

The complaint

Ms O complained that NewDay Ltd issued a default notice on her account and transferred the debt to a recovery agent when they shouldn't have.

What happened

Ms O held a credit card account with NewDay that was dual branded with an online retailer.

In April 2020, Ms O wanted to purchase an item from the online retailer. She identified two identical items and chose to purchase the cheaper one. She paid for it using her NewDay credit card.

Ms O received the item she ordered but then received a notification, from the retailer, that the other item would be delivered the following day. As she hadn't ordered that item, she contacted the retailer to cancel it. The retailer asked her to return the second item once it was received. But the item didn't arrive.

In May 2020, Ms O paid £45 to her NewDay account to cover the cost of the item she'd purchased. But the cost of the second item had also been applied to her NewDay account. NewDay wrote to Ms O in July and August 2020 as they hadn't received any payments to her account and there was a balance outstanding. They also charged late payment fees and interest on the amount she owed.

Ms O contacted NewDay to raise a dispute on the second amount that had been paid to the online retailer. She told NewDay this amount shouldn't have been taken as she'd not ordered the item and the online retailer had agreed to refund but hadn't. NewDay refunded the money to her account. But there was still a balance owed.

In September 2020, NewDay suspended Ms O's account as they hadn't received any payments towards the amount she owed. NewDay issued a default notice in October 2020. But Ms O wasn't happy with this. So, she complained to NewDay. She said she'd paid off an amount to cover the item she'd purchased. She didn't think that she owed NewDay anything else.

NewDay responded to Ms O's complaint. They didn't think they'd acted unfairly. Ms O disagreed with NewDay's findings. So, she referred her complaint to this service.

One of our investigators looked at Ms O's complaint. She also didn't agree that NewDay had acted unfairly. So, Ms O asked for her complaint to be referred 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.

Ms O's account statements show two entries to an online retailer on 12 April 2020. One for £49.44 and the other for £44.95. Ms O has confirmed that the larger amount shouldn't have been taken as she hadn't ordered the item this related to. I also see that a payment of £45 was made to her account on 12 May 2020. Ms O says that she made this payment to cover the purchase she made.

NewDay charged interest to Ms O's account for the remaining balance owed. I've looked at their credit card agreement. This shows they were entitled to do that as the balance owed hadn't been repaid in full. They continued to charge interest while a balance remained outstanding.

The statements also show that Ms O didn't make any payments to her account after the £45 paid in May 2020. NewDay's credit card agreement says *"If you do not make your contractual payment...we will charge a default fee."* So, NewDay charged default fees of £12 on each occasion a payment was missed. I believe they were entitled to do that.

Ms O had contacted NewDay in June 2020 about the disputed transaction. They explained she would need raise to this through her online account manager. But it appears she didn't do that. It also appears she rang NewDay again on 11 July 2020. NewDay attempted to call her back on 12 July, without success. Ms O finally raised the disputed transaction claim with NewDay on 12 August 2020. NewDay weren't able to do anything before then.

NewDay refunded £49.44 to Ms O's account on 17 August 2020. This still left a balance owed, but Ms O didn't make the contracted minimum payments. It appears that the balance owed resulted from interest and charges that NewDay had charged and I think they were entitled to charge these.

The overriding issue here is that Ms O chose not to make payments to her NewDay account as she believed that the transaction for £49.44 on 12 April 2020 was wrongly claimed. While that may be the case, that wasn't NewDay's fault. So, at the time, Ms O did owe an amount to NewDay. Their credit card agreement does say *"...if you have a dispute with someone else over a transaction, you must keep making payments to us while you are resolving it"*. But Ms O chose not to do that here.

Ms O's credit card account is dual branded with the same online retailer through which she made her purchase. Ms O believes that NewDay should be held accountable for the mistake that the online retailer made when they charged her for two items. So, I think it's important to clarify this point.

Accepting the dual branding associated with Ms O's account, it's important to understand that her account is provided by NewDay – not by the retailer. The two businesses are distinctly separate. The credit card agreement clearly states, *"This Agreement is between us, NewDay Ltd...and you..."*. So, I can't reasonably hold NewDay responsible for any actions or mistakes made by the online retailer. They wouldn't have had any control over that.

Ms O's account statements were available for her to view through NewDay's online service. And I think the statements were clear there was a balance outstanding and a minimum contracted payment needed to be made. The statements also clearly showed any charges and interest that were applied to her account.

I understand that Ms O says she shouldn't *"bear responsibility for the accrued interest suffered as a result of"* the retailer *"taking money from my NewDay credit card account when they knew they didn't supply the product to me"*. I do sympathise with Ms O's situation. But I don't think I can reasonably hold NewDay accountable for the retailer's actions. If she remains dissatisfied, she may consider addressing that with the retailer.

Given that Ms O didn't make the contracted payments to her account, I also think that NewDay were entitled to take the actions that they did, including passing the outstanding debt to a debt recovery agent. I do appreciate that Ms O will be disappointed, but I agree with our investigator here. So, I won't be upholding Ms O's complaint.

My final decision

For the reasons set out above, I don't uphold Ms O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 7 December 2021.

Dave Morgan
Ombudsman