

complaint

Ms K complains about the default that NewDay Limited has recorded on her credit file.

background

Ms K had a credit account with NewDay but she was experiencing financial difficulties so a reduced repayment arrangement was agreed in May 2015 under which she was to make monthly repayments of £1. A default notice was sent to her in October 2015 and a default was recorded the following month. NewDay also sold her account to a third party. NewDay wrote to Ms K in September 2016 to advise that it hadn't issued a notice of intent to file a default to her. Ms K complained to NewDay about the default in March 2018. It offered to pay her £25 because of its error. But Ms K wasn't satisfied with its response so complained to this service.

The investigator didn't recommend that this complaint should be upheld. She didn't think that NewDay's failure to send a notice of intent letter resulted in Ms K's account being defaulted as it was likely that she wasn't in a financial position to pay the amount due so the default of the account would've been inevitable.

Ms K has asked for her complaint to be considered by an ombudsman. She says, in summary, that:

- she was treated unfairly because, by not receiving the notice of intent to register the default, she wasn't given the same opportunity as others who were in the same position as her;
- NewDay demanded £70 when it sent her the notice of default but she couldn't afford to pay it in such a short time when she was receiving benefits, living on a very small budget and didn't have any extra money left;
- If she'd been sent a notice of intent to register the default she'd have had time to arrange the payment – and she's provided payslips to show that she was in employment and would've been able to afford to pay the required amount; and
- she didn't receive the notice of default and NewDay hasn't provided any proof that it was posted.

my findings

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

A reduced repayment arrangement was agreed on Ms K's account in May 2015 under which she was to make monthly repayments of £1. But NewDay says that due to the level of arrears and in line with its business policy and agreement terms it sent Ms K a notice of default in October 2015. The credit limit on the account was £250 but the outstanding balance was £267.72. The notice said that if she didn't pay £73.50 within three weeks it would default the account.

Ms K says that she didn't receive the notice. NewDay has provided a copy of the notice that it sent to Ms K – and it was properly addressed to her. So I consider it to be more likely than not that the notice was sent to Ms K – even if she didn't receive it. And by sending the notice to Ms K I consider that NewDay discharged the requirement to give that notice to her.

NewDay accepts that it didn't send Ms K a notice of its intention to register the default. It discovered the error and wrote to Ms K in September 2016 to explain its error. And when Ms K complained to it in March 2018 it apologised for its error and offered to pay £25 to her.

Ms K says that she would've paid the required amount if she'd received the notice of NewDay's intention to register a default because she was working part-time then and receiving benefits. But if she was able to repay £73.50 to NewDay I consider that she could've afforded to pay more to it each month than the £1 that she was paying under the repayment arrangement. But I've seen no evidence to show that Ms K contacted NewDay about her account until after she'd received the letter about its error. And Ms K had other priority debts – so I'm not persuaded that she would've been able to pay the required amount.

Ms K didn't make the payment set out in the default notice by the required date so NewDay recorded a default on the account in November 2015 – and it sold her account to a third party. I consider that the default is a true and accurate record of Ms K's account. And I'm not persuaded that it would be fair or reasonable for me to require NewDay to remove the default from Ms K's credit file.

NewDay has offered to pay £25 compensation to Ms K. If she now wants to accept that offer, she should contact NewDay to see if it remains available to her. But I find that it wouldn't be fair or reasonable for me to require NewDay to pay any other compensation to Ms K or to take any other action in response to her complaint.

my final decision

For these reasons, my decision is that I don't uphold Ms K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 31 August 2019.

Jarrold Hastings
ombudsman