

complaint

Mr I complains that NewDay Ltd defaulted his credit card account and recorded that default on his credit file.

background

In April 1996 Mr I took out a credit card with NewDay, although at that time it was issued by a different company, which I'll refer to here as "D".

In around 2017, Mr I changed his address, which he informed D of. He said he approached D about this as he was unaware that it was no longer his credit provider. Mr I says he received nothing from NewDay to show it had taken over from D as his credit provider and this is why he didn't communicate his change of address with it directly.

NewDay continued to write and provide statements to the address it had on file for Mr I. It wasn't aware he had changed his address. And it said it had no reason to think its correspondence hadn't been received as nothing it sent was returned undelivered. So, after Mr I had notified D of his change of address, he didn't receive any further statements or correspondence from NewDay.

Mr I continued to use his credit card after he changed his address. And he missed all payments after May 2017, which was something that hadn't happened before. So, on 17 February 2018 NewDay sent him a default notice. And, in March 2018, it terminated Mr I's credit agreement and transferred his account to its debt recovery unit. After this date Mr I's account was assigned to a debt collection company, which I'll call "L" here. In July 2018, L registered a default marker on Mr I's credit file.

Mr I says he was unaware of his account defaulting and the subsequent default marker until he checked his credit file after an application he made for credit was declined when he was purchasing a car. After that, he discovered that D was no longer his credit provider.

On becoming aware of what had happened Mr I settled his outstanding balance promptly. But he made it clear to NewDay and L that he was unhappy about the default being recorded on his credit file. He thought it was unfair given that he had told D about his change of address, settled his balance promptly and made all payments on time prior to May 2017.

Mr I referred his complaint to our service where our investigator, who looked into this matter, empathised with him. But they didn't recommend his complaint should be upheld. They didn't think NewDay had made an error in defaulting Mr I's account and they thought it had acted fairly. But Mr I wasn't satisfied with this outcome and asked for his complaint to be referred to an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. While I sympathise with Mr I's situation, having considered everything that he and NewDay have said, I've reached the same conclusion as the investigator for broadly the same reasons. I appreciate Mr I will be disappointed by this outcome. But I hope he can understand the reasons behind my decision.

I'd like to make it clear at the outset that, while L was also involved in how Mr I's outstanding balance was dealt with, this complaint relates only to what NewDay did. So, I'll limit my findings to whether it acted fairly and reasonably here.

There are three parts to this complaint and I think it will make things clearer if I deal with them separately.

NewDay's decision to continue to write to Mr I at his previous address

I don't dispute that Mr I communicated his change of address with D. But, while I sympathise with him that D didn't pass on this information to NewDay, I can't fairly conclude that NewDay made an error in writing to him at his last known address. I'll explain why.

It's clear that NewDay had no other way of contacting Mr I. It didn't have a telephone number or email address for him. So, it had no alternative method to reach him other than by post. NewDay says none of its correspondence to Mr I was returned undelivered and I've no reason to doubt what it says about that. It may be that these letters were lost in the post or the occupants of Mr I's former address discarded post that was addressed to him. But I can't fairly hold NewDay responsible for that – nor can I expect it to have known Mr I was no longer living at the property.

Mr I says he received nothing from NewDay to advise that it taken over from D as his credit provider and this is why he didn't communicate his change of address with it directly. But, I've seen copy statements that NewDay provided, which pre-date Mr I's change of address.

Having considered these statements carefully, I can see they refer to NewDay as being the credit provider of Mr I's credit card. The details of its registered address are recorded on the statement. So, I think information about Mr I's credit provider was made available to Mr I prior to the date he stopped receiving statements.

Mr I continued to use his credit card and was no longer receiving any correspondence about his credit card following a change of address. In those circumstances I think it would have been reasonable for him to have queried why he was no longer receiving statements. I appreciate that he would have most likely approached D to query this. However, I think he would, most likely, have been told at this point that D was no longer his credit provider.

So, for the reason's outlined above, I can't fairly find that NewDay made an error in continuing to write to Mr I at his previous address.

NewDay's decision to default Mr I's account

I know that Mr I feels it was unfair of NewDay to default his account. I accept what he's said about the default being "*inadvertent and without malice*". But, based on the evidence I've seen, I don't think it was wrong of NewDay to default his account. I'll explain why.

When an account goes into arrears for a number of months, as Mr I's did here, a business is entitled to issue a default. As Mr I's account remained in arrears for an extended period of time I think it was reasonable for NewDay to issue a default notice and assign his debt to L. As our investigator explained guidance from The Information Commissioner's Office (ICO) says it would expect a default to be registered by the time a consumer is six months behind with their payments. I'm satisfied NewDay acted in line with this guidance.

In Mr I's case, the last payment he made to his account before the default notice was issued was in May 2017. I've seen the correspondence NewDay sent Mr I between January and May 2018 telling him what he needed to do to bring his account up to date and what it could do to help him. By February 2018, when NewDay sent Mr I a default notice, it had been nine months since his last payment had been received.

In those circumstances I think NewDay was entitled to issue the default notice it sent him. I can see this notice clearly advised Mr I he was in arrears and in breach of his credit agreement as a result. It also told him how much he had to pay to bring the account up to date and what would happen if he didn't take action.

I've already commented on why Mr I didn't receive the letters NewDay sent. And I've explained why I don't think NewDay made an error in writing to Mr I at his last known address. But, before NewDay defaulted Mr I's account, I'm satisfied it wrote to him on numerous occasions about his account at his last known address.

In the overall circumstances of this complaint, I can't say NewDay acted unfairly when it defaulted Mr I's account and assigned it on to L. This was done after an extensive history of missed payments and was a decision NewDay is entitled to take if a customer isn't meeting their contractual repayments.

The decision to record the default on Mr I's credit file

I know that Mr I feels a default has been unfairly recorded on his credit file. I appreciate the default will remain on Mr I's credit file, and most likely impact him, until July 2024. I recognise that, as he's now retired, this is likely to cause additional detriment to him. He's told our service he's already had a credit applications declined as a result of what happened.

But, while I've taken all of that into account, I've seen evidence here that the default hasn't been recorded NewDay. It told us its normal process is that once a debt is sold to a third party the default is registered on a customer's credit file by NewDay. But that record is temporary and it's removed once the debt sale process is complete. It's then replaced with information recorded by the third party that has purchased the debt. I've no reason to doubt what NewDay says about this process.

So, in this case NewDay removed the default it registered on Mr I's credit file after it assigned his outstanding balance to L. And, on 31 July 2018, L registered a default marker instead. I appreciate that Mr I settled the outstanding balance after L acquired his account from NewDay. However, settling the account doesn't remove the default from Mr I's credit file. And, as it's been registered by L, Mr I will need to take his concerns regarding the fairness any entries on his credit file up with L directly.

I realise Mr I will be disappointed with this decision. But it brings to an end what we, in trying to resolve his dispute with NewDay informally, can do for him. I'm sorry we can't help Mr I any further with this.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 6 May 2020.

Julie Robertson
ombudsman