

## **complaint**

Mr O complains about how NewDay Ltd has recorded his credit card account on his credit file.

## **background**

Mr O said that he was no longer in work, because of health problems. He told NewDay about those problems, and it agreed not to pursue him for the outstanding debt on his credit card. Mr O told us that NewDay had charged this off. But he said that the debt still showed up on his credit file.

Mr O sent us guidance from the Information Commissioner, which he said suggests that NewDay should show his account as partially settled. And he also said that because he doesn't owe NewDay any money any more, he thinks that his credit file should show a nil balance for this card.

NewDay said that Mr O stopped making payments in December 2016, and went over his credit limit in January 2017. NewDay issued a default notice in March, and Mr O told it about his health problems. He said he couldn't pay, and he couldn't give a date when he could make payments. NewDay said that it froze all charges on Mr O's account in response to this, and it now says it has charged off the account. That means that it will no longer ask Mr O to pay the debt. But NewDay said that it reserves the right to sell this debt to a third party, who may then pursue Mr O for the debt.

NewDay said it hadn't written off the debt. Mr O still owed it money. Mr O asked NewDay to write off the debt, then when it had said no, he had asked it to delete the account entry from his credit file. NewDay said it wouldn't do that either.

NewDay thought it had acted positively and sympathetically to support Mr O, but it said that it was under an obligation to report accurate information to credit reference agencies. It didn't think it could justify writing the debt off. We asked if it would record the card account as partially settled, but NewDay said that it was just choosing not to pursue the debt at the moment. It said that it only agreed to stop pursuing payments permanently as part of a bankruptcy, IVA, or when it accepts a partial settlement. In those cases it would mark the record as partially settled.

Our adjudicator upheld this complaint in part. He said that NewDay wasn't obliged to mark the default as partially satisfied, because the debt hadn't been repaid. But he thought that in these circumstances, as NewDay wasn't going to pursue the debt, that it seemed fairer if NewDay marks the account as partially satisfied. So he recommended that NewDay amend Mr O's account in this way.

Mr O said that if NewDay was going to do that, he thought it should backdate the settlement to the date that it agreed to no longer pursue the debt. But NewDay said that there was no agreement not to pursue the debt in future, or not to sell the debt to a third party collections agency, so it didn't think that our adjudicator had understood the situation. It said that the guidance our adjudicator had pointed to applied when a partial settlement was made, but Mr O hadn't made any payment in part settlement of his debt. And NewDay hadn't agreed in return never to pursue the debt. So it didn't think that marking Mr O's credit file to show this account as partially settled would be the right thing to do.

NewDay asked for this case to be considered by an ombudsman, so it was passed to me for a final decision.

### **my provisional decision**

I issued a provisional decision on this complaint and explained why I only proposed to uphold it in part, but not on the key point. This is what I said then:

- I could see that Mr O had brought a number of similar complaints to our organisation, and a number of these had been upheld. But I explained that each complaint with our service is considered on its own merits. A complaint being upheld against one business doesn't mean even a quite similar complaint will necessarily be upheld against another.
- In this instance, Mr O has reached an agreement with NewDay, which means it isn't currently pursuing him for his debt. I thought it was important to consider what NewDay had said to Mr O about this agreement.
- NewDay wrote to Mr O on 28 July 2017, to say that it had placed a hold on his account for twelve months, but that things might change after this. It wouldn't ask for any money during the twelve month grace period it had given him, but it wouldn't write off his debt.
- It wrote to him again on 20 February 2018, and said it had agreed that it wouldn't ask him for payment in the next 12 months. It says that the balance has been charged off, which it describes as meaning that it won't be actively seeking to collect on the balance due. This didn't seem to be limited to a twelve month period.
- NewDay has a right under the contract it has with Mr O to transfer any or all of its rights or duties to another organisation. It uses this right to sell debts to a third party in certain circumstances. It has told us that it might do this in future in Mr O's case.
- I thought that the first letter that NewDay sent Mr O was clear. His debt had only been paused for twelve months.
- But I thought that the second letter NewDay sent was quite confusing. It says he has been given twelve months when no payment will be expected, but then it also says that the *"balance had been charged off which means we would no longer be actively seeking to collect on the balance due"* and later it says *"I can confirm we are no longer actively pursuing you for the outstanding balance"*.
- I didn't think that this open-ended reassurance was consistent with the earlier letter that Mr O received, which suggested that he had only been given a twelve month grace period. I thought that a better reading of this second letter was that NewDay had waived its right to actively seek to recover this debt.
- But NewDay now says that this isn't what it meant. It says that it reserves the right to sell this debt to a third party in future.
- I didn't think that is consistent with what NewDay said in its letter of 20 February. I thought that Mr O would've understood from this letter that he wasn't going to have to pay this debt. And NewDay now says he might have to pay it in future. So I thought that NewDay made a mistake when it wrote that letter, and told Mr O that it was no longer pursuing him for the debt, but didn't also tell him that it might sell the debt later.

- If a business makes a mistake, then I wouldn't make the business do what it mistakenly said it would do, unless the person affected could show me that they were worse off in some way, because they'd relied on what the business said. I hadn't seen anything to suggest to me that this applies in this case. So I didn't think that it would be reasonable for me to tell NewDay that it can't sell this debt in future.
- But I did think that Mr O would be extremely disappointed and upset to find out that this debt might be sold in future. So I thought that NewDay should pay Mr O £200 to make up for that.
- Mr O wanted NewDay to show his account as partially settled. But because NewDay now says that he may have to pay the debt in future, I didn't think I could ask NewDay to do that. So I said I wouldn't recommend that NewDay amends Mr O's credit file.

I invited the parties to make any final points, if they wanted, before issuing my final decision. NewDay accepted my decision, and offered to pay Mr O £200. Mr O replied objecting to my decision.

### **my findings**

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

Mr O said that NewDay had told him that it wouldn't try to collect on the debt any more, and it had been charged off. He said that was the same as written off. He said that NewDay has only changed its mind now it's realised that it should amend his credit file. Mr O said that even if NewDay did sell the debt, it wouldn't be collecting itself, and the relevant guidance said that whenever a lender isn't going to collect on a debt, it should mark it as partially settled.

Mr O said that it wouldn't be fair if NewDay was given a pass, when all the other lenders had complied with the relevant guidance and our service's decisions.

Mr O said that he wanted NewDay to update his credit report to reflect that NewDay isn't pursuing the debt but a debt collector might do so at a later stage. And he said that he wouldn't be able to pay the debt collector either.

I do think that NewDay has been unhelpful and unclear in the language it has used when it has written to Mr O. So I understand why Mr O initially thought that this debt wouldn't be pursued at all. But NewDay has been clear with our service that this debt hasn't disappeared altogether. It just says that it isn't going to do anything to enforce it. But it won't make any promises about not selling this debt to a debt collection agency in future.

I explained in my provisional decision that I didn't think that Mr O could've realised this from the letters he received. So I said that NewDay should pay Mr O £200 to make up for the disappointment and upset that he would have experienced when he realised that.

But I also explained, in my provisional decision above, that if a business makes a mistake, then I wouldn't make the business do what it mistakenly said it would do, unless the person affected could show me that they were worse off in some way, because they'd relied on what the business said. I haven't seen anything to suggest to me that this applies in this case. So I don't think that it would be reasonable for me to tell NewDay that it can't sell this debt in future.

I also said that, because NewDay now says that Mr O may have to pay the debt in future, I didn't think I could ask NewDay to show his account as partially settled. So I said I wouldn't recommend that NewDay amends Mr O's credit file.

Mr O now says that even if NewDay did sell the debt, it wouldn't be collecting it itself, and the relevant guidance said that whenever a lender isn't going to collect on a debt, it should mark it as partially settled. But I don't think that's what the guidance means.

The guidance Mr O refers to says that "*... where an organisation has decided to stop pursuing a debtor for payment, it would appear unfair to show that money is still owed under the account.*" But I think that it's only potentially unfair if the organisation has decided that the debt won't be pursued at all. I don't think it's unfair for someone's credit file to show that they still owe money, if the organisation has just decided it won't chase the individual for the money itself, but might allow someone else to do that in future. So I don't think it's reasonable to ask NewDay to update Mr O's credit report, as he wishes, to reflect that NewDay isn't pursuing the debt but a debt collector might do so at a later stage.

Mr O could add a notice of correction to his credit file which says that, if he would like.

Mr O says that other companies have made the change to his credit file that he wanted. But I've explained that each of our cases is considered separately, and on its own merits. In this case, I've considered what Mr O and NewDay have both said very carefully, and I still don't think that NewDay has to do more than pay Mr O £200 in compensation.

### **my final decision**

My final decision is that NewDay Ltd must pay Mr O £200 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 30 November 2018.

Esther Absalom-Gough  
**ombudsman**