

complaint

Mr F complains that NewDay Ltd incorrectly registered a default on his credit file.

background

Some years ago Mr F fell into financial difficulties and entered into a number of payment plans with lenders including NewDay. In 2013 it defaulted his account and later sold the debt. It contacted Mr F in 2016 to let him know it had failed to issue a notice of intent to file a default and that the default was on his credit file. It further explained that although it had failed to issue the notice of intent it had filed the default correctly.

NewDay rejected Mr F's request to remove the default notice on his credit file and the matter was brought to this service. Initially our adjudicator didn't recommend that the complaint be upheld. She noted that although the business may have failed to send a default notice or a notice of intent to file a default, we needed to assess whether this could've changed the possibility of a default being reported.

She believed NewDay was entitled to default the account if the relationship with Mr F had broken down. Given the size of the debt and the likelihood of it being repaid with the monthly payments Mr F was making she thought it reasonable of NewDay to have defaulted the account. However, she said that if Mr F could show that he could have repaid the loan in 2013 had he been properly notified she would review the matter.

Mr F provided details of the company of which he was the majority shareholder and said then he could have paid himself a dividend to clear his debt if he thought it would be defaulted. The adjudicator was satisfied that Mr F could have cleared his debt and recommend the complaint be upheld. She suggested that NewDay remove the default and pay Mr F £100.

NewDay didn't agree and wondered why Mr F hadn't paid off his debt since it believed he was fully aware of it. It noted he had entered into payment arrangements rather than pay off the debt when he had money to do so.

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 consider this to be a finely balanced decision, but after due consideration I find myself in agreement with the adjudicator. I share NewDay's doubts about Mr F's approach to his debt and also have wondered why he didn't seek to pay off more than he had been doing back in 2013. However, I am aware that he had other debts and was seeking to pay these off with various arrangements to pay. I suspect he was seeking to balance his payments with the demands being placed on him by his creditors.

I can see that a default would be detrimental to his business and it seem more likely than not he would have taken steps to avoid the loan defaulting if he had been fully aware of the impending default. I know that NewDay had been in contact with him, but with the failure to send out the notice I consider it possible that this contributed to his not settling his debt. I gather it has reduced significantly over the years and I presume it will be cleared very soon.

Therefore on balance I consider:

- The default should be removed and a repayment plan should be reported on his credit report. NewDay should make any necessary arrangement with First Credit for this to happen.
- NewDay should pay Mr F £100 compensation for the trouble and upset this matter has caused him.

my final decision

My final decision is that I uphold this complaint and I direct NewDay Ltd to resolve the complaint as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 9 February 2017.

Ivor Graham
ombudsman