

The complaint

Mr C is unhappy that NewDay Ltd, trading as Debenhams Mastercard, made excessive telephone calls to him in relation to outstanding balances that he had with them.

What happened

Mr C has five accounts with NewDay linked to five different retailers. Mr C previously raised a complaint about all of these accounts as he felt that NewDay had offered him credit which he couldn't afford in all five instances. This complaint was eventually referred to this service and upheld in Mr C's favour on 3 April 2020.

As a result, NewDay were instructed to take action which included making reimbursements to Mr C's accounts and removing all adverse information about these accounts from his credit file. NewDay were asked to complete these actions within 28 days, which gave them a deadline of 1 May 2020.

However, it was acknowledged as part of the previous complaint decision that Mr C would be liable to repay any balances that remained on the accounts after NewDay had completed the necessary restorative action, and that NewDay should make repayment arrangements with Mr C regarding these balances.

In March and April 2020, Mr C received what he considers to be an excessive number of telephone calls from NewDay in relation to the outstanding balances on these accounts. Mr C wasn't happy about this, so he made a complaint.

NewDay looked at Mr C's complaint, but they noted that while the previous complaint was being reviewed by this service Mr C was still required to make his minimum payments against the accounts, which he hadn't done. As such, NewDay felt that it was appropriate that they had continued to try and contact Mr C about the arrears on his account, and they noted that they had ceased all calls by 1 May 2020, which was the deadline they had been given to complete the corrective actions on his accounts. So, they didn't uphold this aspect of his complaint.

Mr C wasn't satisfied with NewDay's response, and he was also unhappy that NewDay hadn't taken due account that he suffered with mental health issues despite his informing them of this previously. So, he referred his complaint to this service.

One of our investigators looked at this complaint. They felt that the number of phone calls that NewDay had made to Mr C was excessive, and that NewDay hadn't taken due notice of Mr C's mental health issues following him informing NewDay about these. So our investigator upheld the complaint and recommended that NewDay make a payment to Mr C of £200 as compensation for this.

Mr C didn't think that the offer of compensation recommended by our investigator went far enough, and he thought that he should be compensated a similar amount for each of the five accounts he held. So, the matter was escalated to an ombudsman for a final 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 issued a provisional decision on 17 February 2021 in which I stated the following:

It's clear that Mr C feels strongly about this complaint, and I note the emails that he has provided to this service which demonstrate that he mentioned his mental health issues to NewDay on 21 November 2019 and also on 17 April 2020.

I must begin immediately by addressing the issue of the number of calls which NewDay made to Mr C which he considers to be excessive. Our investigator has agreed with Mr C's assessment here, but I'm not convinced that the number of calls is excessive in this instance, especially considering the number of accounts that Mr C held and the fact that the majority of the calls made by NewDay went unanswered.

In our investigator's view of this complaint, they noted that information provided by NewDay confirmed that they had made a total of 82 calls across all five accounts to Mr C between 14 March and 27 April 2020 – which is just over a six-week period. This equates to approximately 14 attempted calls per week, which when considered as being calls relating to five different accounts equates to approximately three calls per week, per account.

I know that Mr C feels that the numbers provided by NewDay aren't accurate and that more calls were attempted by them than they have a record of. However, even if I were to grant that NewDay made five calls per account per week to Mr C, I would still find it difficult to conclude that this was excessive, especially considering as how the large majority of the calls weren't answered by Mr C, which if they had been may have mitigated the need for follow up calls to have been made by NewDay.

Of crucial importance here is the fact that Mr C holds five accounts with NewDay relating to different retailers. The overall number of attempted calls made by NewDay is large. However, if it were the case that each of the five accounts were administered by different companies then it would be difficult to claim that any one of those companies was contacting Mr C excessively. Because of this, I don't feel that it's fair to consider that NewDay have contacted Mr C excessively, given that they have been acting separately as administrators of Mr C's five different accounts.

It follows then that, while I am provisionally upholding this complaint, I'm not doing so on the basis that NewDay have contacted Mr C excessively.

Instead I am upholding this complaint for two reasons. The first being that NewDay didn't take due notice of Mr C informing them in at least two emails – as dated above – that he suffers with mental health issues.

In instances where a business is informed by a customer that they are experiencing mental health issues, it would be expected that the business would react positively and sympathetically and would listen to what the customer has to say about their issues before exploring what ramifications this might have for how the business might manage that customers account.

NewDay don't appear to have done this here, at least not at the times that Mr C first

informed them of his mental health issues, and NewDay have confirmed that they didn't record that Mr C was suffering with mental health issues until he reported this to them again on 12 May 2020.

The second point of consideration is that, while NewDay have expressed that it was appropriate for them to have continued to try to contact Mr C up until the deadline of 1 May 2020 set by the outcome of the previous complaint, it's difficult to conclude that this has led to a fair outcome here. The previous final decision gave a deadline of 1 May 2020 for NewDay to complete the corrective action needed on the accounts. However, this complaint response was issued on 3 April 2020, and it was apparent that from that time any contact that NewDay made with Mr C would have been ineffective and inappropriate.

I say this because the purpose of the calls that NewDay were making was to chase outstanding arrears on the accounts held by Mr C. But, following 3 April 2020, both NewDay and Mr C became aware that corrective action was needed on these accounts before the true balance of the accounts would be known.

So, it's hard to see what NewDay would have achieved by contacting Mr C during this time, because the result of any conversation that took place would surely have been that Mr C would have explained to NewDay's staff that the balance of the account was under dispute because reimbursements had been instructed on these accounts by this service and had not yet been applied. As such, it would be expected that NewDay would have altered their contact strategy so as not to call Mr C while these corrections were being made, and so I feel that isn't reasonable or fair to Mr C that they continued to attempt to call him during this period.

Having reviewed this complaint, I feel that NewDay should compensate Mr C for the distress and inconvenience that he has suffered because of the issues I have detailed above. Matters of compensation are always subjective, but I feel that an award of £200 is an appropriate amount in this instance. So, I am provisionally upholding this complaint on that basis.

My provisional decision invited both Mr C and NewDay to provide any comments that they wished me to take into consideration before making my final decision.

NewDay confirmed that they had no further points to add. However, Mr C drew attention to what he believes is a misunderstanding of his complaint.

Mr C advised that his complaint wasn't just about the amount of phone calls that NewDay had made, but that NewDay shouldn't have made any attempt to contact him by phone following this service issuing a final response on his earlier complaint. Mr C explained that after he received the final response from this service on 3 April 2020 which instructed NewDay to take corrective action regarding the outstanding balances on his accounts, Mr C immediately raised a dispute with NewDay about the balances outstanding.

Mr C thus believes that because the account balances were in dispute that NewDay should not have contacted him about these balances at all, and Mr C references several FCA guidelines to corroborate this claim. Additionally, Mr C doesn't accept that NewDay being given 30 days to implement the balance amendments in the previous final decision issued by this service should override the requirements to not contact him on the basis that the amounts were in dispute.

I'd like to assure Mr C that I have understood the basis of his complaint. Indeed, I can confirm that that one of the reasons why I am upholding this complaint in Mr C's favour is

because NewDay continued to attempt to contact him before implementing the balance corrections as mandated by the previous final decision issued by this service. And this was explained in my provisional decision letter.

I must also note that, technically, the balances were no longer in dispute. I say this because the basis for calculating the balances on the accounts had been determined by the outcome of the prior complaint and detailed in the final decision letter from this service that related to that earlier complaint – which had detailed the corrective action NewDay were required to undertake. So, rather than being in dispute, that the balances on the accounts were incorrect and would remain incorrect until the corrective action that NewDay needed to undertake on the account balances was completed.

However, as I have explained, I am of the opinion that NewDay shouldn't have continued to attempt to contact Mr C before taking the necessary action to correct the account balances, and I will be upholding this complaint on that basis.

Mr C has also expressed his concern at the amount of compensation that I instructed in my provisional decision and believes that he would be awarded a larger amount if this complaint was treated as five separate complaints – against each account individually – and that he is therefore being disadvantaged that this is not the case.

I can understand why Mr C might think this. But I've considered the overall impact of what has happened here, and I'm satisfied that the £200 compensation that I provisionally awarded represents a fair and reasonable outcome to this complaint.

All of which means that I see no reason to deviate from the decision I provisionally arrived at as outlined above, and I will be upholding this complaint on that basis.

Putting things right

NewDay must make a payment to Mr C of £200 for the distress and inconvenience that he has incurred.

My final decision

My final decision is that I uphold this complaint against NewDay Ltd, trading as Debenhams Mastercard on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 April 2021.

Paul Cooper
Ombudsman