

The complaint

Mr H complains that NewDay Ltd trading as Fluid, unfairly recorded a default against his credit file. He wants the default removed and to be paid additional compensation.

What happened

Mr H held a credit facility with NewDay and was required to make monthly repayments towards his account balance. In August 2022, he entered into a hardship plan, where he was able to make reduced payments for a period of time – during which, the interest and fees on his account were frozen; and the account was re-aged, so as to not to reflect further arrears.

A further hardship plan was put in place in December 2022, and then a third in July 2023. However, despite Mr H making the first three repayments under the third plan (August, September, and October of 2023), in late September 2023, NewDay charged off Mr H's account and registered a default on his credit file. Unhappy, Mr H complained. He said he'd maintained the reduced payments on the understanding a default would be avoided.

NewDay initially sent a Final Response Letter (FRL), where they explained they'd incorrectly charged off the account and registered a default when they shouldn't have. They agreed to remove the default and paid Mr H £55 in compensation. However, after a couple of months, Mr H contacted NewDay as the default remained on his file, but was told that the original information NewDay had provided was incorrect, and that their decision to default the account remained. They said this was because their terms only allowed for an account to be re-aged twice in a rolling 12-month period, so a third plan should never have been approved. They offered Mr H a further £40 for any distress this caused, but Mr H declined and brought his case to our service.

An investigator considered the complaint and said she didn't think it was unfair of NewDay to have recorded a default against Mr H in the circumstances. She thought NewDay had provided Mr H with a poor service overall, given the errors in the information they'd put to him. But while she felt Mr H should be compensated for this, she was satisfied that the £95 NewDay had offered was sufficient; so, she didn't ask them to do anything further.

Mr H responded, and said that had he known the third repayment plan – if paid – could still result in a default, he would've repaid the arrears on the account. So, the investigator asked Mr H for evidence to show he could do this; and she asked NewDay to provide details of its terms, to evidence that an account may only be re-aged twice in a 12-month period. Having received both, she issued a further opinion.

She set out that she remained satisfied NewDay were right to register the default, based on the account terms, and from what the Information Commissioner's Office (ICO) guidance set out on this subject. And she thought, that even if Mr H had been made aware that a third repayment plan couldn't be set up; and, that failure to bring his account up to date could result in a default; from the evidence she'd seen, she wasn't persuaded that Mr H had the capacity to repay the outstanding arrears. So, she didn't ask NewDay to remove the default. She did recommend they increase the compensation offered to Mr H from £95 to £250.

NewDay accepted the findings, but Mr H didn't. He maintained that the default should be removed. So, as the parties disagree, the case has 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.

First, I'd like to say that I appreciate this must have been a difficult time for Mr H. Given what he's told us about his reasons for entering a hardship plan to begin with; to then be provided with conflicting information on a number of occasions, I can imagine must have been distressing. So, I've taken this into account when reaching this outcome.

When reviewing this case, there are two key questions for me to answer. One; was it fair, for NewDay to default Mr H's account based on his account status – considering that he had maintained his third repayment plan; and claims that he could have paid off the arrears. And two; did the service levels NewDay provided Mr H throughout, warrant further compensation.

Looking first at the default. As the investigator has rightly explained, the ICO sets out that “*a default normally occurs when you have not met the terms of a credit agreement and your account is three to six months in arrears*”. In this case Mr H's account, at the point the default was registered, was already more than six months in arrears based on his contractual monthly repayments. So, I don't think it was unreasonable for NewDay to look to default his account at this point.

Mr H has argued, that had he known that the third repayment plan should not have been approved; and that his account was in a position where a default may be issued, that he would have cleared the arrears of around £268. But, while I don't doubt Mr H's intentions, and accept that, in hindsight, he would've preferred to have cleared the arrears to avoid the default, I also need to be satisfied that Mr H had the capacity to do so. By which I mean, he had the funds available.

From the statements Mr H has provided, it shows that he was regularly running his account in an overdraft, and was often utilising the overdraft to its full extent. I also need to take into account at this time, that Mr H was on a reduced payment plan with NewDay because he was struggling to maintain the full contractual repayments under the agreement. So, on balance, I'm not persuaded that Mr H was in a position to pay off the arrears on his account in full; and I therefore remain satisfied that it wasn't unreasonable of NewDay to default Mr H's account when they did.

Turning next to the conflicting information Mr H was provided. I accept this must have been distressing as there was clearly a number of errors on NewDay's part. But, just because there were errors, it doesn't mean a business is bound by them; and if mistakes are made, a business is allowed to correct things and put them right – so long as they ensure that they treat customer's fairly when doing so, and that customers are not unfairly disadvantaged.

I don't think Mr H has been materially disadvantaged by NewDay's mistakes. I've set out why above, and how I'm satisfied it was reasonable of NewDay to have issued the default. But, I think in this instance, for Mr H to be told that a third payment plan would be set up, to then be told it shouldn't have; to be told his account would default, and then that it wouldn't; only to be finally told again that it would, must have been confusing for Mr H, at a time when we know he was already struggling – and I think this would have caused him distress.

That being said, I do think the overall sum recommended by the investigator of £250, is a considerable sum. And, in the circumstances, I'm satisfied that this is a fair level of compensation for the distress I think this matter would've caused Mr H. So, while I appreciate this may come as a disappointment to Mr H, for this reason, I won't be awarding any further compensation than NewDay have already agreed to, following the investigator's most recent opinion.

My final decision

My final decision is that I uphold Mr H's complaint, and if they haven't already, NewDay Ltd trading as Fluid should pay Mr H £250 in total, for the distress this matter would've caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 January 2025.

Brad McIlquham
Ombudsman