

## The complaint

Mr C says that he was misled about the payment terms of a credit agreement he entered into with NewDay Ltd.

## What happened

Mr C bought a mobile phone costing £899. He was offered various credit options by the retailer, including a flexible credit plan. That plan operated in a way similar to a credit card, in that the customer was given a credit limit and had to make a minimum, rather than a fixed, payment each month. As long as those payments were made, there was no fixed term in which the credit had to be repaid.

NewDay's submissions to this service included a link to the section of the retailer's website dealing with finance options. In respect of the flexible credit plan, the information included:

### ***"How much do I need to pay each month?"***

*All you need to pay is the contractual monthly payment amount through your NewDay Online Account Manager. This will either be £5 ... or 1% of the full amount you owe, including interest and fees – whichever is higher...*

The website gave a representative variable APR of 19.9%.

The current equivalent section of that website appears to have been changed. It now says:

*"You need to pay at least the contractual monthly payment amount. This will be the higher of either £5 (or the full amount you owe, if you owe less than £5), or the sum of:*

- *interest,*
- *default fees, and*
- *1% of the full amount you owe (including the interest and default fees) as shown on your monthly statement."*

Mr C chose the flexible credit option. The full terms of the regulated credit agreement included this explanation of the payments he needed to make:

### ***"How is your contractual minimum payment calculated?"***

*Your contractual minimum payment will be the higher of:*

*A. £5 – or if you owe less than £5, the full amount you owe (e.g. if you owe £2 that will be the contractual minimum payment); or*

*B. the sum of (i) interest, (ii) default fees and (iii) 1% of the full amount you owe, (including the interest and default fees) as shown on your monthly statement."*

They also gave an example immediately below this based on a balance of £1,000, including £20 interest and £12 default fees, resulting in a minimum payment of £42 (£20 plus £12 plus 1% of £1,000).

Mr C's first bill required a minimum payment of £8.99; he paid £12. He says he overlooked the next month's payment until a couple of days after it was due, so incurred a default fee of £12. He accepted that but was then surprised to discover that the payment minimum payment for the following month was around £36; he had expected it to remain much the same as the first payment, or 1% of the account balance.

NewDay explained that the credit agreement required a minimum payment of the interest that had accrued on the account *and* 1% of the outstanding balance. Mr C said that he could not afford to pay that much each month and that he had been misled about the payments he had to make. He wanted to be able to continue making payments of £8.99 a month.

After Mr C referred the matter to this service, NewDay offered to place the account on a 0% instalment plan, to be reviewed after 12 months, or on a buy now, pay later plan. Mr C was not happy however that NewDay had not said how long that might continue.

Our investigator sought to put Mr C in a position whereby he would pay no more than £8.99 a month until the debt was repaid but noted that under such an arrangement it would take up to 100 months – or more than eight years – for the debt to be repaid. In July 2021 NewDay terminated the credit agreement – no payments having been received for some time.

As it was not been possible to agree settlement terms, the complaint was passed to me for review.

I considered what had happened and issued a provisional decision. In that decision I said the following:

*I'll discuss first of all the terms of the flexible credit agreement and, in particular, those that concern the minimum monthly payment. In my view they are clear that Mr C agreed each month that he would pay any interest that had accrued and any charges and 1% of the full outstanding balance on the account. There was no agreement that Mr C would pay only £8.99 a month. Indeed, such an arrangement would mean that the account balance would simply increase as interest was added each month; as long as interest was more than 1% a month (as it was if the APR was 19.9%) the debt would never be repaid. It would have increased until it reached the facility limit – at which point Mr C would have been in default and NewDay would have been entitled to demand repayment in full.*

*The regulator has recognised the risk that flexible or running-account credit might simply increase if minimum payments are not sufficient, and relevant rules require lenders to set a minimum payment which covers interest, fees and at least 1% of the outstanding debt.*

*I accept that the website, before it was amended, was at best ambiguous on this point. Arguably, it was misleading. But I think the account terms were clear and included an example which – by chance – was not very different to Mr C's position.*

*I believe that, in setting out his view of the case, the investigator may have approached it on the basis that NewDay and Mr C had agreed minimum payments of 1% of the account balance. But, as I have explained, I do not believe that was the agreement here. They cannot have agreed minimum payments in breach of FCA rules and which would never see the debt repaid.*

*I do note however that NewDay has made various offers to try to resolve this complaint – including placing the account on an interest-free footing and offering a buy now, pay later arrangement. It has not however committed to extending any such arrangement indefinitely.*

*Mr C has said that he cannot afford to make payments of more than around £8.99 a month – the amount he thought he had agreed to pay. And the original account has now been terminated, so it is not possible for NewDay to make adjustments to the flexible credit arrangements.*

*The current position is therefore that Mr C has an outstanding debt of £853.43 at the date the account was terminated, but there is no formal agreement about how it should be repaid. NewDay is prepared to charge no interest on that debt for 12 months, but – if I have understood its position correctly – is not prepared to commit to anything more than a review of the position at the end of that time.*

*In my view, that position is not unreasonable. If, as he says, Mr C is unable to make any more than small payments, it enables him and NewDay to review the position if and when his financial situation improves. But it will also enable them to ensure that suitable arrangements are in place if things do not improve.*

*I also take the view that it was not unreasonable of NewDay to terminate the account when it did – although it could have handled things better, given the existing complaint. But, since it was clear that the account was not operating as intended, closure was a logical way to deal with it.*

*The termination of the account means of course that Mr C does not now have the use of the remaining facility. That is, he cannot borrow further funds or make purchases up to the credit limit. He thinks this is unfair. But at the same time he says that he cannot afford to repay the amount he has already borrowed. Those two positions are, in my view, inconsistent. I do not believe that I can properly require NewDay to restore Mr C's credit facility when – on his own case – Mr C cannot afford to repay what he has already borrowed on the terms NewDay agreed to lend it.*

*Since Mr C says that he cannot afford the minimum monthly payments on the terms (as I have found) the credit facility was offered, it is possible that NewDay or its agent did not carry out proper affordability checks. Mr C has nevertheless had the benefit of the money he has borrowed, because it was used to buy his phone. A resolution based on what Mr C can now afford to pay appears therefore to me to be fair. I would note as well that, if Mr C cannot afford the minimum payments under the flexible credit facility, it is most unlikely that he could have afforded payments under any other arrangement that was on offer at the time.*

*NewDay has accepted that it did not always handle this matter as well as it could have done and offered Mr C £100 in recognition of that. I think that is a fair sum in the circumstances.*

To resolve the matter, I recommended that NewDay: agree not to charge interest on Mr C's debt for 12 months from acceptance of my decision; accept affordable payments from him for the same period; agree to review the position at the end of the interest-free period; and pay Mr C £100 in recognition of the inconvenience to which he was put.

NewDay accepted my provisional decision but Mr C did not. As well as repeating some of his earlier submissions, he said (in summary):

- Contrary to what I said, NewDay had not suggested any solution.
- He had never said that he could only afford £8.99 a month.
- The credit offered was £1,500, not £899.
- Any example on the retailer's website was well hidden.
- I had concluded that the terms were ambiguous.

### **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 am afraid that I think Mr C is mistaken in saying that NewDay has not suggested any solution here. It is true that it has not offered any solution that Mr C finds acceptable – and that of course is why the case was passed to me to review. But much of correspondence involving our investigator, Mr C and NewDay following the investigator's initial assessment was directed towards reaching a settlement. Indeed, NewDay also accepted the recommendation in my provisional decision, which suggested some concessions to Mr C.

I accept that Mr C did not say directly that he could only afford £8.99 a month. The investigator noted in his initial assessment, however, that Mr C had sought a payment holiday because of the challenging financial climate in 2020 and that he had paid £8.99 a month at other times. I accept that this does not mean that was all he could afford. Be that as it may, the resolution I proposed in my provisional decision referred to making "affordable" payments. For the avoidance of any doubt, I accept that Mr C may be able to afford more than £8.99 a month.

As I explained in my provisional decision, the facility that NewDay provided was a flexible credit plan, which operated a little like a credit card, in that Mr C was given a credit limit. That limit was £1,500, and Mr C used £899.99 of it to pay for the phone. Mr C says that, because the facility was withdrawn, he no longer has the benefit of the balance of the facility. Given the payment history, however, I don't think it was unreasonable of NewDay to withdraw the facility when it did – even though this service was already considering the complaint.

The example to which I referred, showing how minimum payments were calculated, was included in the formal contract terms which Mr C signed. It was under the heading "*How is contractual minimum payment calculated?*" and was in a box. I think it was reasonably prominent and certainly not hidden.

I did not, as Mr C suggests, say that the account terms were ambiguous. In my provisional decision I sought to draw a distinction between the agreed terms set out in the formal credit agreement and what was on the website. And I considered carefully the extent to which the website was misleading and whether and to what degree that meant that Mr C should be held to the formal agreement. The website did not itself form part of the contract, but the ambiguities in it were part of the reason I thought NewDay should offer some concessions.

For these reasons, I have not changed my view of how this complaint should be resolved.

### **My final decision**

My final decision is that, to resolve Mr C's complaint, NewDay Ltd should:

- agree not to charge interest on Mr C's debt for 12 months from any acceptance of my decision;
- accept affordable payments from him for the same period;
- agree to review the position at the end of the interest-free period; and
- pay Mr C £100 in recognition of the inconvenience to which he has been put.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 January 2022.

Mike Ingram  
**Ombudsman**