then I'd also need to see Miss B has taken steps to mitigate her losses.

So, as I mentioned Miss B is adamant NewDay gave her two different payment references. And she says it's this error by NewDay that led to her payments being returned / not reaching her account and it subsequently being defaulted.

Miss B wasn't able to be precise about the date she was given these payment references – and was hesitant when first asked about 'how' she was given them – before then saying they were given on the phone.

We've asked NewDay for their notes of all calls. The only conversation I can see regarding payment instructions was 6 July 2022. There is no suggestion in this note two different payment references were given. I think it's unlikely at this point Miss B was given two different references – and I say that because she continued successfully making payments until November 2022. The first payment to be returned was in December 2022.

We asked Miss B about this – because if she was aware of the payments being returned, then we'd have expected her to take some action regarding this. Miss B says yes, she knew the payments had been returned, but she complained to NewDay and they did nothing to help her.

It's Miss B's responsibility to ensure her bill is paid and on time. Miss B was sent multiple letters from January 2023 onwards about making payments. These letters were correctly addressed, so there is no reason Miss B shouldn't have got them.

These gave Miss B a phone number to call up and make her payments, as well as explaining how she could do this online and through her bank account. Clearly, her bank account wasn't working, as the payments were being returned, so this wasn't an option. When asked by our Investigator why Miss B didn't call NewDay to make the payments she's said it's because she was spoken to horribly by NewDay previously and put in a complaint about that so didn't want to speak to them.

I'm genuinely sorry to hear about this, but the complaint Miss B is referencing was, based on what I can see, some months before the issues in December 2022. I can also see she was calling NewDay between January and March 2023 but didn't make the required payments. The call notes in January 2023 talk about Miss B saying she wants to send NewDay receipts of her payments, but the notes say NewDay told her this isn't what they need.

From all the evidence I have, I think initially Miss B genuinely believed she'd made all the payments she needed to make – and didn't at first see the payments had been returned. So, when she was getting letters saying she'd not made her payments she was confused, as she'd thought she had – which is why she was telling NewDay she'd send in the receipt of her payment. It seems after this she spoke to her current account provider, who told her two different references were being used which was the problem – which she's then attributed to an error by NewDay.

Unfortunately for Miss B, I've found no evidence NewDay gave her two different references. NewDay's letters are clear about the amount Miss B owes and the consequences if she doesn't pay that amount. I've found no evidence Miss B did pay that amount, so in the circumstances I can't require NewDay to do anything different – as I didn't find they'd done anything wrong.

My final decision

For the reasons I've explained above, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept

or reject my decision before 3 April 2024.

Jon Pearce
Ombudsman