

The complaint

Mr A complains about how NewDay Ltd administered his credit card account.

What happened

Mr A held a credit card with NewDay.

In January 2022, NewDay sent Mr A a default notice. It did so because it said he hadn't made at least the minimum contractual repayment towards his account. Over the next few months, NewDay sent Mr A more letters; those letters set out, among other things, that his account had been terminated, and that NewDay intended to register a default on his credit file.

In December 2023, Mr A complained to NewDay. He acknowledged that he'd fallen behind with some payments, but he said, in summary, that he'd received no communication from NewDay about the default. As such, Mr A didn't think it had been fairly applied because he hadn't received notice of it.

NewDay sent Mr A its final response letter on 14 December 2023. In it, NewDay set out that Mr A hadn't made any repayments after November 2021 – and it had sent Mr A letters in December 2021, as well as both January and February 2022, to notify him of the arrears. Those letters were in addition to his statements, the default notice and the termination notice, which had all been sent separately.

Overall, NewDay felt it had followed the correct steps because it had received no response to its letters, or any payment towards Mr A's account. So, it didn't uphold the complaint.

Mr A remained unhappy, so he contacted this Service for an independent review. He reiterated that, in his view, the default was unfair. He was also unhappy with what was reported on his credit file. An Investigator here looked at what had happened; he didn't think NewDay had done something wrong. In summary, he said:

- NewDay had provided copies of several letters it had issued, all correctly addressed to Mr A. Those letters had been about Mr A's arrears, the termination of his account, notice of default, the account being passed to a third party and the registration of a default.
- NewDay couldn't be held at fault if Mr A didn't receive any of those letters, given it was only responsible for sending them; not delivering them.
- NewDay were reporting the account as "settled" to Mr A's credit file.
- Overall, there was nothing to indicate that NewDay had done something wrong in its administration of Mr A's account.

Mr A remained unhappy, and he asked for an Ombudsman's decision. In response to the Investigator's view, Mr A largely reiterated his initial points – but he also added that he didn't

think the default notice itself complied with relevant legislation; specifically, in terms of its contents.

Finally, Mr A also said that NewDay were, in fact, reporting a default – alongside the third-party debt purchaser – and that the agreement NewDay had provided didn't contain his information and wasn't signed, so it couldn't be relied upon.

As no agreement has been reached, the complaint has now 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.

Given there are several facets to this complaint, I think it's important to be clear about exactly what I've considered in this decision. Put simply, I'm looking at whether NewDay has acted fairly in its administration of Mr A's credit card account. Any actions undertaken by the third-party debt purchaser don't form part of my review.

Additionally, I'm unsure whether Mr A is saying – when he told our Investigator about the credit agreement being unreliable – that he thinks the credit agreement is *unenforceable*. I'll point out here that if he's referring to the terms and conditions, which our Investigator provided him, those would be general terms and conditions from the time. But, in any case, if Mr A is questioning his specific credit agreement, I should explain that our Service cannot determine enforceability. Instead, that's a matter for the Courts. So, I'll make no further comment on it.

Turning to NewDay's actions, while I know this will disappoint Mr A, I don't think it acted unfairly or unreasonably in the circumstances here. I'll explain why.

Mr A has told us that he didn't receive *any* communication from NewDay about a default. While I don't doubt his recollection of events, I do find that somewhat surprising given the level of correspondence issued to him. I think it unlikely that none of the letters, all correctly addressed, such as the default notice, the letters about termination and closure of his account, or the default registration letter, made their way to him.

Nonetheless, even if I accept that Mr A didn't receive any communication about the default or, in the alternative, consider it more likely that he did receive at least some of them, I'm not persuaded that either scenario would alter his current situation in any material way.

That's largely because Mr A has said himself that he fell behind with some payments; so, I'm satisfied he was clearly aware of the debt and that he needed to make repayments. It just seems that he didn't do so. It follows then that either way, if Mr A did, or didn't, receive any letters about a default; he still knew there was a debt to be paid – and I think he ought to have known there would be consequences for not paying it, or contacting NewDay about it.

I don't think I need to specifically address Mr A's comments about the default notice complying with relevant legislation. That's because, given he says he didn't receive it at the time, I don't think the contents of the notice would have caused him to do anything differently. For the sake of completeness, though, I will say that I think the notice did comply

with updated requirements.

Ultimately, I consider the steps taken by NewDay to be the result of the state of Mr A's account since November 2021. Broadly speaking, in my view, there's nothing inherently unreasonable about a business taking steps to recover what a customer borrowed from it. Particularly if that customer doesn't make at least minimum contractual repayments or, for example, engage with the business to discuss their circumstances and alternative options. It seems that's what happened here.

Clearly, Mr A would prefer that a default had not been registered against him. He's argued that NewDay has reported things incorrectly to his credit file. However, from the available evidence I have, it seems to me that the information recorded by NewDay is an accurate reflection (as it must be) of the history of the account. Under the circumstances I am unable to agree that I should now direct NewDay to remove that information.

As I've explained above, I haven't considered any actions taken by the debt purchaser. If Mr A is unhappy with that firm, he should complain to it directly if he hasn't already done so.

In closing, and to sum up, my remit here is to decide whether NewDay has acted fairly and reasonably in the circumstances. For the reasons I've explained, I'm satisfied it has. Regardless of whether Mr A received the default notice, or any of the other letters, the fact is that he knew about the debt but – based on the evidence I have – stopped making repayments from around November 2021. With all of that in mind, I don't find NewDay's administration of the account to be unfair. So, I don't uphold the complaint and I don't require NewDay to take any further action.

It is possible, of course, that a Court would reach a different view. My decision is not binding if Mr A does not accept it, and our consideration of the matter will not prevent him from raising the same arguments in Court proceedings, should he wish to do so. But this decision brings to an end what our Service can do.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 May 2024.

Simon Louth
Ombudsman