

The complaint

Mr K is unhappy that NewDay Ltd defaulted his credit account and reported the default to the credit reference agencies.

What happened

Mr K had a NewDay credit account which was in a position of arrears. On 9 May 2024, NewDay issued a default notice to Mr K, giving Mr K until 29 May 2024 to recover the position of his account.

On that same day, 9 May 2024, Mr K called NewDay and offered to repay 60% of the outstanding balance in settlement of the account. NewDay agreed to accept 60% of the account balance as a settlement so long as Mr K made the payment within 14 days. NewDay tried to contact Mr K by telephone to explain this to him but couldn't reach him. NewDay then sent a letter to Mr K on 15 May 2024 explaining their position, including that Mr K needed to make the settlement payment no later than 29 May 2024.

Mr K didn't receive the letter that NewDay sent on 15 May 2024 until ten days later, on 25 May 2024. Mr K wanted to change the settlement agreement and sent a letter in response to NewDay on 27 May 2024. But NewDay didn't receive Mr K's letter until after 29 May 2024, and so after the window of opportunity for Mr K to avail of the settlement offer had expired and when the full outstanding balance of Mr K's account had become due once again. And, because this meant that Mr K hadn't taken any action to recover the position of his account by the 29 May 2024 deadline given in the default notice issued on 9 May 2024, NewDay moved to default the account. Mr K wasn't happy about this, so he raised a complaint.

NewDay responded to Mr K but didn't feel that they'd done anything wrong by administering his account as they had, including their defaulting of Mr K's account for non-payment and the reporting of the default to the credit reference agencies. Mr K disagreed with NewDay's position, so he referred his complaint to this service.

One of our investigators looked at this complaint. But they didn't feel that NewDay had acted unfairly towards Mr K and so didn't uphold the complaint. Mr K remained dissatisfied, so the matter was escalated to an ombudsman for a final 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.

Having done so, I'd like to begin by confirming that this service isn't a regulatory body or a Court of Law and doesn't operate as such. Instead, this service is an informal, impartial dispute resolution service. And while we do take relevant law and regulation into account when arriving at our decisions, our remit is focussed on determining whether we feel a fair or unfair outcome has occurred – from an impartial perspective, and after taking all the relevant factors and circumstances of a complaint into consideration.

I also note that Mr K has provided several detailed submissions to this service regarding his complaint. I'd like to thank Mr K for these submissions, and I hope that he doesn't consider it a discourtesy that I won't be responding in similar detail here. Instead, I've focussed on what I consider to be the key aspects of this complaint, in line with this service's role as an informal dispute resolution service.

This means that if Mr K notes that I haven't addressed a specific point that he's raised, it shouldn't be taken from this that I haven't considered that point – I can confirm that I've read and considered all the submissions provided by both Mr K and NewDay. Rather, it should be taken that I have considered that point but that I don't feel it necessary to address it directly in this letter to arrive at what I consider to be a fair resolution to this complaint.

Mr K's NewDay account was in a position of arrears because Mr K hadn't made the contractually required monthly payments to the account. Because the account was in arrears, NewDay issued a default notice to Mr K on 9 May 2024. And this notice gave Mr K until 29 May 2024 to recover the position of his account.

When Mr K asked NewDay if they would accept 60% of the outstanding balance in settlement of the account, NewDay considered and then accepted Mr K's request, on the condition that Mr K made the settlement payment within 14 days.

NewDay have explained to my satisfaction that they did try to call Mr K to inform him of their acceptance and payment requirements on phone numbers that Mr K had recently confirmed were valid, but found that they were unable to contact Mr K. This meant that NewDay had to confirm their settlement offer to Mr K via letter, which they posted to Mr K on 15 May 2024. And because NewDay required Mr K to make the settlement payment within 14 days, this meant that the deadline by which Mr K had to make the payment was 29 May 2024 - the same date as the deadline for account recovery given in the 9 May 2024 default notice.

Mr K has said that he didn't receive the settlement letter from NewDay until 25 May 2024, which only gave him four days until the 29 May 2024 deadline. This is unfortunate for Mr K, but I wouldn't consider NewDay to be accountable for the delayed delivery of correctly addressed mail. This is because the delivery of such mail is undertaken by a postal service over which NewDay have no direct control. Additionally, it was Mr K's responsibility to have ensured that NewDay held correct contact telephone numbers for him. And if NewDay had been able to contact Mr K by telephone, as I feel that they reasonably should have been able to, then Mr K would have had the full 14-day period to consider NewDay's settlement offer and payment requirements.

Mr K has explained that he wanted to change the terms of the settlement offer and so wrote back to NewDay, posting a letter to them on 27 May 2024. But I don't feel that it was reasonable for Mr K to have posted such a letter to NewDay only two days before the 14-day window of opportunity to avail of the settlement offer expired, especially given the delay that Mr K had himself experienced in receiving the settlement offer letter from NewDay. Instead, I would have reasonably expected Mr K to have called NewDay, to ensure that his counter-offer was received by them at a time the 14-day window was still open. And this is regardless of any hold time or other inconvenience Mr K might have anticipated or experienced if he had called NewDay.

In sending a letter to NewDay on 27 May 2024, rather than calling them as he had done previously, I feel that Mr K tacitly accepted the risk that his letter might not be received until after the 29 May 2024 deadline.

It's also important to note that if Mr K had called NewDay, instead of posting a letter to them, then NewDay would have been under no obligation to accept Mr K's counter-offer, and that if

NewDay had accepted the counter-offer that payment would still have been required by 29 May 2024.

Accordingly, because Mr K didn't make a settlement payment by 29 May 2024, I don't feel that NewDay acted unfairly by then rescinding that settlement offer, given that payment by 29 May 2024 was a condition of the offer. And because the 29 May 2024 was also the deadline given by NewDay in the 9 May 2024 default notice for Mr K to recover the position of his account, which Mr K didn't do. I also don't feel that it was unfair or unreasonable for NewDay to then commence default proceedings against him.

Ultimately, NewDay were under no obligation to accept a settlement offer from Mr K, and I'm satisfied that they were clear about their requirement that any settlement payment must be made by 29 May 2024. Additionally, I feel that Mr K could and reasonably should have ensured that NewDay could have contacted him by telephone rather than having to post a settlement offer letter to him, and that Mr K could and reasonably should have made his counter-offer to NewDay by telephone which would have ensured that it was received by NewDay before the window of opportunity for Mr K to make the settlement payment expired.

All of which means that I don't feel that NewDay have acted unfairly here by following the process to default Mr K's account, or by reporting that default to the credit reference agencies. And because I don't feel that NewDay have acted unfairly, I won't be upholding this complaint or instructing NewDay to take any further or alternative action.

I realise this won't be the outcome that Mr K was wanting, but I hope that he understands, given what I've explained, why I've made the final decision that I have.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 22 May 2025.

Paul Cooper
Ombudsman