

complaint

Mr J complains that NewDay Ltd (NewDay) registered a default notice on his credit file without telling him and won't remove it.

background

Mr J opened a credit card account with NewDay in 2000. Unfortunately, in 2012, Mr J started to experience some financial difficulties and he agreed with NewDay to start making reduced repayments from December of that year.

In March 2013, NewDay sent Mr J a default notice and told him it had terminated his agreement. It sent a duplicate notice in April 2013. At the time, the outstanding balance on the account amounted to around £3,800. Mr J disputes receiving these notices and the records confirm he continued to make his repayments under the reduced repayment plan for some time after they were sent. NewDay registered the default in August 2013.

In 2016, NewDay wrote to Mr J to let him know that, due to a system error, it didn't send him the 'Intention to Default' letter in 2013. It apologised for this but defended its decision to default the account.

I issued my provisional decision on this complaint in October 2017. Having reviewed all of the information, I thought NewDay had evidenced that it had sent Mr J the default notice in March 2013 and that its decision to default the account was reasonable. But I didn't think NewDay's decision to register the *date* of the default until August 2013 was fair. So I set out that I intended to ask it to backdate the date of the default.

Mr J responded to my provisional decision explaining that he still thought the default should be removed. He feels that the default remaining on his credit file for six years is unfair and at odds with what happens in criminal sentencing. He believes he should be able to have this removed in light of the positive change in his finances between 2013 and present day.

NewDay responded to say that, in line with its interpretation of industry guidance, it believes its customers benefit from a longer opportunity to put things right before a default is registered. It's explained that it often waits 180 days between the account becoming delinquent and the registration of the default. For this reason, it doesn't accept my finding that the date of the default should be backdated.

As both parties have now responded, it is appropriate for me to issue my final decision.

my findings

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 partially uphold it.

Mr J didn't respond specifically to my provisional finding that it was more likely than not that the default notices were correctly sent and received. And having reconsidered all of the information, I see no reason to depart from these findings. NewDay has provided sufficient information in this case to satisfy me that the default notice was sent to Mr J's correct address. And while the 'Intention to Default' letter wasn't sent, I'm persuaded that NewDay did what it needed to do under the Consumer Credit Act (CCA) 1974 to default Mr J's account.

Mr J believes the length of time a default notice is shown on someone's credit file should reduce if they have significantly improved their financial conduct. I can certainly appreciate why Mr J would like this to happen, but it is standard practice for the data to be shown on a consumer's credit file for six years. The intention of publishing this information is to ensure that future lenders have all of the relevant information they need when deciding whether to lend or provide their services. Mr J's payment history with NewDay and the subsequent default is relevant information, even though he has now improved his financial circumstances. So it follows that I see no reason why the usual six year period ought not to apply here.

Mr J also believes it was unfair for NewDay to have applied the default in the first place. Having reconsidered the information surrounding this point, I remain of the opinion that NewDay acted reasonably in registering the default on Mr J's credit file. Mr J hadn't met his contractual repayments under his credit card account for some time which meant arrears continued to build. And while he had recently agreed a reduced repayment plan with NewDay, his new repayments were relatively low compared to the outstanding balance. Reduced repayment plans are intended to be a temporary measure, but comparing Mr J's several years to clear this debt. So taking everything into account, I don't think NewDay's decision to default Mr J's account was unreasonable.

In my provisional decision I explained that I didn't agree with NewDay's decision to register the default as being effective from August 2013 when it had told Mr J that his account would be defaulted if he didn't repay the arrears within 28 days. NewDay says it likes to give its customers a longer time to bring their account up to date before registering the default and says this is why it registered the default in August. It believes this is supported by industry guidance that says consumers should be given enough time to respond properly to the default notice.

Whilst I can understand NewDay's intentions to help its customers, the content of the default notice told Mr J that his account would be defaulted in 28 days should he not bring the account up to date. 28 days is generally considered (by industry guidance) as enough time for a consumer to respond. And in this case, Mr J wasn't aware he had a longer period in which to rectify the position. If NewDay wanted to let Mr J know that he had until August 2013 upon which to repay the arrears on the account, it could've done so. Instead, it made the decision to terminate his agreement and issue a default notice on 7 March 2013 giving Mr J 28 days to repay the arrears. So it follows that the effective default should be 28 days from 7 March 2013.

my final decision

For the reasons explained above, I partially uphold this complaint and direct NewDay Ltd to backdate the date of the default on Mr J's account to 28 days after he was issued the first default notice on 7 March 2013.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 22 January 2018.

Lucy Wilson
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