

## **complaint**

Mr S complains that NewDay Ltd recorded a default on his credit file with an incorrect date. He says NewDay should compensate him for loss of reputation and restricting his ability to obtain credit.

## **background**

Mr S held a credit card account which was originally held with a different provider I'll call C. The account fell into arrears and C sent Mr S default notices in November 2008 and January 2009.

The account was then transferred to NewDay in August 2011. In March 2013 NewDay issued Mr S another default notice. In August 2013, the account was defaulted with an outstanding balance of £3,597.10 and sold to a debt purchaser I'll refer to as IL.

Around July 2018, Mr S says he checked his credit file and noticed that the recorded default date of the account was showing as August 2013. He didn't think this was correct so he asked IL to amend it. He said the account had been defaulted in January 2009 and that accounts can only be defaulted once. He said the default should have been removed from his credit file in 2015, as defaults should appear on an individual's credit file for six years.

IL investigated Mr S's complaint and didn't uphold it. It also got in touch with NewDay and asked it to respond to Mr S's concerns about when the account was defaulted. Mr S didn't agree with IL's response so referred a complaint to this service.

NewDay responded to Mr S in November 2018 and explained it sold the account to IL in August 2013 and the account was defaulted at the same time. NewDay confirmed that it hadn't provided a default notice in August 2013, but concluded that the default was fairly applied. It said it couldn't now remove the default and Mr S would need to contact IL. It also offered him £25 compensation for its handling of the complaint.

Mr S was also unhappy with NewDay's response and referred his complaint to our service.

The adjudicator who investigated Mr S's complaint concluded the account had been fairly defaulted in August 2013 and it hadn't been defaulted previously. The adjudicator explained when Mr S's account was defaulted it was good practice for a lender to send a default notice but they weren't required to do so. So he said the default recorded on Mr S's credit file was a fair reflection of what happened and he didn't recommend NewDay do anything else.

NewDay accepted his assessment. But Mr S didn't, in summary he said:

- C issued several default notices, but hadn't been contacted for information and there was no evidence to show the account wasn't defaulted before August 2013;
- Mr S wasn't provided a new card or able to use one but was issued a new credit agreement by NewDay and the account statements showed a minimum payment of £326 which was significantly over any normal contractual payment required;

- NewDay hadn't attempted to contact him or spoke to him by phone when it said it had;
- the adjudicator had assumed Mr S could not afford to increase his payment offer, but had no evidence to support this;
- NewDay didn't follow best practice when it didn't issue a default notice in August 2013;
- IL's notes said NewDay sent a corrective notice in September 2016 but it hadn't provided a copy;
- the Information Commissioner's Office's rules on timescales for correction hadn't been followed;
- the adjudicator hadn't covered any of the customer service issues Mr S had experienced.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I think NewDay has treated Mr S fairly so I'm not asking it to do anything to put things right. I've explained my reasoning in more detail below.

*was Mr S's account defaulted before it was acquired by NewDay?*

This service has since been in contact with C and it hasn't been able to provide any information about Mr S's account. This isn't surprising given the account was sold in 2011. Given how long it's been since NewDay acquired Mr S's account I don't think it's unreasonable that it doesn't have documentation to show what happened before then.

The default notice C issued in November 2008 showed an arrears balance of £3,704.48 while the January 2009 default notice showed an arrears balance of £2,282.00. Both required Mr S to either pay off the outstanding arrears or agree a suitable payment arrangement or the account would be defaulted.

The terms and conditions of Mr S's account with C explain:

#### ***"We might put you on a PayDown Plan***

*If you continue for a further period to make payments that are not sufficient to help you pay your balance down as explained above, as responsible lenders we may move all or part of your balance to a PayDown Plan. We may do this as an alternative to restricting or suspending the use of your card, or we may also stop the use of your card or reduce your credit limit.*

*When we set up a PayDown Plan, we will take your existing outstanding balance, estimate how much interest you will incur if you repay it over a reasonable period (for example, four years), and then increase your contractual minimum payment with the aim of repaying that balance in this reasonable period. In other words, we will change the way that we calculate the contractual minimum payment so that you have to pay more each month to ensure that*

*you pay down your balance more quickly and reduce the amount you are paying for credit. If we allow you to continue to use your account after we have set up a PayDown Plan, we will also increase the contractual minimum payment you need to make in respect of any new balances (see **How is your contractual minimum payment calculated?**).*

*We will always tell you if we are going to put you on a PayDown Plan so that you know in advance that your monthly contractual minimum payments are going to increase. If you cannot pay the increased amount you should contact us to discuss alternatives."*

I think what's most likely to have happened is that C agreed a *PayDown Plan* with Mr S and this was in place until the account was sold to NewDay. This matches us with what he's told us – that he agreed a payment plan and is supported by NewDay's customer contact notes which show it received a letter from Mr S in March 2013 and that he was on C's "LOB plan". Mr S's account being subject to a *PayDown Plan* also most likely explains why the monthly payment required was above what would have been his normal contractual minimum payment based on his balance, and why interest most likely wasn't being applied to the outstanding balance.

While I can see default notices were sent to Mr S before NewDay took ownership of his account, I haven't seen anything to confirm the account was defaulted before then. Mr S has provided a statement from C in July 2008 which shows his account balance was over £20,000. When the account was acquired by NewDay the outstanding balance was around £9,000. So, Mr S had clearly made considerable payments towards the account over that period. I think a plan was agreed which most likely meant C never defaulted the account. So, on balance, I don't think the account was defaulted in January 2009 or any time before it was acquired by NewDay.

*was it fair for NewDay to default the account when it did?*

Mr S says NewDay should have defaulted the account sooner. For me to conclude NewDay is required to compensate Mr S I would need to be satisfied that the default should have been recorded earlier and that Mr S was caused a detriment as a result.

The statements show that after NewDay acquired his account Mr S continued to make regular monthly payments of £326 until December 2012 when no payment was applied to the account. In January 2013 a £50 payment was received but this was less than the £326 required as part of Mr S's agreement. NewDay sent Mr S an arrears notice on 28 January 2013, explaining the arrears on the account and asking him to pay off the arrears or get in touch.

Mr S paid £50 towards the account again in February and I can see NewDay tried to call him and also sent a letter.

NewDay's account notes show it received a letter from Mr S in March 2013 which explained he was in financial difficulties and could only pay £50 a month towards the account. Mr S made two payments of £50 towards the account that month.

NewDay's notes show it didn't deem Mr S's payment proposal sufficient, it left Mr S voicemail's at least twice in March 2013 and also sent him an income and expenditure form to complete. But I can't see Mr S provided the information NewDay had requested.

I can see after the default notice was issued in March 2013 Mr S made payments of £50 towards the account balance each month between April and August 2013. These payments were less than the minimum payment required and I can see the May and June payments were received after the due date. I can also see that NewDay made several attempts to contact him during this time.

On 29 July 2013 NewDay issued Mr S a letter explaining he hadn't made the minimum payments in June or July 2013. As the minimum payment also wasn't received in August 2013, I think it was reasonable for NewDay to default the account at that point.

I've also thought about whether NewDay should have defaulted the account sooner. The ICO's guidance from the time; *"Data Protection Technical Guidance Filing defaults with credit reference agencies"* says:

*"The following are in line with the practices currently adopted by most lenders:*

- Accounts should not be routinely filed as being in default where full payments or those due under a rescheduled agreement are fewer than three consecutive months in arrears.*
- Accounts should normally be filed as being in default where those payments due have not been received for six months."*

Mr S hadn't made the full payments required for eight months which is slightly longer than what's set out in the ICO's guidance. But at the time the default was issued he was regularly paying £50 a month towards the outstanding balance. And, NewDay's contact notes show the minimum payment it required to agree a new plan was £62.78.

Mr S's payments were less than £13 short of what NewDay would accept and before December 2012 he'd kept to the payment arrangement. I think it was reasonable for NewDay to try and find out a little more about Mr S's financial difficulties and give him more of an opportunity to agree a repayment arrangement before defaulting the account. So I don't think it made a mistake defaulting the account in August 2013 rather than anytime earlier.

*should NewDay have issued Mr S another default notice?*

As NewDay had issued Mr S with a default notice in March 2013 I don't think it needed to send him any additional notification in August 2013. The default notice in March 2013 clearly set out the consequences if Mr S didn't pay off the arrears or agree a repayment arrangement by a certain date. And the default notice explained that these actions may take place on or *after* this date. I think NewDay had done enough to make Mr S aware the account was in arrears and that his repayment proposal wasn't sufficient. As Mr S hadn't responded to NewDay's requests for information, paid the amount required under the default notice, or agreed an acceptable payment plan, I don't find it was unreasonable to default the account.

I think NewDay should have been able to provide a copy of the corrective notice it sent. And its notes don't show that it was sent. But Mr S has confirmed he received. I can see he contacted NewDay in October 2016, and I've not seen anything to suggest Mr S raised concerns at that time that the account had previously been defaulted.

Even if the corrective notice hadn't been sent I don't think it would have a significant impact on what a fair resolution to Mr S's complaint is. As I think the default was applied correctly and fairly, I don't think NewDay needed to take any action to amend what it recorded on Mr S's credit file.

*NewDay's handling of Mr S's complaint*

NewDay's account notes show the first time it received Mr S's complaint was in September 2018. It issued its final response within a few weeks and offered Mr S £25 compensation. I haven't seen it made any significant errors in its handling of Mr S's complaint. And the compensation it's offered is fair. So I'm not asking it to do anything else. If Mr S would like to accept the £25 offered he should contact NewDay directly.

**my final decision**

I think NewDay Ltd has treated Mr S fairly, so I don't uphold his complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 April 2020

Chris Bick  
**ombudsman**