

## **The complaint**

Mr S complains about NewDay Ltd trading as Aqua and their decision to move his account onto a PayDown plan.

## **What happened**

Mr S held a credit card account with NewDay. In January 2018, NewDay wrote to Mr S explaining he'd only been making the minimum payment on his account for the previous six months. NewDay followed this up with another letter in September 2018, explaining Mr S was classed as in persistent debt for the previous 18 months as he'd been paying more in interest, charges and fees that he'd paid to his actual borrowing.

NewDay sent further letters to Mr S at 27 and 35 months, explaining he remained in persistent debt and asking him to pay more if possible in order to ensure he cleared his balance sooner and saved on additional interest payments. NewDay also explained if no additional payments were received, they'd be moving Mr S' account to a four-year PayDown plan.

No additional payments were received so NewDay wrote to Mr S in April 2020 explaining his account had been moved onto a PayDown plan. But Mr S was unhappy about this, so he raised a complaint.

Mr S explained he hadn't received the persistent letters sent by NewDay. So, he only became aware of the PayDown plan when he logged onto his online banking and saw his account had already been transferred. Mr S didn't think this was fair and thought NewDay should've discussed his options with him before taking this action. Mr S was also unhappy that NewDay had charged his account interest while a payment freeze was in place due to the impact of COVID-19 on his finances. And finally, Mr S was unhappy he was sent a payment chaser letter during this time.

NewDay responded and upheld Mr S' complaint in part. They thought they'd made Mr S aware he was in persistent debt and had followed the Financial Conduct Authority (FCA) guidelines by moving Mr S' account to a PayDown plan to help him clear his balance. So, they didn't think they'd done anything wrong. But they did invite Mr S to contact them to discuss alternative plans should he wish to do so.

They also thought they'd charged interest on Mr S' account fairly while a payment freeze was in place. But they agreed they shouldn't have sent Mr S a chaser for payment in June 2020 and offered Mr S £30 to recognise any upset this caused. Mr S remained unhappy with this response so he referred his complaint to us.

Our investigator looked into the complaint and didn't uphold it. She acknowledged Mr S said he didn't receive the persistent debt letters and notice of the PayDown plan. But she explained the letters were addressed correctly so was satisfied they'd been sent and didn't think Mr S' failure to receive these was the fault of NewDay. So, she thought NewDay had made Mr S reasonably aware of his status as in persistent debt and the likely action they

would take if further payments weren't made. And she thought NewDay's fell in line with the FCA's guidelines so didn't think they needed to do anything more.

She also thought NewDay made it reasonably clear to Mr S that interest would still be accrued on the account while the payment freeze was in place. And in any event, she didn't think Mr S had been impacted financially as NewDay had refunded this to ensure his PayDown plan didn't exceed the four years set. And finally, she thought the £30 NewDay offered was a fair one to recognise their error when sending Mr S a chaser for payment while a payment freeze was in place on his account. So, she didn't think NewDay needed to do anything more.

Mr S didn't agree. He maintained his position that the letters hadn't been received and that NewDay should've sent them electronically. And he thought NewDay offering to discuss alternative options in their final response to his complaint showed these options should've been presented to him before a PayDown plan was put in place. And he still didn't think this plan was fair due to the amount of interest that was still being charged on the account. He maintained his view that NewDay could've acted more positively and sympathetically to his situation so wanted to be compensated for this. As Mr S didn't agree, the complaint 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.

Having done so, I'm not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this complaint has had on Mr S. I recognise Mr S' comments about not receiving the letters NewDay sent. So, I can appreciate the shock and concern Mr S would've felt when he discovered his account had transferred onto a PayDown plan and why he'd query the fairness of this, considering he didn't think he'd agreed for this to take place. But for me to say NewDay have done something wrong, I'd need to be satisfied their decision to place Mr S on a PayDown was unfair and that it impacted his financial situation negatively. Or, that NewDay failed to follow the FCA guidelines regarding how to notify a Mr S that he was in persistent debt and that a PayDown plan may be put in place. And in this situation, I don't think that's the case.

The FCA implemented a change in their rules from 1 September 2018, which were designed to ensure businesses such as NewDay took action to prevent customers from being in persistent debt for long periods of time. This is because when customers are in persistent debt, they often end up paying more in interest and charges than they do paying off the actual amount they spent. So, I've thought about whether NewDay fairly followed these guidelines.

I've seen NewDay sent Mr S letters at 18, 27 and 36 months explaining he was classed as in persistent debt and explaining additional payments would reduce the cost of his borrowing and the time it would take him to repay his debt. This follows the guidelines set by the FCA.

And I've seen during this time, Mr S continued to make minimum monthly payments meaning most of this payment amount went to clear the interest and charges on the account, rather than the borrowing amount. Because of this, NewDay took the decision to place Mr S' account on a PayDown plan over a four-year period.

FCA guidelines explain at this point, a lender should offer the customer a reasonable way to repay the balance over a reasonable amount of time and stipulates this should usually fall between three to four years.

I've seen the monthly payment of this plan was at a similar level to the minimum payments Mr S had been able to maintain and was set over four years. So, I'm satisfied the plan NewDay put in place was fair and in line with the guidelines set. So, I think NewDay's decision to place Mr S' account on a PayDown plan was fair and I can't say they did anything wrong when taking that decision.

But I've also considered whether NewDay made Mr S reasonably aware this action was likely to be taken and whether they should've offered alternative options to him. Mr S has explained he didn't receive any of the letters I've seen from NewDay. And he doesn't think the PayDown plan is fair as it continues to accrue interest at a rate he feels is unfair and placing him in further debt.

I've seen the letters NewDay sent to Mr S. And I'm satisfied they're addressed correctly to the same postal address we hold for Mr S. While I appreciate Mr S says he didn't receive these, I'm satisfied they were sent by NewDay and I don't think it would be fair for me to hold them responsible for this. I understand Mr S' comments about being eligible for e-letters but the FCA guidelines doesn't stipulate how these letters should be sent. I don't think NewDay had any reason to believe these letters weren't being received so I wouldn't have expected them to send the letters in an alternative format at the time.

And I've seen in the letter sent to Mr S the month before the PayDown plan was put into place, they make it clear a PayDown plan would be introduced. So, I think NewDay provided Mr S with reasonable notice, in line with the guidance, on the basis they were unaware the letters weren't being received.

And while the letter explains Mr S was unable to opt out of this, they do offer Mr S the chance to speak to them to discuss his financial situation. All of the letters NewDay sent offer Mr S the chance to speak to them in all of the letters sent to Mr S, so I think they've done all they can to offer Mr S the chance to discuss his options.

And I think NewDay reiterating this option in their final response letter is showing them acting positively and sympathetically to Mr S' situation, rather than evidence they failed to provide Mr S with options in the first place. So, I think NewDay made Mr S reasonably aware of the PayDown plan and that he was classed in persistent debt and I don't think they need to do anything more for this aspect of the complaint.

I've also thought about Mr S' comments about interest being charged to his account while a payment freeze was in place. I've seen the letter sent to Mr S on 27 May confirming the payment freeze which explains *"If you are already on a PayDown plan, your PayDown plan instalments will be frozen during the payment freeze. You will then continue to pay towards your PayDown plan. Interest will continue to be charged during your payment freeze."* I think this makes it reasonably clear to Mr S that interest would continue to accrue on his account so I can't say NewDay have acted unfairly by applying it. Because of this, I don't think they need to do anything more.

And even if this wasn't the case, NewDay have said this interest was refunded to the account to ensure Mr S repays the borrowing within the four-year term. So, although I think NewDay were fair to charge this interest, I don't think Mr S has been impacted by this anyway and in fact is in a better position.

NewDay have accepted the letter they sent to Mr S in June 2020 was an error, as it was chasing payment while a payment freeze was in place. And they've offered £30 to recognise the upset this caused. I think this offer is a fair one as it recognises the emotional impact on Mr S but also takes into consideration the fact he wasn't financially impacted by the error. So, I don't think they need to do anything more on this occasion.

I understand this isn't the outcome Mr S was hoping for. And I recognise it doesn't help alleviate his immediate financial situation or concerns about the PayDown plan and the interest being charged to his account. But the interest being charged to the account is in line with the credit agreement Mr S agreed to when he took out the card. And this isn't something I'd expect NewDay to reduce nor are they expected to do so under the FCA guidelines.

### **My final decision**

For the reasons outlined above, I don't uphold Mr S' complaint about NewDay Ltd trading as Aqua.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 December 2021.

Josh Haskey  
**Ombudsman**