

The complaint

Mr C says NewDay Ltd allowed him to access borrowing on his credit card account after he explained his mental health was impacting his spending and behaviour at the time. He's also unhappy he was led to believe his account wouldn't be defaulted but it was.

Mr C is represented in his complaint by his wife (Mrs C). She's also been heavily involved in managing his account and supporting him so I will refer to them both in this decision.

What happened

Mr C took out a credit card in January 2014. NewDay has said from August to October 2017, he used the card for cash withdrawals. He's explained this was part of his compulsive spending habit. In October 2017, Mr C told NewDay he was struggling to make his repayments due to an administrative issue. He said it was short-term so it agreed to set up a payment plan for two months.

In December 2017, Mrs C says she repaid the outstanding balance on Mr C's account of around £2640 over the phone. NewDay's given us a recording of parts of this call with Mr C and collections notes from the time which show a third-party payment was made. Mrs C says during this call, she asked NewDay not to give Mr C any further credit due to his mental health. She's explained despite this, he was able to continue spending on the credit card and built up the balance again with cash withdrawals. In March 2018, Mrs C says she paid off the balance again and had the same conversation a second time with NewDay. Over the next few months, Mr C's balance built up to near the limit again. He made minimum payments but as interest accrued, he went over the limit and charges were applied.

Around October 2018, Mr C again let NewDay know he was struggling to make payments due to a short-term issue with his income. He said he was having problems with his direct debits and payments to his accounts. This was similar to the reason he gave the previous year. NewDay put a plan in place again. And the following month, Mr C called NewDay to explain he was vulnerable and needed its support. He also gave it authority to speak to Mrs C. At this point, NewDay referred him to its customer care team.

Mrs C's told us Mr C has a serious mental health condition which affects his behaviour and spending habits. She's explained he suffered from a mental breakdown and was suicidal. And this was made worse by NewDay's actions. In particular, she says it agreed to write off his outstanding debt after receiving evidence of his circumstances but has recorded his account as in default on his credit file. This has affected his ability to get further borrowing. She also says NewDay initially said it would record the debt as 'partially settled' but hasn't.

NewDay has said Mr C didn't ask it to restrict his spending or tell it about his mental health until November 2018, at which point it took the appropriate action by referring him to the customer care team. It's given us call recordings and notes to show this. Whilst it's agreed not to pursue the outstanding debt, it thinks it defaulted Mr C's account appropriately – but it accepts it shouldn't have said it would be reported as partially settled.

As things weren't resolved, Mrs C contacted our service on Mr C's behalf. She explained Mr C wants NewDay to remove the default from his credit file and reduce the balance of his account to £0. She gave us letters from Mr C's doctors explaining he's been seriously unwell for some time and didn't have the capacity to realise the impact of his spending.

Our investigator upheld the complaint in part. He didn't think NewDay should've been aware of Mr C's circumstances or done more to support him earlier than it did. And he thought it correctly defaulted his account. But he directed it to pay £100 compensation to make up for incorrectly saying his account would be recorded as partially settled. NewDay accepted our investigator's assessment but Mr C didn't. So the case was passed to me to decide.

Provisional decision

I issued a provisional decision on this complaint in January 2022. Based on what I'd seen so far, I upheld the complaint in part in summary because:

- From listening to the call in November 2018, it seemed to me that Mr and Mrs C were asking for support for the first time as there was no indication they'd explained anything about Mr C's circumstances before or they were dissatisfied it hadn't been acted on.
- I thought it was more likely from the evidence, Mrs C did speak to NewDay to repay the balance on Mr C's credit card. But I wasn't satisfied she made it aware of the further support needed before November 2018.
- I thought NewDay should've been alerted that there might be an issue from Mr C's erratic use of the account. He repeatedly reached the limit on his credit card through cash withdrawals – and I thought that was unusual, especially within the timeframes he did it in. And he struggled to maintain payments, giving similar reasons why each time.
- I didn't think NewDay did enough by putting repayment plans in place when Mr C said he was struggling – and I thought it could've checked in with him or intervened in some way.
- I thought the only appropriate actions NewDay could've taken wouldn't have prevented Mr C from spending excessively given what I understood about his mental health. But I thought it should make up for not taking any action at all by paying him compensation. And I explained I could only consider the impact on him as the eligible complainant.
- NewDay has a duty to report accurate information to the credit reference agencies about how Mr C managed his account. And as he was unable to meet his obligations under the agreement, it was appropriate for NewDay to record this as a default on his credit file.
- I didn't think it would be fair to direct NewDay to record the account as partially settled when it wasn't – even though it'd incorrectly said it would be at one point.
- I understood Mr C would've felt disappointed to know he'd been given the wrong information about what would be recorded on his credit file and I thought NewDay could've explained this better. But I thought it had offered enough to make up for that.

I asked both parties to make any further comments before I reached my final decision.

Neither party accepted my provisional decision. Mr and Mrs C responded in writing and spoke to my colleague over the phone which I've listened to a recording of. And they were sent recordings of the calls NewDay gave us. In summary, they've said:

- They asked NewDay to write off the debt and not to record a default on Mr C's credit file. But it still did so, despite all of the evidence it had about his health.
- NewDay initially said it would write off the debt and then recorded it as partially settled. It was only after Mr C tried to negotiate on this, it defaulted his account.
- Unlike NewDay, other creditors have treated Mr C fairly by negotiating with him and writing off all of or some of his debt.
- There were alternative options NewDay could've explored before defaulting Mr C's account. But by not taking them, it's had a very damaging effect on him and his family.
- Our service has been told repeatedly that Mrs C made NewDay fully aware of Mr C's mental health and asked it to not give him further credit. But I seem to have missed this.
- They are concerned that I don't seem to know – or I'm not sure about – what's happened. So they think I've taken NewDay's word over theirs.
- NewDay's actions show it's dishonest and disingenuous. They question whether it's given us all of the information available – and whether I've listened to the call recordings.
- Mrs C was in a position to repay the outstanding balance on two occasions due to inheritances she received at the time. And a third-party repaying Mr C's debt should've alerted NewDay there was something wrong after he'd reached his limit so quickly.
- Based on what we do know (in particular the seriousness of Mr C's health issues and that Mrs C wouldn't want to keep repaying his debts), it should be more likely to me that they made NewDay aware of the situation so it wouldn't happen again.
- They believe NewDay's only acted when it's really had to – when Mr and Mrs C provided evidence of Mr C's extreme ill health.
- They provided letters and statements sent to Mr C by NewDay. They've highlighted in its letter sent in March 2019, NewDay acknowledged Mrs C had asked it not to give Mr C any further credit but it didn't explain to her at the time that it couldn't act on her request.
- To put things right, Mr C wanted the default removed and for NewDay to be held accountable. And he thought the compensation I'd suggested it pay was insulting.

NewDay didn't agree it should pay any further compensation. It said in summary:

- It wasn't obliged to monitor the use of Mr C's cash transactions and it doesn't agree it should've intervened earlier due to Mr C making cash withdrawals.
- In October 2017, the notes show Mr C was having difficulties because his benefit had stopped but there's no evidence he couldn't have paid if that wasn't the case.
- Neither Mr nor Mrs C asked for the account to be closed in December 2017. And in any event, Mrs C didn't have the authority to do so.
- If Mrs C hadn't repaid the balances, the account would've defaulted earlier.

- It only became aware of Mr C's health in November 2018 after he spent on the account.

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've decided to uphold the complaint in part still, I'll explain why.

Support provided

I appreciate Mr and Mrs C maintain that they made NewDay aware of Mr C's ill mental health before November 2018. But I have to weigh up their testimony – what they've said – against all of the evidence I have available. And on balance, I can't say it's more likely they did. Whilst we don't have recordings of all of the calls between the parties, we do have the call from December 2017 when Mrs C said she first told NewDay about the circumstances and November 2018 when both parties agree it was discussed.

From listening to all of the call recordings including the one from December 2017, I found there were no references to Mr C's mental health and the difficulties he was going through. And more significantly, in November 2018 when Mrs C shared the information with NewDay, there was no sign of disappointment or upset that it hadn't been acted on already. And I'd expect that if she'd already made it aware on at least two occasions.

Mrs C has highlighted she used funds she'd received from inheritances to repay Mr C's debt and it was important to her not to be put in that position again. I'm very sorry to hear what Mrs C went through – and I accept it must've been extremely difficult for her. But it's because of how important it must've been to Mrs C not to be put in this position again that I think if she had told NewDay about Mr C's circumstances and it hadn't done anything to restrict his spending, it's likely she would've raised a complaint much sooner.

I've looked carefully at the letters Mr and Mrs C have sent our service – in particular the final response letter from March 2019 in which they think NewDay accepted it was asked to decline Mr C's credit card application. But it seems to me in this letter, NewDay was trying to confirm its understanding of the complaint by repeating what had been said. And in the body of the letter, it explained it didn't know about Mr C's health until November 2018.

Mr and Mrs C have also provided statements which they say show Mrs C paid off the outstanding borrowing and immediately afterwards, a new credit limit was available. It might be helpful to explain here, Mr C had revolving credit – a credit card. So that means it's open ended and customers can use it whenever they want, up to the limit provided. So NewDay didn't grant Mr C further borrowing each month – he'd freed up the previously agreed limit. I note Mr C didn't terminate the agreement which would've stopped him from spending further.

Mrs C says even if she did ask NewDay to restrict Mr C's account, it wouldn't have followed her instructions anyway – and she wasn't made aware of this. But in November 2018, when I'm satisfied she did speak to NewDay, I think it listened to her, arranged to add her as an authorised person and put Mr C in touch with the customer care team block his account. So I'm satisfied it would've acted upon the information about Mr C's health if Mrs C had given it earlier even though she wasn't named on the account.

I assure Mr and Mrs C I've understood their testimony and I know they've given us the same information repeatedly about what happened. But considering everything I've been given by both sides, I'm not satisfied it's more likely NewDay was aware of Mr C's circumstances before November 2018. And I haven't seen anything to make me think it's withheld evidence.

Mr and Mrs C also argue NewDay should've realised there was a problem as she, as a third-party, paid Mr C's debt. I don't think this alone should've alerted NewDay Mr C might've been struggling – as it's not unusual for partners to financially support each other. But for the reasons I gave in my provisional decision, I do think NewDay should've noticed there might be a problem sooner than it did because of how Mr C's account was managed.

NewDay doesn't agree with what I've said here as it doesn't think it needed to monitor Mr C's cash withdrawals. And I accept it couldn't have known what he was spending the cash funds on. But withdrawing cash is a very expensive way of using a credit card. In Mr C's case, looking at a selection of his statements, it cost him around 6% more in interest than standard purchases. So I think NewDay should've been alert to this unusual way of spending, particularly considering the short amount of time Mr C repeatedly reached his limit in through cash withdrawals. And at that point, I think it should've done something to check in with him – to make sure he understood the extra expense he was incurring from using his card in that way, and check everything was ok.

Registering the default

I appreciate Mr C is unhappy a default has been registered on his credit file. But considering he wasn't able to meet his obligations under the credit agreement, I'm satisfied NewDay has reported this accurately.

It's unfortunate Mr C was given the wrong information – that his debt would be recorded as partially or completely settled. But my role is to put customers in the position they would've been in if nothing had gone wrong. And in my view, what's gone wrong isn't that a default has been recorded (as that's an accurate reflection of what's happened). but it's that Mr C was initially given incorrect information about what would happen. And I think NewDay's already done enough to put that right.

Putting things right

To put things right, I think NewDay should pay Mr C a further £200 for not identifying from the management of his account he needed support and providing it to him. That's in addition to the £100 our investigator already recommended – so £300 altogether.

My final decision

For the reasons I've given, I uphold Mr C's complaint in part and direct NewDay Ltd to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 April 2022.

Nadya Neve
Ombudsman