

The complaint

Mr P complains that Novaloans Ltd trading as cash4unow (“Novaloans”) has incorrectly defaulted his loan account. To put things right Mr P wants the default removed.

What happened

The default has been recorded in connection with a £600 loan advanced on 21 May 2021. Mr M was due to make six monthly payments of £174.94. Mr M has had problems repaying this loan and based on the most recent evidence Mr P is making monthly repayments towards the balance through an informal repayment plan.

In May 2022, Novaloans recorded a default on Mr P’s credit file in relation to the above loan. However, following a different complaint that he raised, this default was then removed from his credit file because the correct notice wasn’t sent to him.

However, on 7 September 2022 a default notice was issued to Mr P which explained the action he needed to take within 14 days. And on 12 September 2022, Mr P emailed Novaloans letting it know about his current financial situation and offered to pay £25 per month. He did this to prevent the default from being applied.

He also spoke to a member of staff on 20 September 2022, where a payment plan was set up. Mr P says on this call, he was told that as he had set up a payment plan the default wouldn’t be recorded with the credit reference agencies (CRAs).

Mr P then made a new complaint – the one this decision deals with - on 6 October 2022 because a new default had been added to his credit file.

Novaloans responded with its final response letter on the same day. It said the default notice was issued due to persistent arrears, and the default notice made clear that all the arrears needed to have been fully repaid by 21 September 2022 otherwise a default would be recorded with the CRAs.

However, it did say, that it had listened to the call that Mr P had with the adviser – on 20 September 2022, and it agreed that Mr P was given incorrect information – that setting up a repayment plan would prevent the default. As a gesture of goodwill, it offered Mr P £50 by way of apology.

Unhappy with this offer, Mr P referred his complaint to the Financial Ombudsman. The complaint was considered by an adjudicator who didn’t uphold it. He concluded Novaloans hadn’t made an error when it defaulted the account. He also thought the £50 payment offered by it as a way of apology was fair and reasonable.

Mr P said he didn’t agree and I’ve summarised his response below:

- Novaloans kept applying and then removing a default from his credit file.
- Mr P had a payment plan in place which he has stuck to.

- On the day Mr P received the default notice he contacted Novaloans to arrange a repayment plan for £25 per month.
- Mr P doesn't consider he's been treated fairly.

As no agreement has been reached, the case has been passed to me for a decision.

What I've decided – and why

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

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr P's complaint.

I appreciate there was a previous issue where Novaloans recorded a default on Mr P's credit file in May 2022. Novaloans has said this was removed due to no default notice being issued. I only mention this here for context for this decision and I make no finding of award about that issue because Mr P's complaint is concerned about the default applied in September 2022.

The first thing I have considered is whether Novaloans was even in a position to issue a default notice at the time. I've considered the Information Commissioner's Office (ICO) guidance entitled "*Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies*". This document provides guidance to banks and other lenders as to when a default or arrears can or can't be reported to the CRA and I consider this guidance to be good industry practice. Principle four of the guidance says:

"4. If you fall into arrears on your account, or you do not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down.

As a general guide, this may occur when you are 3 months in arrears, and normally by the time you are 6 months in arrears."

So, clearly, given the loan was granted in May 2021, with the expectation it would be repaid by November 2021, the account was sufficiently in arrears for Novaloans to have issued the default notice in September 2022. And I can see from the payment history and the contact notes that there were periods of time where Mr P didn't make payments – either contractually or in previously set up repayment plans.

Mr P has been clear to Novaloans why he hasn't been able to maintain contractual repayments, and I'm sorry to have read those reasons. But that wouldn't have prevented Novaloans from recording arrears on the credit file or have prevented the default notice from being issued. I then gone on to consider what the default notice said and whether it complied with the regulations.

I've been provided with a copy of the default notice that was sent to Mr P on 7 September 2022. I've considered its content as well as Section 88 of the Consumer Credit Act 1974 because this Section provides details of what a default notice must contain. The key part is the section is outlined below.

"Contents and effect of default notice.

- (1)The default notice must be in the prescribed form and specify—*
(a)the nature of the alleged breach;

*(b)if the breach is capable of remedy, what action is required to remedy it and the date before which that action is to be taken;
(c)if the breach is not capable of remedy, the sum (if any) required to be paid as compensation for the breach, and the date before which it is to be paid.”*

In addition, to providing the above, Novaloans was also required to provide at least 14 days for Mr P to remedy the breach – and the default notice sent to him provided that time.

Turning to the actual notice that was sent to Mr P. The default notice explained what the breach was – that Mr P had arrears of £279.90 and section 2 of the notice also said

“Immediate action is required to remedy this breach. You are required to pay us the total amount of arrears outstanding by 21/09/2022.”

Novaloans, as required by the regulations, set out the breach and what actions Mr P needed to take before the 21 September 2022 to prevent a default being applied. Mr P wasn't being asked to set up a repayment plan, he was being asked to pay £279.90 and if he didn't do so then Novaloans would apply the default to the CRAs. This information was also relayed to Mr P in an email to him from Novaloans on 7 September 2022.

So, I'm satisfied the account was sufficiently in arrears – as defined by the ICO for a default notice to be issued. The default notice also contained everything that it needed to contain to enable Mr P to remedy the situation by the deadline. And as Mr P didn't clear the arrears by the deadline it was reasonable of Novaloans to report the default with the CRAs.

However, Novaloans accepts he was given incorrect information on the phone call on 20 September 2022. Mr P ought to have been told on that call that a payment plan wasn't sufficient at this stage, due to the arrears and if Mr P did set up an arrangement then a default would still be recorded.

Whereas, what actually appears to have happened is Mr P was told the payment plan of £25 per month would be enough to prevent the account from defaulting. But that information was contrary to what was contained within the default notice and the email from Novaloans. I'm also not persuaded given Mr P needed a repayment plan that had the agent told him the correct information then he would've been able to have paid the arrears, in full, by the deadline.

I therefore don't uphold Mr P's complaint about Novaloans issuing a default notice or applying a default to his credit file. But Mr P was mis-advised and for that Novaloans offered a payment of £50. Novaloans should, if it hasn't already done so arrange to pay Mr P this sum, and I consider this offer to be fair and reasonable in the circumstances of the complaint.

My final decision

For the reasons I've explained above, I'm not upholding Mr P's complaint about the default notice being applied. And if Novaloans Ltd trading as cash4unow hasn't already done so, it should pay Mr P the £50 compensation it offered in the final response letter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 18 August 2023.

Robert Walker
Ombudsman

