

The complaint

Mr K is unhappy that he wasn't made aware by NewDay Ltd that he wasn't able to complete a balance transfer between two differently branded NewDay administered credit accounts.

What happened

Mr K applied for a NewDay administered credit account as he wanted to take advantage of a 0% interest promotional offer on balance transfers. Mr K's application was approved, and he was issued with a new credit account. However, when Mr K went to complete the balance transfer, he discovered that it wasn't allowed because the credit account he wanted to transfer the balance from was also administered by NewDay, albeit under a different brand. Mr K wasn't happy about this, so he raised a complaint.

NewDay looked at Mr K's complaint, but they noted that the fact that balance transfers between different NewDay administered accounts wasn't permitted was explained online and that a link to that explanation had been provided to Mr K during the account application process. So, they didn't uphold Mr K's complaint.

Mr K wasn't satisfied with NewDay's response, so he referred his complaint to this service. One of our investigators looked at this complaint. They noted that the main documents that Mr K had been provided with at the time of the application didn't explain this exclusion or signpost Mr K to where it might be found. Because of this, they recommended that the complaint be upheld in Mr K's favour and that NewDay should make a payment of £100 to Mr K.

NewDay didn't agree with the recommendation put forwards by Mr K, 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 this complaint on 22 November 2021 as follows:

I can appreciate that NewDay feel that the exclusion in question is listed online and that Mr K ought therefore to have been aware of this exclusion when applying for the new NewDay administered account.

However, it's evident from the documents provided Mr K at the point of application – being specifically the 'Your Card – Important Customer Information', 'Pre-Contract Credit Agreement', and the 'Credit Card Agreement' - that none of these documents make any reference to this exclusion or adequately directed Mr K to where this exclusion could be found.

Furthermore, while NewDay have stated that a link was provided to Mr K where the

information could be found, it's clear from NewDay's own explanation of how to access the information from this link that a number of further steps needed to be taken by Mr K following accessing the link before the information in question became visible.

Given the importance of this exclusion in cases such as Mr K's – where a customer applies for a new NewDay administered card specifically to carry out a balance transfer from an already existing differently branded NewDay administered credit account – it would be expected by this service that an explanation that such a balance transfer isn't permitted would have been clearly provided to Mr K.

But I don't feel that I can reasonably say that the relevant information was made clearly available to Mr K – for the reasons outlined above – and I'm satisfied that if Mr K had been made aware that he wouldn't be able to carry out the balance transfer he was intending to, that he wouldn't have applied for the new NewDay credit account. As such, I feel that Mr K has been unreasonably inconvenienced by having applied for the account in the absence of the important relevant information and also by having then sought to understand why the balance transfer he wanted to make wasn't allowed. And it follows from this that I'll be provisionally upholding this aspect of Mr K's complaint.

In their view of this complaint, our investigator recommended that NewDay make a payment of £100 to Mr K to compensate him for the inconvenience he'd incurred. Matters of compensation can be subjective, with an offer considered as being fair and reasonable by one party not being considered as such by someone else. However, while I appreciate that Mr K may believe that a larger amount of compensation is warranted, the amount of £100 compensation does feel fair to me, and I can confirm that it's commensurate with what this service would expect, given the circumstances here.

Mr K has also questioned whether, should this service uphold this aspect of his complaint, as I am provisionally doing, that this entails that this service considers the exclusion clause in question to be onerous in contract law. But this service isn't a Court of Law and doesn't operate as one, and so I can confirm that my decision to uphold this aspect of Mr K's complaint doesn't in any way include any form of acknowledgement or judgement as to the merits of the exclusion in question. Rather, it is simply and only a decision, made by myself in my professional capacity as a financial ombudsman, that in this particular instance and under these specific circumstances, an unfair outcome has arisen for the reasons explained previously for which I feel compensation of £100 should be paid by NewDay to Mr K.

I'm also aware that Mr K feels that NewDay should amend his credit file to remove the new account as though it had never been applied for. I can appreciate Mr K's concerns here, but NewDay have a responsibility to make accurate credit file reports, and I would only consider instructing NewDay to amend a credit file where a person's credit file has been negatively impacted by an error or omission made by NewDay.

And, while I do feel that NewDay did make an omission here, I don't feel that this has had any negative impact to Mr K's credit file, and I say this because the successful application for a new credit account doesn't constitute adverse credit reporting or, in all likelihood, impact negatively on Mr K's ability to gain alternative further credit, should he choose to do so. And this remains the case should Mr K now choose to close the new credit account without use.

Finally, I'm aware that Mr K is unhappy that NewDay didn't respond to a Data Subject Access Request (DSAR) which he made to enable him to understand the potential impact of what had occurred here and to help him articulate his complaint to this

service. NewDay have confirmed that they received a replacement DSAR request form from Mr K, but that this wasn't forwarded by them to the correct department, so that Mr K's request was never acted upon.

NewDay have confirmed that they are able to complete the DSAR request, should Mr K still require it. However, I feel that this further inconvenience to Mr K merits additional compensation, and as such my provisional decision here will be that NewDay should make a further payment of £50 to Mr K because of this, taking the total amount of compensation payable to £150.

In my provisional decision letter, I gave both Mr K and NewDay the opportunity to provide any comments or further information they might wish me to consider before I moved to a final decision. NewDay confirmed that they accepted my provisional decision. However, Mr K did provide some further comments for my consideration.

Mr K didn't feel that enough consideration had been given to how NewDay had handled his complaint, including that NewDay corresponded with Mr K via written letter rather than by email. But it's up to a business to decide how it will operate, and it isn't within the remit of this service to instruct a business to change how it operates – only to assess whether an unfair outcome has arisen as a result. And, while I can appreciate that Mr K would have preferred to have communicated with NewDay electronically, I don't feel that I can censure NewDay in any way for electing to communicate in writing.

It also should be noted that this service isn't permitted to look at any aspect of a complaint which is concerned with how a business has handled a complaint, such as is the case in this instance. This is because there are rules about what this service can and can't look at. These rules can be found in the Dispute Resolution (DISP) section of the Financial Conduct Authority (FCA) Handbook and includes that this service is only permitted to consider complaints about regulated activities – which complaint handling is not.

Mr K has also stated that he feels that NewDay, by collecting the interest that was due on his previously existing account – the balance of which he was unable to transfer to the new NewDay account – have profited from Mr K not being allowed to transfer that balance.

I can understand why Mr K might think this. However, it was always the case that the exclusion clause was in place, and it isn't the case that this decision is in any way saying that NewDay shouldn't have such an exclusion clause in place, only that NewDay didn't reasonably signpost the existence of that exclusion. This means that it would never have been the case that Mr K would have been able to transfer the balance, which in turn means that Mr K would always have had to pay the interest due on the older account.

As such this means that the £100 compensation being awarded for this aspect of Mr K's complaint is being awarded solely for NewDay not providing clear information, and therefore I don't feel that any unfair outcome has arisen from Mr K having to pay interest on his older NewDay account, because as mentioned, this interest would always have needed to be paid, because it would never have been possible for the balance to be transferred.

Finally, Mr K has made a reference to NewDay not fulfilling its legal obligations regarding his Data Subject Access Request. However, as mentioned in my provisional decision letter, this service is not a Court of Law and as such is unable to comment on this point as Mr K would like. What this service can comment on is whether an unfair outcome has arisen. And as explained in my provisional decision letter, I feel that an unfair outcome has arisen here in regard to this point, and it remains my position that a further £50 compensation should be paid by NewDay to Mr K because of this.

All of which means that I'm satisfied that the outcome that I arrived at in my provisional decision letter – that this complaint should be upheld in Mr K's favour and that NewDay should make a payment of £150 to Mr K to compensate him for the inconvenience these matters have caused him – does constitute a fair and reasonable resolution to what has taken place here, and I can confirm that my final decision will be that I am upholding this complaint in Mr K's favour on that basis.

Putting things right

NewDay must make a payment of £150 to Mr K. This payment may not take the form of a credit to one of Mr K's NewDay accounts unless Mr K gives his permission for it to do so.

My final decision

I uphold this complaint against NewDay Ltd on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 27 December 2021.

Paul Cooper
Ombudsman