

The complaint

Mr W is unhappy that NewDay Ltd, trading as Aqua, didn't set up a three-month payment holiday on his account when he informed that he was unable to make payments towards his account because of the impact of Covid-19.

What happened

Mr W had a NewDay administered credit account. In April 2020, Mr W contracted Covid-19 and was admitted into hospital, where he remained until June 2020. When Mr W was discharged from hospital, he was unable to work, so he contacted NewDay and advised them of the situation and requested financial assistance.

At that time, the Financial Conduct Authority (FCA) had temporary guidance which prescribed three-month payment holidays for people such as Mr W who had been financially impacted by Covid-19. However, because Mr W's account had fallen into arrears during the time that he'd been admitted to hospital, NewDay didn't feel that Mr W met the eligibility criteria for these payment holidays – which included that a credit account shouldn't be in existing arrears – and so they didn't offer such a payment holiday to Mr W.

Instead, NewDay placed a three-month hold on Mr W's account where arrears would accrue and where those arrears would be reported to the credit reference agencies. It was also the case that while Mr W wasn't obliged to make a payment during the three-month hold, if the arrears on his account grew to a certain amount, NewDay retained the right to begin account default proceedings against him.

Mr W didn't make a payment towards his account during the payment hold period, and the arrears on his account did grow such that NewDay did issue a default notice on the account to him and subsequently defaulted the account. Mr W wasn't happy about this, so he made a complaint.

NewDay looked at Mr W's complaint. But they felt that they had provided appropriate financial support to Mr W and that they'd followed the default process fairly. So, they didn't uphold Mr W's complaint.

Mr W wasn't satisfied with NewDay's response, so he referred his complaint to this service. One of our investigators looked at this complaint. They felt that NewDay should have understood that the reason that Mr W's account had fallen into arrears was because of Covid-19 and that NewDay should have taken this into account and applied a three-month FCA prescribed payment holiday to Mr W's account retrospectively. Because of this, our investigator felt that NewDay should amend aspects of Mr W's credit file reporting and make a payment to Mr W of £100 to compensate him for the trouble and upset that he'd incurred.

NewDay didn't agree with the view put forwards by our investigator, 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 24 March 2022 as follows:

In April 2020, the Financial Conduct Authority ("FCA") published temporary guidance regarding the provision of three-month payment holidays to eligible consumers who were experiencing difficulty meeting the payments due on their credit accounts because of financial difficulties brought about by the impact of Covid-19. The FCA guidance included that, for these three-month payment holidays only, the reporting of these payment holidays to the credit reference agencies would be suspended, so that an eligible consumer who benefited from such a payment holiday didn't have their credit file impacted by doing so.

Later continuing guidance issued by the FCA prescribed the provision of a second three-month payment holiday if an eligible consumer still required it, and also that if a consumer was still in financial difficulty following the second three-month payment holiday that credit providers should offer that consumer continuing financial support.

The FCA issued this guidance because it was concerned that consumers who until that time had been able to manage their credit commitments without significant issue may incur adverse credit reporting because of the Covid-19 pandemic, which was having an unprecedented impact on many consumers ability to meet their financial commitments.

Given that Mr W first missed payments due on his NewDay account because he was in hospital with Covid-19 and therefore unable to work, it's difficult to reach any conclusion other than Mr W was the kind of consumer the FCA guidance was designed to protect. And it doesn't feel fair to me that Mr W was denied the benefit of the three-month payment holidays because he was incapacitated by Covid-19 and unable to contact NewDay before his account fell into arrears.

As such, I do feel that when Mr W first contacted NewDay after leaving the hospital that NewDay should have recognised the nature of Mr W's circumstances and retrospectively backdated an FCA prescribed three-month payment holiday to Mr W's account. This would then also have enabled NewDay to later apply a second such three-month payment holiday to Mr W's account, thus enabling Mr W to benefit in the manner that the FCA guidance was designed to provide.

Importantly however, the type of payment holiday prescribed by the FCA wasn't available indefinitely, and while Mr W would still have been eligible to receive continuing financial assistance from NewDay following the end of any second three-month payment holiday he received, this continuing assistance wouldn't have been on the same terms as the FCA prescribed three-month payment holidays and wouldn't have included that missed payments weren't reported to the credit reference agencies.

Instead, any continuing financial assistance that Mr W did receive from NewDay in this regard, which in all likelihood would have been from November 2020 onwards, would have included that if Mr W wasn't able to make any monthly account payments that these payments would be considered as arrears and would be reported to the

credit reference agencies. And while Mr W was receiving such ongoing assistance from NewDay, if the arrears on Mr W's account grew to a point where it was reasonable for NewDay to begin default proceedings on the account, NewDay would have been expected to have done so.

The reason for this is because it's considered irresponsible for credit providers such as NewDay to allow a customer to fall further and further into arrears, and thus further and further into debt indefinitely, if that customer can't make the payments due on the account.

Instead, if a customer falls into significant arrears such that a credit provider doesn't feel that the customer has a reasonable chance of recovering their financial position, it's considered good practice for that credit provider to default that account – which has the effect of freezing the balance outstanding on that account such that no further interest accrues and so that the customer doesn't fall any further into debt that they already are.

In this instance, Mr W has stated to this service that unfortunately, after leaving the hospital, the continuing effects of Covid-19 did impact his ability to work and his ongoing financial position such he doesn't feel that he would have been able to resume payments in November 2020, but that he would only have been able to resume making payments to the account in April 2021 – and the payment history on Mr W's account supports this position.

This means that, even had Mr W been given the two FCA prescribed three-month payment holidays that I feel he should have been given, any payments that Mr W wasn't able to make following those payment holidays – from November 2020 onwards – would have been considered as arrears and would have been reported to the credit reference agencies.

Because Mr W wouldn't have been able to begin resuming payments until April 2021, it seems to me that Mr W's account would in all likelihood have reached a position of arrears post-November 2020 such that I'm satisfied it would almost certainly have been the case that the account would have been reasonably defaulted by NewDay at some stage.

Because of this, my provisional decision won't include any instruction to NewDay to amend Mr W's credit file here as he would like. And the reason for this is because if I did instruct NewDay to rework the account and retrospectively apply the two FCA payment holidays to his account which I feel Mr W should have benefited from, I feel that the account would still have ultimately defaulted for non-payment. Crucially, this default would be at later date than the default already in place, and so would remain on Mr W's credit file for longer than the present default will – which would be to Mr W's detriment.

I can appreciate that Mr W might be disappointed by this aspect of my provisional decision. But while I empathise with the difficult position that Mr W has found himself in because of Covid-19, it unfortunately isn't the case that Mr W could have received ongoing financial assistance and not recovered the financial position of the account for such an extended period of time without the account being reasonably defaulted, for the reasons explained above.

However, while I won't be instructing NewDay to rework Mr W's account here, I do feel that NewDay should have recognised the nature of Mr W's personal

circumstances such that they should have provided Mr W with the FCA prescribed three-month payment holidays, which I feel would have given Mr W some valuable peace of mind during the difficult period that he faced following his leaving hospital.

Mr W has confirmed to this service how difficult he found these months where I'm satisfied that he should have benefited from this assistance, and I do feel that Mr W has unfairly incurred unnecessary distress and inconvenience as a result.

Because of this, my provisional decision will be that I am upholding this complaint in Mr W's favour on this limited basis only, and that NewDay must make a payment of £400 to Mr W to compensate him for the distress and inconvenience that he's incurred here. In arriving at this amount, I've considered both the impact of these events on Mr W, which as explained took place at a very difficult time for Mr W and so had a significant impact on him, as well as the ongoing nature of these events.

In my provisional decision letter, I gave both Mr W and NewDay the opportunity to provide any comments or new information they might wish me to consider before I moved to a final decision.

Both Mr W and NewDay confirmed that they were happy to accept my provisional decision, and so I can confirm that my final decision is that I am upholding this complaint in Mr W's favour on the limited basis explained above.

Putting things right

NewDay must make a payment of £400 to Mr W to compensate him for the trouble and upset this matter has caused.

My final decision

My final decision is that I uphold this complaint against NewDay Ltd, trading as Aqua, on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 May 2022.

Paul Cooper
Ombudsman