

complaint

Mr C complains NewDay Ltd has told credit reference agencies his account defaulted in July 2010.

background

Mr C had a credit card account. He fell behind on his monthly payments and received a default notice dated 14 March 2009. At the time he owed just under £10,000. The account was reported as being in default in July 2010 and the money stated to be owed was just under £11,000.

Mr C complained to NewDay. It didn't respond fully to his concerns within eight weeks. But says it did send a final response letter at the end of August. In this letter it didn't agree the default has been incorrectly dated but offered Mr C £60 for failing to address his concerns more quickly. Mr C says he didn't receive this final response letter.

The adjudicator did not recommend the complaint should be upheld. He said he could see Mr C had made payments after the default notice was sent. Mr C had also raised a complaint in December 2009 stating that he wouldn't be making any more payments and claiming that the debt was unenforceable. The complaint went on until April 2010. In view of these circumstances the adjudicator's view was that the default was correctly applied in July 2010.

Although the default was shown as a 'bank' default rather than a credit card default the adjudicator thought this should be taken up with the current owner of the debt.

Mr C disagreed. In summary he says:

- the adjudicator hasn't justified why he thinks a default date of July 2010 should have been applied;
- when he got in to financial difficulties in 2008 he was only in a position to make token payments to all his creditors. All his creditors were written to at the same time, paid in the same way and over the same time period with token payments. These payments ended completely in 2009. All the other credit providers recorded a default date in 2009.

Mr C provided a copy of a credit report dated November 2009. This showed the account as marked as being subject to an arrangement and that a payment of £27 had been received in each of the previous five months. He also provided a copy of a credit report dated April 2010. This showed the £27 payments stopped four months earlier. There was then a single payment for £1 and no further payments were made. It also stated the special instruction end date was 1 December 2009.

my provisional decision

I came to different conclusions from the adjudicator. I set these out in a provisional decision to allow both sides to comment. I said I understood why the adjudicator felt that it was fair for the default to be recorded after Mr C's complaint that the debt was unenforceable was resolved. The Information Commissioner's Office's guidance says that lenders are faced with difficult decisions when considering recording defaults which are disputed by the customer.

But I thought – in this case - the complaint that the credit card debt was unenforceable was further evidence that the relationship had broken down and a default should have been recorded from that point. I didn't have all the information I'd need to give the precise date that the default should have been registered but I thought at the very latest the default should have been registered on 1 January 2010.

As I thought the default date should have been registered at a date more than six years ago I thought that NewDay should use its best efforts to get the new owners of the debt to tell credit reference agencies that the default should be removed from Mr C's file.

I thought NewDay should also pay Mr C the £60 it had offered him.

responses to my provisional decision

Mr C says he accepts my decision subject to NewDay:

- promptly notifying the new owner of the debt of the fact that the default date for the credit card debt it purchased from NewDay is inaccurate and should now be removed from his credit file with the credit reference agencies (and confirming in writing to him the date that it has done this); and
- paying £60 compensation.

NewDay says it does not agree with the decision as it thinks it has provided all the information it can to show why a default was not registered.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

NewDay hasn't provided any new evidence or argument. And I don't see any reason to depart from my provisional decision save that I will – as requested by Mr C – require NewDay to tell Mr C when it has used its best efforts to get the new owner of the debt to tell credit reference agencies the default should be removed from his file.

my final decision

My decision is that I order NewDay Ltd to:

- use its best efforts to get the new owners of the debt to tell credit reference agencies that the default should be removed from Mr C's file and to tell Mr C;
- write to Mr C to confirm when it has told the new owner of the debt to tell credit reference agencies to remove the default from Mr C's credit file; and
- pay Mr C £60.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 March 2016.

Nicola Wood
ombudsman