

The complaint

Miss S complains that NewDay Ltd ('NewDay') trading as Debenhams Mastercard, applied a default unfairly because it applied it around two years after it first issued a default notice.

What happened

Miss S had a NewDay branded credit card. In March 2018 she told NewDay about being in financial difficulties. This led to her entering a debt management plan, through a debt advice charity, in the same month.

NewDay issued a default notice in May 2018 and closed the account to new spending when the payment it demanded wasn't made. Miss S says NewDay ought also to have registered the default against her account at this point, referring to the Information Commissioner's Officer (ICO) rules. Miss S therefore says she would like the default date changed to a date no later than May 2018, which is when she entered into the debt management plan through the debt advice charity.

NewDay did not uphold Miss S's complaint. It said it looks to register a default once an account reaches 180 days of being in arrears. It therefore said it was correct in registering a default against the account in June 2020.

Miss S brought the complaint about the registration of the default to this service.

Our investigator did not uphold Miss S's complaint against NewDay. He said this because he could see that from May 2018, NewDay was continuing to work with Miss S and the debt advice charity representing her. As her account didn't reach six months of payments in arrears until May 2020, it was acting properly in sending a default notice in June that year, leading to the default being registered at the end of June 2020. Our investigator also pointed out that NewDay had stopped applying interest and charges to the account in March 2018, so that the repayments would have a bigger impact in reducing the existing arrears balance, even though they were smaller than the minimum amount due under the credit agreement.

As Miss S was unhappy with this outcome, the complaint has been passed to me for a decision.

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 want to be clear that in this decision I am only looking into issues relating to the question of default notices being applied to the account.

Miss S says that NewDay has been unfair in not registering the account going into default at the same time as it issued a default notice, in May 2018.

In this decision I am therefore looking at the question of whether the timing of NewDay registering the default was fair and reasonable.

Our investigator has explained to Miss S the ICO guidance. The key issue that's relevant here is that the guidance explains that it's reasonable for a business to register a default between after three to six months of arrears, but by no later than six months.

In Miss S's complaint, an agreement was made with a debt advice charity and NewDay to accept lower payments. That means the debt management plan would show on Miss S's credit file and while arrears may accrue and increase, a default would not be recorded while Miss S made the agreed payments. I've seen that NewDay stopped interest and charges on the account.

Generally, a default should be recorded when the relationship between the borrower and the lender appears to have broken down and is usually a last resort. But here Miss S had taken the decision to use a debt advice charity to see if a debt management plan could be agreed with. On that basis, I can't say that the relationship had broken down, given that Miss S was being proactive in trying to come to an arrangement. One of the potential outcomes of reaching that arrangement would be to prevent a default being registered.

That said, I've seen that the account went into arrears after the agreement was made with the debt advice charity. So, after three months of arrears, NewDay issued a default notice requesting payment by 23 May 2018.

NewDay has said that typically it would look to default an account after it had been in arrears for 180 days – roughly equivalent to six months. But Miss S was already reducing the level of her arrears at the time of receiving the default. And by August 2018, the arrears set out in the default notice had been cleared and remained that way for a further eight months. So the circumstances for registering the default were not fulfilled.

Miss S went into arrears again in February 2019, going on to accrue three months of arrears. The payment plan was reviewed at that point by the debt advice charity and the payments were lowered. But Miss S was still able to repay sufficient funds so that the account had returned to normal by June 2019. Three months later the arrears started again. By May 2020 there had been six months of consecutive mounting arrears and this led to the account going into default in June 2020. NewDay once again issued a notice of default and this time went on to register it after 28 days.

Against all this background, I agree with our investigator that NewDay acted in a way that was fair and consistent with the ICO guidance and its own approach. So I'm not able to agree with Miss S that a default should have been recorded in May 2018, given that the arrears had started to be reduced. Additionally, as she had recently agreed the debt management plan with NewDay, she was now better placed to reduce her level of arrears at a faster pace, given that interest and charges weren't being applied to the account.

I would add that generally I would not have expected NewDay to have registered a default when they agreed to accept a debt management plan to help avoid a consumer going into default. NewDay had stopped interest and fees on the outstanding debt, which would have helped Miss S at the time to focus on repaying the outstanding debt, as part of the debt management plan.

To summarise, I'm satisfied NewDay acted fairly and reasonably by not registering a default until it did so in June 2020, for the reasons I've already explained.

As I'm satisfied that NewDay was fair not to register a default on the account in May 2018, it follows that I won't be asking NewDay to take any further action.

I've also carefully considered everything Miss S has said in response to our investigator's finding but I am afraid it doesn't cause me to change my view. From all that I've seen, I'm unable to make a finding in this case that NewDay has acted unfairly.

Finally, I'd like to add that I'm sorry to hear of the difficult personal circumstances Miss S has told us about, which has had an adverse impact on her financial situation. I am sorry that on this occasion we are unable to help her further.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 13 February 2025.

Michael Goldberg

Ombudsman