

complaint

Mrs H complained that NewDay Ltd unfairly recorded a default against her credit file after it agreed a full and final settlement.

background

The background to this complaint was set out in my provisional decision. An extract from this is attached and forms part of this decision, so I won't repeat that information here.

In my provisional decision I set out why I was minded to uphold Mrs H's complaint. I thought it likely that Mrs H believed NewDay had accepted her payment in full and final settlement, rather than partial settlement. I considered it likely that Mrs H didn't receive NewDay's letter telling her that it would record a partial settlement.

Even if I hadn't been persuaded that Mrs H settled the debt in full in 2014, I considered NewDay had been unreasonable to register a default almost two years later without prior warning.

I thought it fair compensation to order NewDay to remove the default and write off any remaining balance.

Both Mrs H and NewDay say they have nothing to add after receiving my provisional decision.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As neither Mrs H nor NewDay had anything to add, I haven't changed my provisional findings.

my final decision

My final decision is that I uphold Mrs H's complaint. In full and final settlement, I direct NewDay Ltd to do the following:

1. Remove the default from Mrs H's credit file
2. Write off any alleged outstanding balance
3. Mark the debt as satisfied in full in October 2014

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 27 February 2017.

Gemma Bowen
ombudsman

copy of provisional decision

complaint

Mrs H complains that NewDay Ltd unfairly recorded a default against her credit file after it agreed a full and final settlement on her account.

background

In October 2014, Mrs H settled her store card account. Mrs H says NewDay accepted the payment in full and final settlement. But NewDay says it agreed a partial settlement.

In May 2016, NewDay wrote to Mrs H to say that it had recorded a default on her credit file. It accepts that it didn't send her a notice of intention to default or default notice.

Our adjudicator recommended that Mrs H's complaint be upheld. She thought NewDay should've sent Mrs H a notice of default. And that if it had, Mrs H would've cleared the outstanding balance. She asked NewDay to pay £100 compensation and remove the default.

NewDay offered to remove the default if Mrs H pays the remaining outstanding balance. And it's offered to pay £25 compensation. If Mrs H doesn't want to pay the balance, NewDay says it will mark the debt as partially satisfied.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In cases like this, where the evidence is inconclusive, I reach my decision on the balance of probabilities. That means I'll look at all the available evidence and decide what I think is most likely to have happened.

Mrs H is adamant that her offer of payment was accepted in full and final settlement. And that NewDay didn't tell her that it would record a partial default against her credit file. NewDay disagrees and refers to a letter that it sent to Mrs H in October 2014. The letter refers to a partial settlement and explains that NewDay will record this on Mrs H's credit file.

I asked NewDay whether it had any notes or call recordings from 2014. NewDay sent us a copy of the call notes. It doesn't hold the call recordings. The notes say that Mrs H's husband called to discuss her account and that he was paying the "agreed £1200 on his debit card". There isn't any mention of a partial settlement. The next note from a few days later says "f&f recvd revw for payment to show will...".

I find it more likely than not that Mrs H and her husband understood the payment was in full and final settlement of the outstanding debt. Although I accept NewDay wrote to Mrs H to say it had accepted the payment in partial settlement, I'm persuaded Mrs H didn't receive it. I say this as the call notes jump from October 2014 to June 2016. This is when NewDay wrote to tell Mrs H that it had registered a default against her. I consider it more likely than not that if Mrs H had received the letter in October 2014, either she or her husband would've contacted NewDay as they did after the letter in June 2016.

It follows that I would ask NewDay to remove the default from Mrs H's credit file and mark the debt as settled in full in 2014.

Even if I wasn't persuaded that Mrs H settled the debt in full in 2014, I would still uphold her complaint. I consider it was unreasonable of NewDay to register a default without prior warning almost two years later. It didn't give Mrs H the opportunity to query or avoid the default. Instead it

simply told Mrs H that it had registered the default for the outstanding balance. This must've come as a shock to Mrs H who says she'd heard nothing since 2014. In these circumstances, I consider it would be fair to require NewDay to compensate Mrs H by clearing the balance and removing the default.

Our adjudicator originally recommended that NewDay pay Mrs H £100 compensation in addition to removing the default. I've considered whether I should make any additional award of compensation. But I consider NewDay will have already done enough to put things right.

my provisional decision

Subject to any further information that I might receive from Mrs H or NewDay by 23 January 2017, I intend upholding this complaint. If I do that, I will order NewDay Ltd to do the following in full and final settlement:

1. Remove the default from Mrs H's credit file
2. Write off any alleged outstanding balance
3. Mark the debt as satisfied in full in October 2014

Gemma Bowen
ombudsman