

The complaint

Miss J is unhappy about a default that NewDay Ltd trading as Marbles (NewDay) has applied to her credit file.

What happened

In January 2018, Miss J's account with NewDay fell into arrears. It sent her a default notice in July 2018 advising that if payment were not made by 25 July 2018, Miss J's account would be terminated.

Miss J made further payments between August 2018 and July 2019 but fell back into arrears. NewDay reported the default on her credit file in early 2020.

In November 2023, Miss J complained about the default. As NewDay would not agree to remove it, Miss J came to the Financial Ombudsman for help explaining that she had suffered a significant bereavement and had since settled the account.

Our investigator said that while he could not ask NewDay to remove the default on compassionate grounds, he thought it should have been recorded sooner. Our investigator asked NewDay to backdate the default to 27 July 2018.

NewDay disagreed with the investigation outcome. It says that a default notice is not a notification that a default will be recorded if payment isn't received by a certain date. Rather that the account will be closed if payment isn't received. NewDay said that Miss J later brought the account up to date before falling into arrears again until it defaulted and sold the account in February 2020.

Our investigator disagreed with NewDay's interpretation saying the notice gave a clear indication that it intended to default the account. NewDay remains of the view that the default notice doesn't tell the customer that it will record a default on their account. NewDay says the letter advising the customer it will register a default is the notice of intent to register a default and that this letter was sent to the debt purchaser in January 2020.

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 am sorry to hear about the bereavement that Miss J suffered but like our investigator said, I can't fairly require NewDay to remove the default because of her personal circumstances. I can however consider whether the default should have been applied sooner than it was. And if I decide that it should have been applied sooner, I can require NewDay to amend Miss J's credit file.

The Information Commissioners Office (ICO) guidance says a default may be recorded once the account is three months in arrears and normally by time the account is six months in arrears. By the time NewDay sent Miss J the default notice, her account was six months in

arrears.

Although NewDay says the default notice didn't say that it would record the default, I can see that the letter does say that NewDay will share details of the status of the account with the credit reference agencies (CRAs). I think the wording together with the reference to default in the heading of the letter, implies that NewDay would share details of the default with the CRAs. As Miss J didn't make the payment by the deadline set on the default notice – 25 July 2018 – I think it was reasonable to have expected NewDay to report the default to the CRAs.

Although Miss J paid £200 in mid-August 2018 – this was after NewDay had already terminated her account. So, I think by this point, the account was already in default in line with the ICO guidance and should have been reported as such to the CRAs.

By the time that NewDay reported the default, Miss J had only made two more payments - one in January 2019 and the second in July 2019. This wasn't a case of Miss J being in a payment arrangement to try and avoid the default. So, I can't see that NewDay was acting in Miss J's best interests by delaying the reporting of the default, particularly as otherwise her credit file will carry the default for over 18 months longer than if the default had been reported in July 2018.

The default notice said that Miss J needed to make the payment by 25 July 2018 and NewDay terminated her account on 27 July 2018. So, I agree with our investigator that the fair way to resolve this complaint is to require NewDay to backdate the default to 27 July 2018.

Putting things right

To put things right, NewDay should arrange for the default on Miss J's account to be backdated to 27 July 2018 and correct this with the three main credit reference agencies.

My final decision

My final decision is that I uphold Miss J's complaint and direct NewDay Ltd trading as Marbles to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 11 July 2024.

Gemma Bowen
Ombudsman