

Complaint

Mr B is unhappy that NewDay Ltd (trading as Aqua) unfairly applied a default to, and then closed, his personal credit card account. This adversely affected his credit score which damaged his business.

Background

Mr B had an Aqua credit card from NewDay Ltd. He was self-employed, and in 2018 he experienced some difficult personal circumstances and was unable to work.

Towards the end of 2018 he couldn't make the required payments into his account and fell into arrears. A default notice was sent in December 2018 and the account closed in January 2019.

Mr B complained to NewDay that they had been unfair in showing the account in default in December 2018 and closing it in January 2019. He said he had been told on the phone by NewDay in December that if he made a payment of £145 prior to the 65th day of arrears, this would buy him some time to find the required money to prevent the default. He said this incorrect information had caused the default and the subsequent closure, and the negative impact on his credit rating.

Mr B agreed a payment plan with NewDay in January 2019 who stopped applying interest and charges to the account.

In their final response to his complaint, NewDay acknowledged that Mr B had been given incorrect information on the phone in December in that he was told if he paid £145 within 65 days of arrears his account would remain open. They refunded three months over-limit fees and credited an additional £15 to his account by way of an apology. This totalled £51.

However, they said that as he had not made a payment to his account since October, and a default notice had been sent to him in December, the account was correctly closed in January.

The agreed repayment was not enough to get the account out of arrears. In April the account was defaulted, and in May the debt was sold to a third party. Mr B complained to NewDay about this but did not get a final response.

Mr B did not accept their response to his initial complaint, so brought this, and his subsequent unanswered complaint to us.

He said that NewDay were unfair in closing his account as they had given him incorrect information during the process, and they were unfair in defaulting and selling his debt to a third party as he was maintaining an agreed payment plan. He said this default had badly affected his credit rating and as a result he was finding it very difficult to obtain credit for his business, and his existing loans had become more expensive. In settlement of his complaint, he wanted:

- the default notice removed from his credit file
- the credit card reopened with the balance as it was in December 2018 (£5,200)
- Any charges and interest applied after the account was closed to be repaid
- Compensation of £20,000 due to the damage caused to his business

NewDay told the investigator that they acknowledged the incorrect information they had given Mr B in December and agreed this had caused confusion. However, they said that it wouldn't have made a difference, as even if Mr B had made the payment of £145 he said he was intending to make, it wouldn't have cleared the arrears so wouldn't have been enough to prevent the account closing. They said the amount required to clear the arrears was included in the default letter he received so he would have known how much he needed to pay and when.

They also told the investigator that they agreed a reduced payment plan with Mr B of £1 a month for three months and this was extended. At the start of this agreement, and at the renewal point, NewDay said they wrote to Mr B warning him that the debt may be sold as the account was still in arrears. So, Mr B knew this could happen, and they had acted fairly and in lines with the terms and conditions of his account.

They said that the level of arrears had continued to rise, so it would be irresponsible of them to request the altering or removal of the information held at credit reference agencies. They also would not reinstate the account as the level of debt meant they thought Mr B wouldn't be able to meet the minimum payment.

NewDay acknowledged the confusion they caused in December, and that they hadn't responded finally to his second complaint. They offered Mr B a further £60 in compensation.

The investigator thought that what NewDay told Mr B on the telephone in December was inaccurate and caused confusion. However, he also thought that even if Mr B had made the payment of £145 at that time, it wouldn't have prevented his account closing as it was in arrears by a much larger amount. And as a default notice had been sent to him in December, unless the arrears had been totally cleared, the account would have been closed anyway.

He thought that NewDay had been fair and reasonable in their handling of his account, in that they had sent default letters as required, had spoken to Mr B about the arrears on his account and had tried to get Mr B to complete an income and expenditure review, so that a payment plan could be put in place before his account was defaulted. Mr B only did this once the account had been closed.

He thought that NewDay were fair in the process they followed in selling the debt to a third party, as this was within the terms and conditions of the account, and they had twice given Mr B written warning that this may happen.

The investigator also thought that NewDay were being reasonable in reporting the default and account closure to credit reference agencies as the information they reported was accurate. He therefore also thought they were fair in their decision not to amend the records as a result of the complaint so didn't need to do anything more.

In recognition of the confusion, distress and inconvenience Mr B was caused by both the incorrect information NewDay gave him in December, and during the handling of his second complaint, the investigator thought NewDay should pay him £200.

Mr B did not accept this view.

He said he had been in a position to make the required payment to stop the account being closed. He would have been able to borrow the money from his business partner. He only didn't do so as NewDay had already closed the account. He said he thought what he had been told on the phone was accurate, so paid no attention to the default warning letter NewDay sent as the information differed.

As Mr B did not accept the investigator's view, the complaint has been passed to me for a decision.

My findings

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

I would first like to say that I sympathise deeply for the awful personal circumstances that led up to this complaint. I cannot imagine how difficult it was at the time and since. I sincerely hope things are getting better.

In considering Mr B's complaints, I need to decide whether NewDay have treated Mr B fairly in their decision to close his account, and whether the process they followed to do this, and the effects it had, was also fair. I've also thought about whether it was fair and reasonable for NewDay to sell Mr B's debt to a third party.

Having considered what has been submitted and said, I agree with the investigator's view. I understand Mr B will be disappointed, so I will explain why I've come to this decision.

The credit limit on Mr B's account was £5,200. From August 2018, Mr B's balance had been over this limit. He made payments to the account each month, but they weren't large enough to reduce the arrears. And then, in November and December, no payments were made.

Because of this, NewDay decided the account was being operated outside its terms and conditions. So, it sent Mr B a default notice asking him to bring the account up to date by the beginning of January, or it would be closed. The confusion occurred because Mr B spoke to NewDay on the same day the default notice was sent. They gave different advice, saying he needed to make a lower payment by a later date in January. Mr B telephoned them again the day before this later date and was told his account had already been closed.

This was confusing for Mr B, and I can see how this probably caused him distress, but I think the account would probably have been closed anyway. I think this, because to prevent it closing, he would have had to make a significantly bigger payment than he had said he would. And having listened to the phone calls between him and NewDay, I don't think he had the money to pay off any of the arrears in December or January, let alone the larger amount.

This is because he said he had other priority debts at the time that he couldn't meet, he never actually committed to making the payment, and only said he hoped to be able to, as some money should have come in by then.

I understand Mr B says he took no notice of the default notice that was sent, but the implications of non-payment, I think, were clearly stated in it, so that should have prompted Mr B to query the conflicting information he'd received. He didn't do so. I think it was fair and

reasonable of NewDay to close his account, despite the incorrect information he was given in December. I do however think that Mr B should be given some compensation for the distress he was caused, and I think £200 is a reasonable amount.

NewDay and Mr B agreed a three-month payment plan starting in February, paying £1 a month. In the phone call where this was agreed, I think it was clear that NewDay warned Mr B that although there would be no interest or charges added to the account, he would not be reducing the arrears on the account and as such he should, if able, make larger payments. I think it was clear, from the letters he was sent, that NewDay may sell his debt to a third party even though he was on a payment plan. As such, I don't think they acted unfairly in ultimately selling the debt as they did, and I can't see that Mr B was disadvantaged by this. So, I don't consider it would be fair for me to tell NewDay to reinstate his account.

I also think that NewDay have acted fairly in their decisions to place markers on Mr B's credit file, and not to remove those markers, as they have a responsibility to accurately report the facts about someone's credit history. I understand Mr B says this has had a negative impact on his ability to get credit, and losses to his business, but I can't say NewDay has done anything wrong in this regard. So, it would be unfair of me to hold them responsible for these losses.

My final decision

I partially uphold Mr B's complaint. I direct NewDay Ltd to pay Mr B £200 for the distress and inconvenience caused by the confusing information he was given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 13 April 2020.

Chris Riggs
Ombudsman