

## **complaint**

Mr H complains that NewDay Ltd (trading as Marbles) sold his debt to a debt management company when it should not have done so.

## **background**

Mr H contacted NewDay in May 2018 saying that he had applied for an IVA and he provided the relevant reference number. At the end of June NewDay included Mr A's credit card account in the batch of accounts earmarked for sale to a debt management company (dmc).

Mr H's IVA application was initially refused and 9 July he informed NewDay. He also mentioned his health conditions during this call.

On 31 July NewDay learnt that Mr H's IVA application had been successful and had been registered. It sold his debt to the dmc that day.

Mr H complained to NewDay that it had sold his debt without telling him that it intended to do so and after having said that it would help him.

NewDay replied saying that it reserved the right to pass an account to its collections department where the contract had been breached and without the account holder's prior knowledge. It said it had passed Mr H's account to the debt recovery unit on 19 June.

Mr H was unhappy with this response and complained to us.

Our adjudicator produced two views on this complaint. In her first she said she didn't consider that NewDay had done anything wrong. NewDay had said that it was primarily a credit card company and not a debt collection agency. Consequently, its terms and conditions included provision to transfer accounts to a third party if, amongst other things, the account holder became bankrupt or applied for a debt relief order, as Mr H had.

Mr H disagreed with this view and highlighted conversations he'd had with NewDay, in particular with reference to his health. And so having considered the details of NewDay's vulnerability procedure, which said that the business would not sell a debt where it identified a vulnerable customer, our adjudicator revised her view. She said that NewDay's internal notes showed that it knew about Mr H's health conditions by 9 July at the latest, which preceded the date of the debt sale. Her view was therefore that NewDay had been wrong to proceed with the sale. To put things right she said NewDay should buy back Mr H's debt from the dmc, and pay him £200.

Mr H accepted her findings, but NewDay did not.

## **my findings**

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

NewDay has said that as it is mainly a credit card provider it is not well placed to manage debt collection or IVAs. Its account terms and conditions reflect this by stating that it may transfer debts to a third party organisation under certain circumstances, including where the account holder becomes bankrupt or applies for a debt relief order. All other things being

equal therefore, NewDay was entirely within its rights to decide to sell Mr H's debt to a dmc once he had entered into an IVA.

But NewDay's right to sell a debt must be seen within the context of its overall terms and conditions, and these make separate provision for customers it identifies as vulnerable. It sets out triggers it considers would indicate that a customer may potentially fall into this category. And where a customer has been identified as vulnerable, NewDay states very clearly under a heading '*Removal from debt sale*' that it must not sell a debt or pass it to a debt purchaser.

Having been informed by Mr H that he had applied for an IVA, NewDay selected his account for sale to a dmc. This decision was taken at the end of June, but was not actioned until 31 July after Mr H's IVA application had finally been approved. But on 9 July, and during a phone call from Mr H informing NewDay that his first IVA application had been unsuccessful he also described his various medical conditions. Mr H has said that he had informed NewDay previously, although NewDay's notes don't reflect this.

But by 9 July at the latest NewDay knew that Mr H had problems with his health. And NewDay's notes that day give sufficient detail of those problems for it to have realised that Mr H was potentially a vulnerable customer. I should also state that Mr H has subsequently provided us with evidence of his health conditions, which reflects NewDay's notes of 9 July.

Having considered NewDay's vulnerability policy I have no doubt that the conditions Mr H described during his 9 July phone call should have alerted the business to the fact that he was potentially a vulnerable customer. It should not therefore have proceeded with the debt sale until it had established whether or not he was.

Its arguments for continuing with the sale appear to suggest that as it wasn't aware of Mr H's health condition when it initially selected his debt for sale at the end of June that was sufficient justification for subsequently proceeding with the sale.

But I'm afraid I disagree with NewDay on this point and I find its actions neither fair nor reasonable given that the sale did not proceed until the end of July, by which time it was fully aware that Mr H might be a vulnerable customer.

Given this, my decision is that NewDay should buy back Mr H's debt and then follow its procedure for establishing whether he is a vulnerable customer. NewDay should also pay Mr H £200 as compensation for both the inconvenience and upset it has caused him.

**my final decision**

I uphold Mr H's complaint against NewDay and I require it to:

- Buy back his debt from the debt management company
- Pay him £200 directly for the upset and inconvenience it has caused him

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 June 2019.

June Brown  
**ombudsman**