

## **complaint**

Mrs M complains that NewDay Ltd (trading as Laura Ashley Storecard) registered a default on her credit file without first sending her a notice of its intent to do so and a default notice. She complains that it should have put her account on hold after she told it she was ill.

## **background**

Mrs M had a store card account with Laura Ashley. In 2008 she used it to buy critical illness insurance from a third party, after which she made monthly repayments on the card balance. She also had payment protection insurance (or "PPI") on the card, starting in 2002.

In 2012 Mrs M had an accident, and as a result she became unable to work. She fell into financial difficulties, and while she continued to make monthly payments on the card, these were for less than the minimum payments. In April 2014 and February 2015 she told NewDay that she was struggling, and the reason why. Her last payment was in December 2014. The outstanding balance is about £266.

NewDay put Mrs M's account on hold in February 2015. It says it asked her a number of times to send it evidence about her illness, but she never did. So it defaulted her account in August 2015. In 2016 Mrs M complained that NewDay had not sent her the proper notices.

NewDay accepts that it didn't send Mrs M a default notice or a notice of intent to file a default. But it says it didn't have to send them, and that the default is correctly recorded on Mrs M's credit file. However it still offered to pay her £25 for not sending her the notices. Mrs M did not accept that offer, and she complained to our service. She also complained that the PPI policy had been mis-sold.

Our investigator said that the PPI sale fell outside of our jurisdiction, so she did not consider it. And she agreed that NewDay didn't have to send the notices. But she did uphold this complaint on another ground. She said that NewDay had not provided enough evidence to show that Mrs M owed the debt in the first place. That was because in early 2009 there were some unexplained reversals of payments Mrs M had made, totalling about £65. She said that meant the statements were unreliable, so she recommended that NewDay remove the entire debt from Mrs M's account.

NewDay did not agree. It said Mrs M had accepted that the debt was hers, because she had been paying it by direct debit and had also admitted it was hers in her complaint letter in 2016. And the payment reversals had happened over seven years ago, so it no longer had any evidence about why this had happened. It asked for an ombudsman's decision.

I wrote a provisional decision as follows.

## **my provisional findings**

I was very sorry to read about Mrs M's accident, and her health problems since then.

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I agree with the investigator that the PPI sale is not a matter I can look into. Our power to consider complaints about PPI was more limited in 2002 than it is today, and Mrs M's PPI policy is not the kind that we could look at then. That means we still can't look at it now.

I agree with NewDay that there is ample evidence that Mrs M owes the debt, for the same reasons it gave us. And I'm not going to consider why some payments were returned in 2009. That's because that happened more than six years ago, and under our rules there is a six-year deadline for complaining about something. Mrs M was told about it at the time, because it was in her statements. She questioned the account balance in June 2016, which is over six years later. So I can't look into that issue. And I'm not aware of any other reason why the statements might not be accurate. So I have no reason to doubt that the outstanding balance is correct.

In her complaint letter, Mrs M said that when she had her accident, she told NewDay at the time and it put her account on hold. She said she had heard nothing since then, until four years later in 2016. By then she had assumed that her account had been closed, which is why she questioned the outstanding balance.

I'm afraid I don't accept that the account was on hold for four years, or that Mrs M thought the account had been closed. Mrs M continued to make payments up until the end of 2014. I've seen NewDay's contact notes, and they show that sometimes it spoke to her about missed payments during that period, and did affordability checks. I've no reason to think she didn't receive account statements. And if she somehow had still thought that the account had been closed since 2012, then she wouldn't have contacted NewDay again in 2015 to ask it to put the account on hold.

NewDay put the account on hold in February 2015. It then wrote to Mrs M four times, in March, May, and twice in July, to ask for evidence of her illness. I quote one of the letters below:

"To help us understand further, we require medical documentation of your condition. This information will assist us in considering holding your account without payment. To give you time to forward this information I have placed a hold on your account for 28 days. During this time you will not receive any further collections activity and we will suspend all interest and charges."

It's not in dispute that Mrs M did not send evidence of her illness. She did tell NewDay that she had not received some forms that NewDay had sent her, so it sent them again. And with each letter, the 28-day deadline was extended. But finally, in August, when no evidence had been provided, the hold was lifted and the account was defaulted.

I think that the decision to default the account, in principle, was a reasonable one. NewDay was entitled to ask Mrs M for evidence, and six months had gone by without it receiving any. But I do not agree that it followed the correct procedure.

NewDay has relied on guidelines issued by the Steering Committee on Reciprocity ("SCOR"), the *Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies*. NewDay says that it reported the default correctly and in line with the SCOR Principles. But I don't agree. Principle 4 states that an account will normally be defaulted when it is three months in arrears. It then lists five other circumstances in which an account may be defaulted earlier. It goes on to say:

"The lender must have notified you of their intention to register a default against you at least 28 days before doing so, in order to give you time to make an acceptable payment or reach an agreement with them on an arrangement. This also applies in cases 1 – 3 above. However, in 4 – 5 the lender or provider does not need to provide a notice and can file a default as soon as they become aware of the situation."

None of the circumstances described in items 4 and 5 applied in Mrs M's case. So I think NewDay should have sent her a notice of its intent to default her account before taking further action. Not to do so was an error.

However, given that NewDay had asked Mrs M repeatedly for evidence over six months and she didn't send it any, I don't think it's likely that she would have done anything differently if she had received the proper notice. So on balance, I think this error did not affect what happened. And although NewDay did not accept that it had done anything wrong, it still apologised and offered her £25 when she originally complained. I think that was a fair offer, and I believe that it remains open. So I will leave it to Mrs M to decide whether to accept it or not.

### **responses to my provisional findings**

Neither party responded to my provisional decision. So there is no reason to depart from it, and I confirm it here.

### **my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 6 March 2017.

Richard Wood  
**ombudsman**