

The complaint

Mr P complained that NewDay Ltd trading as Aqua offered him a refund of fees, but didn't pay that, and instead kept charging him additional fees. He said he complained, but NewDay never responded, it just applied a default to his account without warning.

What happened

Mr P said that he'd used his card to get cash in an emergency in September 2020, and he was charged fees. He said he was then charged more fees in October. Mr P said NewDay had agreed to waive these fees, but it didn't. He called again, and NewDay said he had to make a payment first so he did that. Mr P said that the amount he paid would've been fine if NewDay had waived its fees as it said it would, but the fees weren't waived. Mr P said he was just charged more fees.

Mr P said he complained about all this in early November, but NewDay didn't do anything. He said it eventually just wrote to him saying that it still hadn't sorted things out, and he could ask our service to look at this now if he wanted to.

Mr P said in late December he got a default notice from NewDay. He didn't think NewDay should apply a default without any warning, and he thought it should always be a last resort. He said a default would not be appropriate, because he'd been making payments.

NewDay said it had offered to make a refund of £76.15 in fees and interest which had been charged on Mr P's account, but only if he paid £40 first. And it said he never made that payment. NewDay said it sent Mr P a default notice on 26 December, telling Mr P that he needed to pay £50.69 by 15 January 2021.

NewDay had since made some refunds and goodwill payments to Mr P, and in March it told him it had updated his credit file to remove a late payment marker made while his complaint was being investigated.

Our investigator said she couldn't look at how NewDay had handled Mr P's complaint. But she said she could look at the overall service he'd received, and whether it was fair for NewDay to apply charges from September 2020 onwards. Our investigator set out the history of Mr P's account during this time. She said NewDay's contact notes said it would refund £76.15 in interest and charges if Mr P paid £40, but he hadn't made this payment, so she didn't think NewDay had to make this refund.

Our investigator thought that NewDay had applied interest and charges properly, and the problem was that Mr P's account wasn't repaid from September 2020 onwards. The subsequent repayments to the account didn't clear the minimum repayment due each month, which meant arrears continued to build up as interest and charges were added, and that often took the account over its limit.

Our investigator thought NewDay had notified Mr P about everything which was happening on his account, and she thought it was sensible for NewDay to put a suspension on Mr P's account, to prevent further arrears from accruing. She said that it wasn't unfair for a notice of

default to be issued in late December, given the arrears on Mr P's account.

Our investigator said that NewDay had since removed negative markers from Mr P's account, and made refunds. She didn't think it had to do any more.

Mr P didn't agree. He said that our investigator had gone into too much detail, and hadn't looked at the key issues. He said his credit file still hadn't been updated. And he thought we'd been naïve to just believe that NewDay hadn't promised him a refund. He stressed that he wanted us to listen to the calls, where he said this refund was offered. He also said that there were negative marks on his credit file for April and May 2021.

Our investigator double-checked with NewDay that it had already supplied everything it could to cover the calls Mr P made to it in October and November. It said it had.

Mr P wanted his complaint to be considered by an ombudsman, so it was passed to me for a final decision.

My provisional decision

I issued a provisional decision on this complaint and explained why I did not propose to uphold it. This is what I said then:

I can see from statements preceding Mr P's latest complaint, that he has previously received refunds of fees from NewDay, including in August 2020.

In September 2020, Mr P paid late, so he incurred a fee of £12. He paid only £10, which was more than the minimum for the previous month, but not enough to cover the late fee he was also charged. Mr P was also charged a fee that month for a cash advance he took. And because this cash advance took Mr P over his credit limit, he was charged an overlimit fee. I think that all these fees were correctly applied.

Mr P's September statement shows he needed to pay £39.91 immediately to bring him back under his credit limit, and he also needed make his minimum payment of £42.32 by 7 October.

Mr P didn't pay at all that month.

Mr P's October statement includes a £12 overlimit fee, a £12 late payment fee, as well as interest. Again, I think these fees were correctly applied.

Mr P's October statement shows no payment had been made. It says he needs to pay £76.15 immediately, to bring his account back within his limit. And he needs to pay the contractual minimum payment of £41.50 plus arrears of £42.32 by 4 November.

Mr P paid £30 on the due date. He said NewDay was also supposed to make a payment onto his account, a refund of £76.15 which was the amount he was over his credit limit. And he said what he paid would have been enough to cover his minimum payment, if the refund had also been made, so his account had been within the limit.

But even if NewDay had made the refund Mr P says he was promised, and that had placed his account back under the credit limit, Mr P would still not have covered the arrears on his account plus the minimum monthly payment for November, which were both due by that date. I do understand that Mr P considers his minimum payment would've been smaller that month if a refund had been made, but I don't

agree that a refund of £76.15 plus a payment of £30 would have been enough to cover everything that Mr P owed at this point.

So I have to bear in mind that Mr P's account would still not have been in good order in November, if NewDay had made the refund he says it promised.

I also need to think about whether NewDay did promise Mr P that it would make a refund. And if it offered a refund, was this conditional on a payment of £40?

NewDay says it did make this offer, but only if Mr P made a payment of £40 too. Mr P said there were no conditions on the refund offer, and he'd paid a reasonable amount that month.

Mr P wanted our service to listen to the calls he had with NewDay, so that we could hear what was said. But NewDay told us it doesn't have these call recordings, so I can't do that.

I can see that when Mr P received a series of refunds, and a credit as a goodwill gesture, in August 2020, he had paid £45. And it is consistent with my previous experience of this business, that it will offer refunds or goodwill payments if customers also make a payment themselves. So I think it is more likely that Mr P was told that NewDay would make a refund to him, if he did make a payment of £40. As he didn't make that payment, I don't think NewDay did have to make a refund to him at that time.

Mr P's statement of 18 November said that he was £84.18 over his credit limit, which needed to be paid immediately. And he needed to make a payment of £43.37 for his monthly minimum payment and £12.32 for arrears, by 7 December.

Mr P's statement of 20 December records that he paid only £5. By this time, Mr P had either missed payments or paid less than the requested amount for some months, and his account continued to be considerably over its limit. So I don't think that NewDay made a mistake when it issued a warning of a default on Mr P's account, on 26 December.

Mr P also said that NewDay didn't respond to his complaint. I note that NewDay has accepted that it should've treated Mr P's contact with it, from October or November onwards, as a complaint, and it didn't do that.

NewDay refunded £28.95 in interest charges, £36 in fees, and paid compensation of £45, which all show on Mr P's January 2021 statement.

NewDay said Mr P complained again, and when Mr P asked for a call back in February 2021, that wasn't actioned for him. So NewDay wrote to him in March 2021, and said it had removed late payment fees totalling £36, and £26.60 of interest. It had also credited his account with £50 in compensation. These payments show on his March 2021 statement.

NewDay has now also removed adverse markers on Mr P's credit file between November 2020 and March 2021. Although Mr P was concerned that this amendment hadn't actually been done, I can see this is what is reporting to Mr P's credit file.

Our investigator didn't think our service could consider the way that Mr P's complaint was dealt with by NewDay. I don't agree with that, I think this was all part of resolving

the original issue Mr P raised, so I do think we can consider it. And I can see that NewDay has accepted that it provided poor service, by not recording Mr P's complaint straight away, then failing to provide a prompt response. But I also think that what NewDay has done provides a fair and reasonable outcome to this complaint.

I know that Mr P will be disappointed, but I don't think NewDay has to do more than this. And that means I don't think his complaint should be upheld.

Mr P wanted to complain about more recent markers on his credit file, in April and May 2021. But I don't think NewDay has yet had a chance to consider or respond to any complaint about this. Our service won't be able to look at this point for Mr P until NewDay has had the chance to do that.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both parties replied.

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.

NewDay said it accepted my decision, and it wanted to reassure Mr P that it hadn't placed any negative markers on his credit file for April or May 2021. Although I remain of the view that this issue falls outside of this complaint, I'm happy to pass on this information to Mr P.

Mr P said that we hadn't investigated properly, and he resent some emails he had previously sent to our service. I'd like to reassure Mr P that I read these and considered them carefully before reaching my provisional decision. I've read these emails again now, as part of reviewing this case.

Mr P also sent us a further email, setting out his case. He said that the key call, when he was offered a refund, happened in October, and he'd sent us proof that he spoke to NewDay then. But it doesn't appear to me that NewDay disputes that it spoke to Mr P. The issue is what was said.

Mr P said that a figure of £40 wasn't mentioned on the calls. He paid £30 as promised on 4 November. He said that if exactly £40 was required then NewDay could have called him.

I've explained in my provisional decision that the evidence about what happened on this call from NewDay is different. It says that it offered to make a refund only if Mr P paid £40. There is no call recording available for our service to listen to, so I have to weigh the evidence I do have, and also to bear in mind my previous experience of this business. And, with all that in mind, I still don't think it was likely that Mr P was offered a refund without a commitment to make a payment of £40. I also don't think NewDay had to call Mr P, if he didn't pay the amount it understood he'd offered.

Mr P also said that putting a default notice against someone is a last resort, and businesses must at least give the person pre warning. And Mr P said he never got that. No prior notice was sent before the notice dated 26 December 2020. He said if there was he would have contacted NewDay to work something out. And he repeated that there would have been no need for any notices if the credit had been applied as that would have brought him back into credit and all payment following the £30 would have been over the minimum required.

No default was placed on Mr P's credit file on 26 December. The letter that was sent to him then was a warning of an upcoming default. This default wasn't, in fact, applied to Mr P's account. This appears to have been because of refunds and credits applied to his account by NewDay in January.

Mr P has disagreed strongly with our investigator, and with myself. He continues to argue that no fees would have been added nor any sort of default notice thought about if a credit of £76.15 had been put on his account.

I understand that this is an emotive issue for Mr P. But I've set out in my provisional decision why I don't agree with that. The £30 Mr P paid on 4 November wasn't enough to cover what he owed, even setting aside the payment NewDay requested to bring the account back within its limits. Mr P may have overlooked that he'd made no payment for the previous month, so he still owed for that too. And Mr P's next payment after this was only £5. Again, that wasn't enough either to cover his monthly minimum, or to contribute to paying down his arrears.

So I still don't think that what went wrong on Mr P's card is solely a result of a credit that he believed he was going to receive, not being paid.

Mr P has asked us a number of times to listen to the relevant calls. And I know that Mr P feels strongly that NewDay would have recorded his calls. But our service has asked NewDay, and it says it doesn't have these calls now.

Mr P has said that we are naïve to believe what we are told about this. But it would be very serious indeed, if NewDay were to seek to deceive our service. And I haven't seen anything to suggest to me that NewDay isn't telling the truth.

So I have reconsidered the evidence available to me, including what Mr P has said now. But I haven't changed my mind. I know Mr P will be very disappointed, but I still don't think his complaint should be upheld.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 23 September 2021.

Esther Absalom-Gough
Ombudsman