

complaint

Mrs R complains that NewDay Ltd (NewDay) shouldn't have passed her debt on to a debt collection company, D. She's also unhappy with the information NewDay has given her throughout.

background

Mrs R had a credit card with NewDay. She lost her job in 2017 and fell into arrears on her account. NewDay wrote to Mrs R about this over a number of months. On 2 May 2018, she contacted NewDay to discuss this matter with it.

Mrs R says that during this call a verbal agreement was reached with NewDay for a repayment plan of £134.83 a month over three months. She was therefore surprised and upset to find that NewDay had passed the debt to D who was contacting her for payment. So she got in touch with NewDay about this on 26 May 2018.

Mrs R says she didn't call NewDay before being contacted by D as she'd agreed with NewDay during the call on 2 May that she'd call back at the end of the month, once she'd been paid and the call handler's colleague would set up the plan. Mrs R says her husband heard this during the call. But, having listened to the call recording, Mrs R says this part of the call is missing. Mrs R has sent our service evidence that there is a difference in the call length from the call sent to us to the one shown on her phone bill of around 2 minutes 43 seconds. And, when timed, the customer service element doesn't equate to the full time difference so there's still part of the call recording that hasn't been accounted for.

On 31 May 2018, Mrs R made a payment to NewDay of just over £134.83. And she says that, as she complied with the verbal agreement she'd reached with NewDay on 2 May 2018, it shouldn't have passed her account to D.

NewDay says:

- The discussion on the 2 May 2018 was that Mrs R can pay £134.83 over a three month period but she could only pay £50 on that day and start the plan on 4 June. The call handler explained she wouldn't be able to set up the payment arrangement because it'd be starting more than a month later. Instead, she confirmed she'd save the quote to the system for when Mrs R called back so a colleague could pull the quote up and put it in place.
- The account was in arrears and the contract had been breached and, in these circumstances, they were allowed to transfer the collection of the debt or sell it to a third party. This is the case even if a repayment arrangement had been put in place.
- It wouldn't tamper with calls in order to influence the outcome on a case. Mrs R completed identification and verification process and then the call was transferred to collections and the notes support this. So it felt this would account for the time not on the call recording sent to our service.

Our investigator looked into this matter. But she didn't recommend that we uphold this complaint. This is because she didn't feel she could say the business were wrong to transfer Mrs R's account to D. She explained:

- On 2 May 2018, the agent confirmed:

- She was able to agree a repayment plan of £134.83 to start when Mrs R was paid at the end of the month. But she wasn't able to do this on 2 May 2018 as it was too far in advance.
 - (at the end of the call) Mrs R would need to contact NewDay within 2-3 weeks to arrange for the repayment plan to be set up.
- Mrs R's account was passed to D on 17 May 2018. However, as Mrs R didn't contact NewDay on or before 23 May 2018 (being 3 weeks from the date of her call to it on 2 May), the date NewDay Ltd passed her account to D hasn't affected the outcome of this complaint.
- NewDay's terms and conditions confirm it can pass the debt to a debt collection agency (DCA). This is even where there are notes on the system regarding a repayment arrangement.
- The call notes the business has provided match with the call recordings sent to our service by NewDay.

But Mrs R disagreed. She feels NewDay has given her the run around. She says:

- NewDay made a verbal agreement with her and then deleted the evidence from the recording. She says there's also a further part of the call missing where the call handler said if she went for a repayment option over 6 months, the card limit would be reduced and that is why Mrs R was keen to clear it quickly to keep the limit intact.
- When she spoke to someone on 26 May at NewDay, she was told it had written confirmation on the system to state a payment plan had been discussed and that she was due to call at the end of the month.
- NewDay didn't take into account the verbal agreement before passing the debt to D.
- The date that D was appointed is critical as it shows NewDay had no intention of waiting three weeks. She feels NewDay decided to *'ignore the verbal agreement and acted prior to this in order to sabotage this on purpose'*.
- NewDay hasn't apologised for the following matters of poor service:
 - It told her the debt was sold on to D but actually D is collecting the debt on NewDay's behalf.
 - NewDay said payments were held with D and came across once a month even though she'd told NewDay that she'd paid using its app so the payment couldn't have gone over to D.
 - Mrs R's original complaint wasn't logged or escalated correctly when she first raised it with NewDay during her first call on 26 May 2018.

Our investigator and Mrs R have communicated about these points but our investigators view in this complaint hasn't changed as a result.

Mrs R asked that the ombudsman listen to a recording of a call when she spoke to D about the issues she was facing with NewDay. Having now received this recording, the matter 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. Where there's a dispute about what happened, I've based my decision on what I think's more likely to have happened in light of the evidence.

Although a number of issues have been raised, this decision only addresses those issues I consider to be materially relevant to this complaint. However, I've given careful consideration to all of the submissions made before arriving at my decision.

Having done so, I have to tell Mrs R that I think the adjudicator has reached the right outcome here. So I don't uphold her complaint against NewDay. I think our investigator has explained matters well and so there's not much I feel I can usefully add. I would just make the following points.

phone recordings

For me to be able to agree with what Mrs R has said about the length of the call on 2 May and the conversation she says is missing from it, I have to accept, for example, that:

1. NewDay has tampered with the call recording before sending it to our service;
2. NewDay's explanation for the missing time – the identification and verification process at the beginning of the call – isn't reasonable;
3. NewDay's call notes – which reflect the content of the call recording sent to our service – have also been tampered with or happened to exclude the details Mrs R is now seeking to rely on;
4. That 2 minutes and 43 seconds is enough time to cover the identification process, waiting time for the call to be answered as well as the two conversations Mrs R says are missing from the call; and
5. At no time during the call recording we've been sent, does Mrs R correct the call handler about the time frame of calling back in 2 – 3 weeks' time even though she says they'd actually agreed - during the portion of the recording which she says is missing - that this would be the 31 May.

And – whilst I recognise this will be disappointing for Mrs R - I just don't agree I can reasonably or fairly say this is more likely to be what happened here.

I say this particularly when I don't agree that NewDay has anything to gain. This is because, even if agreed that – which I don't accept is the case here – a repayment plan had been set up during this call or the call itself had been tampered with, NewDay would still have the right to pass on the debt to a DCA. I'll explain this below.

debt collection agencies

When companies are finding it difficult to recover the money they've lent they often ask other companies, DCA's, who specialise in debt collection, to help them to do so. Sometimes these companies are assisting the original finance provider and sometimes the debt is "sold" to them and they take over its management. Here, NewDay instructed D to help it recover the debt. NewDay is still the owner of it.

This can be frustrating for the customer and I can understand that Mrs R may feel NewDay hasn't been transparent by passing her debt to D when she was going to call back and start a repayment plan. Having said this, at the end of the phone call on 2 May 2018, Mrs R was told that she'd need to call back in 2 – 3 weeks to set up the repayment plan although the quote had been saved to the system. So I think it was clear that Mrs R had been told it hadn't been set up at that point and she'd need to do something further – call back NewDay within 2 – 3 weeks - before it was set up.

But, I also think it's important to note that, even if a repayment plan had been set up – which I don't accept had happened here - NewDay would still have the right to pass on the debt to a DCA. This is because the terms of Mrs R's agreement with NewDay say:

'We may transfer any or all of our rights or duties under this agreement to another organisation ...We may also arrange for any other person to carry out our rights or duties under this agreement.'

This allows NewDay to pass the debt to another company, such as D, for it to help collect the money due. This can be done at any time during the relationship. And this is what NewDay did here. So I don't think NewDay did anything wrong when it passed Mrs R's debt to D for recovery when it did.

Finally, I don't uphold Mrs R's complaint about the service NewDay gave her. I haven't seen sufficient evidence to say that NewDay told her the debt had been sold to D, gave her incorrect information about whether her payments were held by NewDay or D and failed to set up or escalate the complaint when she got in touch with it. Even so, I note that NewDay says it apologises if Mrs R was given any incorrect information.

So, taking everything into account, I don't think NewDay needs to do anything to put things right in this matter.

I know that Mrs R will be disappointed with this outcome but my decision brings to an end what we – in trying to resolve her dispute informally with NewDay – can do for her.

my final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 1 March 2019.

Rebecca Ellis
ombudsman