

complaint

Mr C complains that NewDay Ltd registered a default on his credit file without him knowing and he'd like it removed. He says he didn't receive any letters about this and he also thinks the date of the default is wrong.

background

The background to this complaint and my initial findings on it, are set out in my provisional decision a copy of which is attached and forms part of this final decision.

I invited both parties to let me have any further submissions before I reached a final decision.

NewDay has indicated that it accepts my provisional decision.

But Mr C doesn't agree with my provisional decision. In summary:

- he says he hasn't received £40 compensation from NewDay.
- he appreciates my suggested award of an additional £75 compensation but he'd rather the default was removed.
- if he'd received another default notice he would have avoided the default. Although he was sent statements he thought NewDay was happy to keep adding charges. If he'd known about the severity and made their intentions clear he would have come up with a sensible arrangement.
- it's not the case that he wouldn't pay. He says the reason he couldn't catch up on payments is because he was being pressured to pay more than he could afford. He says the debt management company to whom his debt was sold have been more understanding and he's now paid off his debt.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having finished my review I haven't been persuaded by Mr C's responses to my provisional decision. It follows I've reached the same conclusions as I did in my provisional decision. So I'll explain why.

Mr C has made a number of points which I have read and considered. I realise he says he never received the default notice in December 2017 and he feels strongly that the default shouldn't have been recorded. He also says if he'd received another default notice he would have taken action and come up with a sensible arrangement. I've thought carefully about this.

I think it's more likely than not that the default notice was sent because NewDay provided a copy of it and it appears to have been correctly addressed to Mr C. I still think NewDay should really have issued a further default notice but I don't think the default would have been avoided even if it'd done so.

I say this because I'm satisfied that after it issued the default notice in December 2017, it wrote to him again in March 2018. This letter made clear that his account was seriously overdue and if he didn't pay the default would be reported to credit reference agencies". So I don't agree he wasn't aware of the severity of the situation.

I also note that in addition to letter NewDay sent to Mr C in March 2018, it continued to send him statements showing he'd exceeded his credit limit and detailing the amount he needed to pay. So I'm satisfied he knew he owed money to NewDay and that he'd exceeded his credit limit. And even though he continued to receive statements showing he owed money, there's nothing to suggest he made any further payment after February 2018. I think he had sufficient time to make a payment or come to another arrangement with NewDay, but there's nothing to suggest he did so.

I'm pleased Mr C has now settled his debt with the debt management company to whom NewDay sold his debt. The information provided shows he settled his debt with a discount and this will show as partially settled on his credit file. But I can't find that this shows he would have paid his debt to NewDay. As I've already explained above I'm satisfied he knew he owed money to NewDay but there's nothing to suggest he made any further payment after February 2018 and neither did he make a further arrangement.

I'm pleased Mr C has had a positive experience with the debt management company to whom NewDay sold his debt but I can't comment on this because this complaint is about the way Mr C was treated by NewDay.

my final decision

My final decision is that I uphold this complaint in part and NewDay Ltd should pay to Mr C £105 compensation for the distress and inconvenience caused to him as a result of a further default notice not being sent, save insofar as any part of this award has already been paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 December 2019.

Michelle Hayward
ombudsman

copy provisional decision

complaint

Mr C complains that NewDay Ltd registered a default on his credit file without him knowing and he'd like it removed. He says he didn't receive any letters about this and he also thinks the date of the default is wrong.

background

Mr C says that without his knowledge NewDay registered a default on his credit file in respect his credit card account. He says he never received a default notice so he'd like the default to be removed. He also says the date of the default sounds wrong.

Initially NewDay didn't uphold his complaint. They said the default was registered by the debt management company to whom they'd sold Mr C's debt. They suggested Mr C should contact the debt management company if he was unhappy with the information recorded. But when Mr C did this the debt management company said they hadn't registered the default either. So Mr C went back to NewDay.

NewDay later confirmed they'd registered the default just before his debt was sold to a debt management company at the end of August 2018. They agreed they'd given incorrect information about who had registered the default and paid £40 compensation. But they said the default was correctly recorded because his account went into arrears in November 2017 and he'd been sent a default notice and further letters about what would happen if his account wasn't brought up to date.

Unhappy with NewDay's response, Mr C brought his complaint to this service. Our investigator didn't recommend the complaint should be upheld. He thought the £40 compensation paid by NewDay was fair.

Our investigator couldn't tell who'd registered the default but he thought it was correctly recorded. NewDay had provided evidence to show they'd sent a default notice to Mr C in December 2017. He noted that it was a long time before the default was recorded, but he thought the delay was fair because during this time Mr C was given additional time to bring his account up to date.

The investigator noted that from late March 2018 the financial relationship had broken down and no further payments were made. The account was placed in default six months after this point and the investigator thought this was in line with the Information Commissioners Office (ICO) guidance for businesses when filing defaults.

Mr C disagrees with the investigator's view and he's asked for an ombudsman's decision. He says he never received the default notice. He also says he received a statement from NewDay in August 2018 which said he still had time to pay.

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.

As the investigator has already explained I can't tell who registered the default. But in any event NewDay confirmed they did this in late August 2018 – before they sold Mr C's debt to a debt management company. Although Mr C would like to know who registered the default I think his main concern is that he believes the default was incorrectly recorded.

Mr C says he never received the default notice sent by NewDay in December 2017. However, I think it's more likely than not that it was sent because I've seen a copy of what NewDay sent and it appears to be correctly addressed. Non-receipt by Mr C doesn't invalidate the default notice. I appreciate that there's been a long delay between NewDay issuing the default notice in December 2017 and the default being recorded in late August 2018. So the question I have to consider is whether this was fair.

NewDay's customer notes show that shortly after the date of the default notice, Mr C phoned and agreed a payment arrangement. However, by mid-December 2017 he informed them that due to unexpected expenses the arrangement was no longer suitable and a new arrangement was put in place for the next six months.

In January 2018 the arrangement was again re-set due to unexpected expenses over the holiday period. And in early February 2018 further issues occurred and another plan was put in place. NewDay's notes of its conversation with Mr C at the time show that it explained to him that if payment wasn't received his account would be passed on immediately.

The ICO guidance explains that the ICO generally expects a default to be registered by the time a consumer is six months in arrears. Clearly that wasn't the case here but the guidance goes on to provide that where an arrangement is agreed a default won't normally be registered unless the payment terms are broken. In Mr C's case I'm satisfied that the reason NewDay didn't record a default once Mr C was six months in arrears is because he was given additional time to bring his account up to date – as I've explained above.

Mr C's last recorded payment was in late February 2018. This payment was made later than the date he'd agreed with NewDay. This meant he broke the terms of his arrangement with NewDay. NewDay then wrote to him in March 2018. The letter explained that payment on his account was now seriously overdue. It also said that if he didn't pay *"we'll report the default on your account to credit reference agencies. This will stay on your file for six years and make it harder for you to get credit in the future"*.

NewDay placed Mr C's account in default within six months of the March 2018 – and this letter was sent after Mr C broke the terms of his payment arrangement. The March 2018 letter clearly explained what would happen if he didn't pay. NewDay recorded the default within six months of him breaking his arrangement. In these circumstances I think NewDay should really have issued a new default notice to Mr C but - even if it had done so - I don't think it would have changed what eventually happened here for the reasons I'll explain below.

I've seen copies of statements NewDay continued to send to Mr C between March 2018 and August 2018 – after Mr C made his last payment. They clearly show he was over his credit limit and these amounts are referred to as *"Overlimit Due Immediately"*. Each statement then sets out the minimum payment due from him and the date by which it's due. The statement says:

“You have failed to make a minimum payment. Failing to make your minimum payment can mean that you have broken the terms of this credit agreement and could result in us taking legal action you”.

However, I haven't seen anything to suggest that NewDay issued a further default notice or that his account was terminated so I can see that the lack of a further default notice and further information he received caused confusion. Mr C's August 2018 statement, for example, explained that Mr C must make his required minimum payment by early September 2018. This suggests he still had time to pay so I can understand why he was concerned that NewDay then registered a default at the end of August 2018 without issuing a new default notice.

But although I think NewDay should have issued a further default notice in these circumstances I can't agree the default would have been avoided had they done so. I'm satisfied the default would still have happened due to a lack of action on Mr C's part. I say this because I'm satisfied he knew he was over his credit limit and owed money to NewDay. He'd made several arrangements to pay each of which was broken. And, after he made his last payment to NewDay in February 2018, I'm satisfied the statements he was sent clearly showed he was over his credit limit and the minimum amount he needed to pay, but didn't.

For the reasons I've given above I don't require NewDay to remove the default. But I think it's appropriate to award £75 compensation to him – in addition to the £40 already paid by NewDay -for the distress and inconvenience caused as a result of a further default notice not being sent.

my provisional decision

My provisional decision is that I intend to uphold this complaint in part. And I intend to direct NewDay Ltd to pay Mr C £75 compensation for the distress and inconvenience caused as a result of a further default notice not being sent.

Michelle Hayward
ombudsman