

complaint

Mr W complains that NewDay Ltd has unfairly recorded and refused to remove adverse information on his credit file in relation to a finance arrangement he had with it.

background

I recently issued my provisional conclusions setting out the events leading up to this complaint, and how I thought best to resolve it. I've attached a copy of my provisional decision, which forms part of this final decision.

I invited both parties to let me have any further comments they wished to make in response to my provisional conclusions.

my findings

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

response to my provisional findings

Neither party had anything to add to my proposed conclusions. In light of this, I see no reason to depart from the resolution I proposed in my provisional decision.

my final decision

For the reasons I've explained here and, in more detail in my provisional decision, my final decision is that I uphold this complaint. In full and final settlement of it, I require NewDay Ltd to take immediate steps to ensure that all details of the default in question are removed from Mr W's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 February 2019.

Niall F Taylor
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr W complains that NewDay Ltd has unfairly recorded and refused to remove adverse information on his credit file in relation to a finance arrangement he had with it.

background

Some years ago, Mr W bought a sofa on credit. The transaction was financed by Santander Cards UK Limited (and subsequently assigned to NewDay), with Mr W due to make 48 monthly payments by direct debit to clear the balance. A couple of months before the agreement was due to finish, Mr W's direct debit was cancelled. That meant there was an outstanding balance, which Mr W didn't repay for several months. By that point, NewDay had recorded missed payments on his credit file, and registered the account in default.

Mr W believes NewDay has acted unfairly. He says neither he nor his bank cancelled the direct debit. Mr W adds that he didn't receive any indication from NewDay that this had happened, or that the account was in arrears. He also says that when he paid off the balance, NewDay told him it had cancelled the direct debit and would remove the default. However, this hasn't been done.

NewDay says it didn't cancel the direct debit, but that it wrote to Mr W to tell him this had happened. It also says it wrote on several other occasions about the position of the account, culminating in a default notice a couple of months before Mr W settled the balance. In respect of the default information, NewDay won't amend Mr W's credit file, as it considers what it's recorded to be a true reflection of the account conduct.

Our investigator wasn't persuaded that NewDay had cancelled the direct debit. He found that Mr W had moved house twice after taking out the finance agreement, but that NewDay had no record of Mr W telling it of his new addresses. He wasn't able to listen to Mr W's telephone conversation with NewDay, but didn't think the content of the call would in any event make a difference to whether the default was correctly recorded.

Mr W hasn't accepted the investigator's conclusions. He's asked for this review.

my provisional findings

I've considered all the available evidence and arguments to reach an initial conclusion about what's fair and reasonable in the circumstances of this complaint. Where there's a dispute about what happened, I've based my findings on the balance of probabilities – in other words, on what I consider most likely to have happened in light of the available evidence.

I can understand why this issue is important to Mr W. He's found out about the adverse credit information in the course of trying to rearrange his mortgage, and the impact of the default affects the rates available to him. It seems to me that there's been an unfortunate combination of events that's led to this situation. The direct debit was cancelled. NewDay wrote to Mr W to let him know, but he didn't receive its letters because they went to an old address. The account statements and arrears letters were missed for the same reason, as was the default notice.

In the course of investigating, we've looked into records held by NewDay and those held by Mr W's bank. Neither of these holds any documentary evidence about the direct debit cancellation that explains why, or by whom. While Mr W has said his bank has told him neither he nor it can cancel a direct debit, that isn't correct. The direct debit guarantee, which applies to all direct debits, says that a customer can cancel a direct debit at any time simply by contacting their bank.

Cancellation would generally prompt contact from the originator (the company to whom payments are due), alerting the customer to any direct debits cancelled in error. But as I've already noted, on this

occasion Mr W didn't receive NewDay's contact – though as our investigator found, there's no record of NewDay being told Mr W had moved house.

I don't think there's enough here for me to say that it's any more likely that NewDay cancelled the direct debit than that Mr W might have mistakenly cancelled the direct debit himself, the action coming as it did 48 months after he bought the sofa. There doesn't seem any logical reason why NewDay would have cancelled the direct debit, knowing payments were still due, and then written to Mr W asking him to reinstate the direct debit. But the lack of a logical explanation doesn't preclude the simple possibility that a mistake was made.

At the point of cancellation, only 46 payments had been made (the first payment wasn't collected until two months after the purchase date). But Mr W might have assumed he'd made all the payments required, particularly if his statements were going to a different address. So it's just as likely that Mr W – or possibly even his bank – simply made a mistake.

Of course, this is simply speculation as to what might have prompted cancellation. The key problem here is a lack of any persuasive evidence as to the reason – or party responsible – for that cancellation. In the absence of this, I'm not currently minded to reach the conclusion that NewDay has acted incorrectly or treated Mr W unfairly by taking the action it has in recording the default information on his credit file. The loan went unpaid, NewDay didn't get a response to its letters and the default notice appears to have been issued to the last known address NewDay had for Mr W.

However, I don't consider that to be the end of the matter. I think there's a further aspect, being whether having looked into the circumstances, NewDay is acting fairly towards Mr W in declining to remove the default information. In this respect, NewDay said the following:

"NewDay Ltd will not routinely amend a payment profile if it is deemed the business has not made an error. As a responsible lender, we must ensure that the information we record is accurate and is simply a mirrored reflection on how payments have been received irrespective of the circumstances.

Therefore if a payment has been received on time, this will be recorded as a prompt and timely payment. However, if the payment has been missed or is late, the information recorded will be that the payment has been received late.

Regrettably, we are unable to amend the information recorded on your credit file as this is considered to be a true reflection of how your account has been maintained."

I can understand where NewDay is coming from. It has, for example, obligations towards other prospective credit providers to report account conduct accurately (though I don't think that goes as far as *"irrespective of the circumstances"*). The fact payments were due but not made is something that NewDay is entitled to record, just as Mr W is entitled to place a notice of correction on his credit file to explain the payments weren't made because the direct debit got cancelled.

I wouldn't expect NewDay to amend a payment profile as a matter of routine. But I consider it good practice for a lender to consider the circumstances when asked to do so. As I've said above, I'm unable to conclude that NewDay made an error over the direct debit collection. But that's not the same as saying NewDay didn't make an error – the position is that this is inconclusive, due to the lack of available evidence.

I don't believe I can rightly conclude NewDay took this into account when it decided not to amend Mr W's credit file. If there was clear evidence that the cancellation wasn't NewDay's fault, its position may be reasonable. But there doesn't appear to be such evidence, and that causes me to question whether in these circumstances it's fair for NewDay to decline to remove the default. As things currently stand, I'm not persuaded that it is.

my provisional decision

For the reasons I have explained, but subject to any further information or evidence I might receive from the parties by 27 December 2018, my provisional decision is that I'm minded to uphold Mr W's complaint, in part.

To settle it, I propose to require NewDay Ltd to take immediate steps to ensure that all details of the default are removed from Mr W's credit file.

Niall F Taylor
ombudsman