

complaint

Mr M complains that NewDay Ltd told him his account would be placed on hold but this did not happen and a default was recorded. He says he was not sent notice ahead of the default being recorded.

background

Mr M has raised a previous complaint about the handling of his account by NewDay.

This complaint is in regard to a default being recorded on his credit file. Mr M says that he was told his account was on hold but this did not happen. He says that a default was recorded without him being sent notice of this. Mr M provided a copy of a letter in which NewDay accepted it did not send him a notice of default.

Mr M says that the default should be removed. He also says that this issue has caused him stress over a long period of time.

NewDay says that the issue regarding Mr M's account being placed on hold has been dealt with previously. It says that Mr M should have still made his minimum payments while his dispute was ongoing. It says because this did not happen charges were added and the arrears increased on Mr M's account. It says that it received email confirmation in December 2014 that Mr M had accepted its offer of compensation and that the email contact confirmed that Mr M was aware that he had an outstanding balance and that further fees had been added.

The adjudicator said that NewDay had not met its obligations as a lender. He said that Mr M settled his account once he became aware of the default which supported his claim he would have settled the account prior to the default had he received the notice. The adjudicator noted Mr M's comments about his financial loss due to the adverse information on his credit file.

The adjudicator recommended that NewDay removed the default and paid Mr M £300 compensation for the distress and inconvenience this issue had caused.

NewDay said that it failed to send Mr M a notice of intent to file a default prior to the default being recorded in December 2014. It sent the letter in May 2016 to inform Mr M of this. It said that despite this the default was recorded correctly due to the arrears on Mr M's account. It said that Mr M had been told of the status of his account on a number of occasions before the default was recorded and that a default notice was issued to him in September 2014.

It did not accept that the default should be removed or that it should pay £300. It offered to pay Mr M £50 for the mistake of not sending notice prior to the default being recorded in December 2014.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconsistent or contradictory, I have made my decision based on the balance of probabilities

- that is what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I have looked at the information provided in this case which also includes information provided in regard to previous issues raised by Mr M. Mr M previously raised a complaint about late payment fees being added to his account and adverse information being applied to his credit file whilst the removal of the late payment fees was being looked into. A final decision was issued in response to his complaint.

Mr M then complained that a default was added to his credit file while he thought his account was on hold. Having looked at the information provided I find that Mr M was told that charges would continue to be added to his account while his complaint was investigated. I find that based on the information Mr M was given he should have been aware that his account was not on hold.

There is an issue as to whether Mr M was provided with adequate notice before a default was placed on his credit file at end December 2014.

NewDay sent Mr M a letter dated May 2016 which said:

"We are required to notify you before we register a default. However, we have not sent this information to you. We apologise for this oversight and want to make sure you are aware that this has taken place. If you believe you have suffered any detriment as a result of us not telling you before we registered the default, please let us know."

However, NewDay says that the default is correctly recoded because other information it sent to Mr M prior to recording the default meant he was aware of the situation on his account.

I have looked at the history of Mr M's account and see that there was a period of many years when Mr M was not receiving mailings from NewDay as it did not have an up to date address for him. However, after employing a tracing company NewDay was informed of Mr M's address in June 2014 after which it did send information to him about his account.

Mr M was provided with information in regard to his outstanding balance in the months leading up to the default and a default letter that was sent to him on 11 September 2014.

During this time Mr M had an outstanding dispute in regard to his account. I agree that it is reasonable that Mr M was expected to make his payments while his dispute was ongoing and that he did not do this.

However, following a review of Mr M's account NewDay did make adjustments to Mr M's account at the end of September which reduced his balance by over half.

As adjustments were made to Mr M's account following the September default letter and no action was taken at that time in regard to the letter, I find it reasonable that Mr M should have been contacted before a default was recorded at the end of December.

Mr M has provided copies of his bank statements from the time. These show that Mr M was making use of his overdraft facility. However he was operating within his limit and there were sufficient funds available for him to have made the payment and prevent the default. Given the relatively small amount outstanding on Mr M's account in December 2014, I find it more

likely than not that had he realised a default was going to be recorded he would have made a payment to settle the account. Mr M settled his account in June 2015.

NewDay has admitted it did not follow its own required process before recording Mr M's default. Based on this and because Mr M had funds available to settle the account (which he subsequently did), I find that the default should be removed from Mr M's credit file.

The adjudicator recommended that Mr M was paid £300 compensation. NewDay offered to pay £50 compensation. I can see this issue has been ongoing for a long time however I also note that the original issues related to other adverse information recorded on Mr M's credit file. The issue of the default was raised more recently.

That said Mr M has had the default on his credit file since December 2014 and it was not until May 2016 that NewDay informed him a mistake had been made. While I cannot say, based on the information I have, whether this has caused him any financial loss, I accept that he should be compensated for the time the default has been on his credit file. I find that £300 is reasonable.

my final decision

My final decision is that I uphold this complaint. I find that NewDay Ltd should remove the default from Mr M's credit file and pay him £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 October 2016.

Jane Archer
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