

complaint

Mr M complains about NewDay Ltd ("the business") registering a default against his credit file, and selling his outstanding debt to a third party.

background

Mr M previously had a credit card, which was operated by the business.

In summer 2014 Mr M reached his credit limit with the card, and contacted the business explaining that he was not in a position to keep to the minimum repayments.

The business corresponded with him and, in August 2014, agreed an informal repayment plan.

Until this time, interest had been being incurred on the account but this was stopped at the point of the agreement.

The business wrote to Mr M confirming the agreement. This letter set out that the business would let credit reference agencies know about the agreement and this may affect Mr M's ability to get credit in future.

The letter also explained that the account may be defaulted with credit reference agencies.

Finally, the letter set out that the business may decide to sell the debt, but that any purchaser would abide by that agreement until further notice.

Along with this letter the business also sent a notice of default to Mr M. This gave 28 days notice of a default being registered.

Mr M made repayments on the agreement in October, November and December 2014.

The business then registered a default on the account in late December 2014.

Mr M missed his agreed payments in January and February 2015, due to an issue at his bank. He then made a payment in March 2015.

Mr M says that he contacted the business to explain the reason for the missed payments and was assured that the business would look into it and would contact him. He says that he didn't receive any returned contact.

The business then sold the debt to a third party company at the end of March 2015. Mr M was subsequently contacted by the third party company.

Mr M complained to the business in March 2017. This was on the basis that the business did not respond to him about his missed payments, and his belief that these missed payments caused the company to transfer to debt to a third party for enforcement.

The business responded to Mr M's complaint in April 2017. This set out that the default was registered as a result of Mr M's agreeing a lower repayment schedule in summer 2014 rather than the missed payments in early 2015. It also explained that the business was entitled to

sell the debt onto a third party, and that Mr M needed to speak with the third party regarding any concerns about enforcement.

Mr M was not happy with this response and contacted us.

One of our adjudicators has looked into this case and set out a view to the parties. Her view was that the business had not acted unreasonably in registering the default and in selling the debt, since the business gave Mr M notice that it may do so.

Mr M did not accept this view and asked for an ombudsman to make a decision on 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 have, in particular, had regard to Mr M's concern that his missed payments in early 2015 caused the debt to be passed to a debt collection agency, when as far as he was concerned he had contacted the business to explain the issue and was awaiting a response.

I understand Mr M's confusion, since if the default had been registered on the basis of the missed payments in January and February 2015, there is no evidence that Mr M was given warning of this.

The evidence shows, however, that it was not these two missed payments which prompted the default to be registered, but the fact that Mr M had agreed with the business that he was not able to keep up with his repayments.

The business has provided evidence that it gave notice of its intention to register a default at the end of August 2014, and it registered the default in late December 2014. As this was before Mr M missed his payments those missed payments cannot be the reason for the default.

Similarly, the business advised Mr M in August 2014 that it may sell his debt, but that his agreement would continue with any purchaser. The business sold the debt in March 2015 and Mr M was allowed to continue making payments after this. The third party company was therefore not a debt collection agency, but the new owner of the debt instead.

I understand that it would have been confusing for Mr M to not receive a response from the business after he contacted it to explain the missed payments. I can also see why Mr M thought the change in the company contacting him meant that the business had passed the debt to collection agents.

The evidence shows, however, that the business had sold the debt, as it indicated it may do in August 2014. It is unfortunate that the timing of these events coincided and I expect that this contributed to the business not returning Mr M's contact.

I consider the business not returning Mr M's call to be a failing, but I do not think it had any significant effect since Mr M has said that he was soon able to speak to the third party company who by then owned the debt. That third party company kept to the agreement as Mr M had resumed making his repayments, so there was no impact on the arrangement.

As a result, I do not think the business has acted unreasonably in registering the default or in selling the debt, as it gave Mr M advance notice of these intended actions.

I do think there is a minor failing in communication as the business does not appear to have returned Mr M's call. I do not think this a significant failing since he was able to successfully speak with the new owners of the debt shortly afterwards and they continued to honour the repayment plan.

I do not, therefore, uphold Mr M's complaint and do not ask the business to do anything further.

my final decision

As set out above, I do not uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 September 2017.

Laura Garvin-Smith
ombudsman