

complaint

Mrs B complains that her account was defaulted, closed and passed on to debt collectors incorrectly by NewDay Ltd trading as Marbles after she got into arrears.

background

Mrs B got into arrears on her account and she agreed a no fee arrangement to pay back the arrears in May 2018. She was expected to make two payments of £40 to bring her account up to date and with this arrangement no further fees would be charged. Mrs B made the first payment of £40 towards the end of May 2018 and was due to make the second payment on 25 June 2018.

Mrs B called New Day a few days after making the first payment as she was getting arrears letters – she says she also wanted to make the second payment but was told not to make the payment and asked to set up a direct debit to collect future payments which she did. The direct debt was cancelled, and no payment was taken Mrs B fell into further arrears and was charged further late and over limit fees.

New Day said they did set up a no fee agreement in May 2018 for Mrs B to make two payments of £40. They also set up a direct debt on the account to collect payment from the end of July 2018. But as no payment was received for June 2018 her account reverted to its normal arrangement and so arrears and late fees were applied again. New Day passed the account onto their debt recovery agency in August 2018 and closed the account in September 2018 as no payment had been made on the account since May 2018.

Mrs B said was unaware of this until she started to get further letters saying she was in arrears in August 2018. She called New Day but was unable to resolve the issue, so she made a complaint. New Day upheld her complaint for providing her incorrect information regarding the direct debt and as a gesture of goodwill they refunded her late fees, over limit fees and made an additional payment of £20 to the account. Mrs B remained unhappy the account had been defaulted and closed so referred the complaint to our Service.

Our investigator thought New Day dealt with Mrs B's complaint fairly. New Day had admitted they could have provided clearer information and she could see they'd refunded the five charges and added the additional £20 to the account. But she didn't think New Day had done anything wrong in defaulting the account, appointing the recovery agent and closing the account.

Mrs B wasn't happy. She said if she'd known the direct debit had been cancelled, she would have paid the arrears and when she did try to pay over the phone prior to the direct debit being cancelled she was told she didn't have to – so she felt it wasn't fair for New Day to default and close her account.

Because I wanted to explain my reasons in a bit more detail and give both parties a chance to reply, I decided to issue a provisional decision before I made my final decision. This allowed both parties to comment on my thinking before I made the final decision – which is the Financial Ombudsman Service's last word on the case.

my provisional decision

In my provisional decision, I said:

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

Mrs B says she agreed to no fee arrangement but when she called to make the second payment it was refused, and she said she was told to set up a direct debt to collect payments. She says she now understand that she shouldn't have been asked to set this up as her account was in arrears and so no direct debt could be set up on the account when in arrears.

She told us she thought the upcoming payments would be taken by direct debt and only realised they hadn't when she got the arrears letters in August 2018. She says the arrears were caused by New Day cancelling the direct debt so her account shouldn't have been defaulted and closed as it was their fault the direct debt was set up and cancelled.

New Day have told us that Mrs B missed the second payment due on her no fee arrangement and this meant the account stayed in arrears. It has admitted it could have been clearer about the direct debt being cancelled so has refunded the late fees and over limit charges as well as providing a further £20 credit on the account.

I have listened to all the calls between Mrs B and New Day from when she agreed the no fee arrangement. Mrs B said that on the call in which the direct debt was set up the agent refused to take the second payment for the no fee arrangement. Having listened to this call that wasn't the case – the agent suggested setting up the direct debt to start from 28 June 2018 so Mrs B would need to call back to set this up. During the call the agent said on a couple of occasions that Mrs B would still need to pay the final payment under the no fee agreement on 25 June 2018 so her account wouldn't go back into arrears. Mrs B didn't offer to make this payment during this call or the other calls that I've listened to.

My understanding is because Mrs B didn't make this payment the account remained in arrears and so the direct debt set up for 28 June 2018 was cancelled shortly after being set up, as in a later call another agent explains that a direct debt can't be set up on an account that's in arrears.

Mrs B's account was in arrears from April 2018 and she hadn't made a payment after the end of February 2018. New Day issued a default notice in May 2018 which explained what she needed to do to avoid further action being taken by New Day including the sharing of details of her account with credit reference agencies. This prompted Mrs B to call New Day and agree a no fee arrangement but this arrangement wasn't completed, and no further payments were made by Mrs B from May 2018 despite her receiving further statements and reminders from New Day setting out the arrears. During a call in August 2018 Mrs B said she wouldn't make a further payment until her complaint was resolved. We wouldn't expect a bank to suspend payments in this situation during a complaints process. So, although I know Mrs B will be very disappointed with my decision, I can't fairly find New Day did anything wrong when it defaulted, suspended and closed her account.

I know Mrs B thinks New Day shouldn't have done this as it didn't tell her that the direct debt had been cancelled but she still had an obligation to make payments. I can see she would have received various statements and letters about the arrears, but she didn't make any payments or agree any further arrangement. I know the account was passed to the recovery agency, but she could still have agreed to make payments while the complaint was looked into. And as New Day has an obligation to accurately report the history of such an account, I can't ask them to remove any defaults from Mrs B's record.

Mrs B is also unhappy that New Day hasn't agreed to reopen the account. But New Day is entitled to decide who it's willing to provide lending facilities to and it would not be fair for me to force them to re-open an account where they have had concerns.

New Day has already agreed to refund the charges applied to Mrs B's account between June and August and paid a further £20 for the incorrect information provided – so I will not be asking them to do anything further. I understand that Mrs B will be disappointed with my decision but for the reasons I've given I think New Day has dealt reasonably with her complaint. And I can't fairly ask New Day to do anything more.

On that basis, I was wasn't minded to uphold Mrs B's complaint.

the responses to my provisional decision

Mrs B and New Day responded to my provisional decision. New Day had nothing further to add and Mrs B didn't raise any new points which I hadn't already considered.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And I've thought again about the conclusions I came to in my provisional decision.

Having done so, I've reached the same conclusions as set out in my provisional decision and for the same reasons.

I'd like to reassure Mrs B that I have considered all the information provided by both parties and I've listened to the calls and considered the relevant correspondence between her and New Day. And I understand that Mrs B will be disappointed with my decision but for the reasons I've given I think New Day has dealt reasonably with her complaint. And I can't fairly ask New Day to do anything more.

my final decision

For the reasons mentioned above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 28 June 2020.

Jag Dhuphar
ombudsman