

## **complaint**

Mr T complains that NewDay Ltd did not default his account when he entered a debt management plan.

## **background**

Mr T had a credit card with NewDay. He says that in 2013 he fell into financial difficulties, and was unable to keep up with his minimum monthly payments. So he entered into a debt management plan (DMP), in which NewDay agreed to stop applying interest and fees to his account. He paid back the balance in full in 2017.

In 2019 Mr T applied, or was about to apply, for a mortgage, and he was concerned that the record of the DMP on his credit file would prejudice his application. He complained to NewDay, arguing that if it had defaulted his account in 2013, then the default marker would have dropped off his credit file after six years, that is, in 2019. Instead, he will have the DMP on his credit file until 2023. He asked NewDay to substitute a default on his credit file, backdated to 2013, so that it would expire in 2019. But NewDay did not agree, and said that the DMP had been the best option for him at the time.

Mr T brought this complaint to our service. He argued that he had been unfairly disadvantaged for paying off his debt in full, compared with people who do not pay, because the DMP would be on his credit file for four years longer than a default would have been. He referred to relevant regulations, and said that another bank had upheld a similar complaint and put a backdated default on his credit file. So since both banks were subject to the same regulations, NewDay should do the same thing.

NewDay said that according to its records, the DMP actually began in 2016, not 2013. It no longer had a record of what had happened between 2013 and 2016. It said the credit file was an accurate report of what had happened, so it wouldn't amend it.

Our adjudicator did not uphold this complaint. He thought that as NewDay had agreed to a DMP, it hadn't needed to take the more drastic step of defaulting Mr T's account. Mr T probably hadn't wanted a default at the time, and the DMP had been a way of avoiding it. Just because Mr T would have been in a better position today, didn't mean NewDay should have acted differently at the time.

Mr T did not accept that decision. He said it was unfair that he should end up in a worse position than someone who failed to repay anything would be in today. Someone whose account was defaulted in 2013 would no longer have a black mark against them on their credit file, whereas the DMP would be on his credit file until 2023. He said NewDay had failed to act fairly and reasonably, as it was required to do. He asked for an ombudsman to review his case. He later said that he had been in arrears since 2012 (and provided evidence of this), so he should have been defaulted in 2012.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I do not uphold it. I will explain why.

Just because a lender can default an account after it has been in arrears for a few months, does not necessarily mean that it should. It certainly doesn't mean that it must. Defaulting an

account is just one of the steps available to a lender when its customer falls into arrears. A default is for when the relationship between lender and borrower has broken down, which is not the case when a DMP is in place, because a DMP means that new terms of payment have been agreed between the parties.

A default looks worse on a credit file than a DMP does and so, during the six years that a default marker remains on a credit file, it would have been harder to obtain credit than would have been the case with only a DMP. So it's unlikely that Mr T would have been satisfied with a default in 2012, 2013 or 2016. And lenders have a duty to treat their customers sympathetically and positively when they are in financial difficulty, so I think it was reasonable of NewDay to look for an alternative to a default. A DMP was a less draconian, and more proportionate, response than a default would have been. People who do get a default often complain that their lender should have done something else, such as a DMP.

Although Mr T says that other lenders did default his accounts, it does not follow that NewDay had to too. It may just not have been possible for the other lenders to agree DMPs, perhaps because their assessments of Mr T's income and expenditure suggested he could not afford to make payments they could accept. Although they are all subject to the same rules, each lender can still have different policies and procedures for dealing with customers in arrears. Some may work harder than others to avoid defaulting an account. They don't all have to do the same thing in the same situation, and they may have been dealing with different situations anyway (such as different outstanding balances).

Similarly, although another lender did concede that it should have defaulted Mr T's account in the first place, and resolved his complaint by doing that and backdating the default, it does not follow that NewDay should as well. I don't know why the other lender upheld Mr T's complaint, but it may be because it didn't follow its own procedures properly, or because the DMP it had agreed with him was unaffordable or otherwise unsuitable. That does not mean that NewDay also did something wrong, and I won't infer that it did based on the actions of other lenders.

I take Mr T's point about him being in a worse position today. But in deciding what to do, NewDay had to take into account the situation Mr T was in then, not the situation in which he was likely to find himself six or seven years later. He was in a better position for the first six years than he would have been with a default marker. And of course, a default marker is not the only consequence of paying nothing. Proceedings in court might have followed. A county court judgement, if one had been obtained in 2014, would have stayed on his credit file until 2020, and that would have looked even worse than a default. So it is by no means certain that Mr T would really have been in a better position today if he had paid nothing.

### **my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 27 April 2020.

Richard Wood  
**ombudsman**