

## **complaint**

Mr W complains NewDay Ltd has treated him unfairly by applying a default marker on his credit file after he says he did everything that was expected of him to settle the outstanding account.

## **background**

As Mr W was experiencing some financial difficulties he approached a debt management company (DMC) to help make arrangements with his creditors in order to manage his financial debts.

One of those debts was a credit card held through NewDay Ltd. Mr W had previously had arrangements to pay on this card, which is why a default had not been registered before. In April 2017 Mr W's outstanding balance on this card was £489.02. And on 4 April 2017 Mr W's DMC made a payment of £364.03 in full and final settlement of the account, having agreed this amount with NewDay. Because of this an amount of £124.99 remained.

NewDay then recorded a default on Mr W's credit file for the remaining amount. And Mr W says he only became aware of this when he went to apply for a mortgage some months later and was refused.

After Mr W brought his complaint to our service NewDay made an offer to settle the complaint. NewDay said that while they still believed the default was correct – as there had been a remaining balance on the account after the final settlement payment was made – they were unable to demonstrate they had given either Mr W or the DMC appropriate notice that they would be applying the default to Mr W's file.

To put things right, NewDay proposed to put Mr W's credit file back in the position it would've been in had he repaid the debt in full in April 2017, so long as Mr W now repaid the remaining amount of £124.99.

Mr W didn't accept this offer as he said that NewDay should've made this offer when he first complained to them about what had happened. And he told our investigator that he was not in a position to pay this amount now, and did not wish to pay NewDay any more money. Mr W felt strongly that he'd given his DMC a lump sum to clear his debts, so he'd done all he'd been asked to do. And he said there had been consequences in that he'd not been able to get a mortgage and so has since needed to live with family.

Our investigator reviewed everything and felt that in the circumstances NewDay's offer was fair to settle the complaint.

## **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 understand Mr W's frustrations with what's happened. And I've carefully considered everything he has told us together with all the other submissions available to me. Having done so, I've decided not to uphold his complaint for the reasons below.

There appears to be no dispute amongst the parties involved that Mr W did not clear his credit card in full, but that instead a reduced payment was agreed to settle the account. So the next thing to question is whether it was made clear to Mr W that a default would be registered on his credit file for the remaining amount. And was it fair to do so.

I've not needed to investigate whether it was made clear to Mr W that a default would be registered. This is because NewDay has already accepted it is unable to demonstrate that it provided Mr W with the appropriate notice to let him know the default would be recorded on his file. NewDay said this as it's been unable to provide copies of relevant call recordings with Mr W's DMC and/ or letters that we would normally expect to see issued in such circumstances. And I've not needed to propose how to put things right as NewDay has already made an offer to do this.

I understand Mr W says he is unable to or does not wish to pay anything further to NewDay as he believes he paid everything he needed in order to settle the account – so he says no default should be registered.

However, it may help Mr W to know that NewDay is required to ensure that an accurate reflection of his credit with them is recorded with credit reference agencies. And as Mr W did not clear the full amount of the outstanding balance on his account, this should be reported on his credit file.

But given NewDay is unable to show they did everything they needed to before registering the default, I think they've acted fairly by now giving Mr W the opportunity to repay the remaining balance and amend his credit file accordingly.

Mr W says they should've offered this to him sooner and I understand why he says this. But I have to also consider Mr W has suggested he's not in a position to repay this amount – so I would have to question whether he could have repaid it any sooner, in which case the default would've been registered anyway. And while I've noted what Mr W has said about the default preventing him from buying a home – setting aside that the lender may have also had other reasons for not agreeing the mortgage - I have to also be mindful that if Mr W had been unable to make the payment any earlier, he may still have been refused the mortgage anyway.

I'm also aware that Mr W and his DMC were sent letters from NewDay on 4 April and 10 April respectively. These letters explained the agreement to settle the account meant the remaining balance would be defaulted and warned this could affect Mr W's ability to obtain credit in the future. While it seems these letters were sent after the final payment had been made, I think they nevertheless put Mr W and his DMC on notice that the account had not been cleared in full and Mr W could potentially have a default registered on his account. However, I've not seen that any action was taken in response to these letters by either Mr W or his DMC.

Taking everything into account, it does appear that NewDay may not have provided Mr W with the appropriate notice before registering the default. However, as NewDay have accepted this possibility I've not looked into this any further and I think the offer from NewDay to try and put things right is fair in the circumstances.

It is now up to Mr W whether he wishes to or is able to accept the offer in question. If Mr W is unable to make the payment of £124.99 then, given the circumstances, it seems fair to me that the default in question should remain on Mr W's credit file from the original date it was registered.

**my final decision**

For the reasons above, my final decision is that I do not uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 August 2018.

Kristina Mathews  
**ombudsman**