

Complaint

Mr M has complained about NewDay Ltd and their decision to register a default against his credit file.

Background

Mr M contacted NewDay in March 2018 and entered into a fair treatment arrangement (FTA). NewDay accepted a re-payment plan, agreeing to halt any further interest and charges.

As this re-payment amount didn't cover the minimum payment, the account continued to build arrears. Because of this, NewDay issued a default notice. Mr M and NewDay discussed this default on 25 May and he continued with the plan.

NewDay then wrote to Mr M to explain that they were closing his account. Mr M contacted NewDay on a number of occasions to discuss making a payment that would prevent the default.

A payment of the full balance wasn't made so NewDay sold the debt to a third party company on 31 October, registering a default on the same day.

Mr M felt NewDay didn't provide him the opportunity to make a full payment. He felt NewDay didn't make him aware his account could be defaulted when he was in an FTA. So, the default was registered unfairly and he wanted it removed.

NewDay responded saying they made a business decision to sell the debt as the arrears had continued to build. They felt they followed the correct process when registering the default and transferring the debt so didn't uphold the complaint.

Mr M wasn't happy with NewDay's response so he referred his complaint to us.

An investigator looked in Mr M's complaint and didn't uphold it. They thought NewDay acted reasonably when registering the default. They agreed with NewDay's offer of £30 compensation, made after their final response, to recognise NewDay's failure to provide a call back.

Mr M disagreed with this view but accepted the £30 offer in the interim. Mr M argued had NewDay responded to his communication in October, he would've been able to pay the account in full. He said although his situation hadn't changed, he had people willing to pay the amount to prevent a default. So, he maintained the default was registered unfairly and now impacted his ability to secure future credit.

As Mr M disagreed with our investigator's view, the complaint has been passed to be for a 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 won't be upholding the complaint for broadly the same reasons as the investigator.

Default

I've looked into whether NewDay acted reasonably when registering the default and also whether they made Mr M reasonably aware about the actions they took and why.

I've seen system notes that document the FTA between NewDay and Mr M as well as the monthly statements sent to Mr M. They show that interest and charges were suspended and that a £5 payment was made as agreed. However, they also show the account was building arrears as the minimum payment calculated from the outstanding balance wasn't being paid.

I think these statements explain clearly that any arrears are payable immediately, in line with the credit agreement Mr M entered into. As Mr M's payments weren't covering the arrears, I think NewDay have acted reasonably when issuing a default notice on 19 May.

I've listened to the call Mr M made to NewDay after receiving the notice. I think NewDay made Mr M aware of how the arrears were being built and that the account would likely be closed and defaulted. Mr M was aware at this point that, unless he was able to pay the outstanding arrears, a default would be registered.

During the call, Mr M decided to wait and see if his financial situation improved. Unfortunately, this wasn't the case. I'd expect NewDay to continue to manage the account and its default as per the usual process during this time.

NewDay closed the account and informed Mr M of their intention to register a default in letters dated 7 July and 6 September. This followed the advice Mr M was provided in the phone call. So, I think NewDay have acted reasonably in the actions they've taken up to this point.

Mr M states he then wrote to NewDay on two occasions after receiving the default notices and didn't receive a response. He states he intended to pay the full balance so if he'd have spoken to NewDay, they could've taken payment before the default was registered.

I've seen Mr M wrote to NewDay 13 September. NewDay responded on 21 September but didn't respond to Mr M's request for them not to register a default. They only mentioned Mr M's request to change the payment date. I would expect NewDay to respond to every point Mr M raised and I think they've failed to do so here.

But, I've seen Mr M called NewDay on 3 October to discuss this further, before the default was registered. So Mr M did have the chance speak to NewDay after receiving the default notices. I think this call gave Mr M a reasonable opportunity to discuss and pay the default before it was registered. Because of this, I don't think NewDay's failure to mention the default in their letter has impacted Mr M.

System notes show on this call Mr M agreed to make a payment on 15 October. The notes don't reflect him making an offer to pay the entire balance. Mr M continued to call NewDay and made a payment of £5 on 16 November, after the default had been registered.

I wouldn't expect Mr M to continue to make smaller payments if his intention was to pay the full amount as he was aware at this time that a default was pending. Because of this, I don't think it's likely that Mr M would have made the full payment even if NewDay had responded to all of his communication.

Mr M had 5 months from being made aware a default could be registered to make the full payment and this wasn't received. He didn't make this payment so I can't agree NewDay have prevented him from doing so. NewDay have an obligation to record an accurate reflection of how Mr M manages his account and so I'd expect them to place the default.

For these reasons, I think the process NewDay has followed when registering the default have been reasonable and they don't need to take any further action to resolve the complaint.

Callback

NewDay have offered Mr M £30 to recognise their failure to call him back after receiving his request for a breakdown of his charges and interest. This offer was made after we accepted Mr M's complaint. I'd expect NewDay to respond to this e-mail so I agree their failure warrants recognition. However, I don't think their error impacted Mr M's ability to pay the arrears before the default was registered for the reasons already listed above.

So, when considering the remedy I've taken into account the frustration the lack of response this e-mail would have created. I've also considered that Mr M received monthly statements which included the charge and interest information he wanted. He'd also spoken to NewDay on a number of occasions where this information could have been asked for.

I can understand how the lack of response would make Mr M feel ignored and this would have caused some frustration. For these reasons, I think NewDay's offer of £30 is a reasonable amount to recognise the upset this caused.

My final decision

For the reasons outlined above, I uphold Mr M's complaint about NewDay Ltd. They must pay Mr M £30 to recognise the frustration created by their failure to call Mr M back.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 November 2019.

Josh Haskey
Ombudsman