

The complaint

Mr A complains about the way his account had been handled by NewDay Ltd, and the tone and content of information he's received from NewDay after a subject access request (SAR).

What happened

Mr A has had a credit card account with NewDay for several years. In October 2013, NewDay issued a default notice and later sold the account to a debt collector. Mr A complained about that at the time and explained he'd missed payments as a result of some difficult personal and health circumstances. NewDay recovered the account from the debt collector and Mr A continued to use it.

In July 2021, Mr A noticed his card had expired a few months earlier and he hadn't received a new one. He contacted NewDay and was told a new card hadn't been sent as he'd not used the account for some time. It arranged to send him a new one and he was able to continue using the account. Shortly afterwards however, he received a letter from NewDay saying it had closed his account and he'd be unable to make any further purchases.

Mr A submitted a request to NewDay for all the information it held about him. NewDay initially just sent him all his statements and then later, after further contact from Mr A, it provided all the information it is obliged to do under a SAR. The information provided included several internal emails which Mr A is unhappy with. He says the they demonstrate that NewDay kept information from him and showed no respect. He feels the closure of his account means he's been penalised but has done nothing wrong.

NewDay looked into Mr A's complaint. It said Mr A shouldn't have had a new card sent to him. It explained that when it bought the account back from the debt collector, he shouldn't have been able to use it other than to repay the balance on an interest free basis. But it made errors which enabled him to use the card without paying interest or charges. The problems were only identified when it reviewed the situation in the light of its investigation into why Mr A hadn't received a new card. It decided to close the account for new purchases, but also left the account as free of interest and charges. NewDay offered to pay Mr A £150 for the inconvenience caused to him.

NewDay considered Mr A's comments about the information he'd received under his SAR. There were some emails exchanged internally about what to do with Mr A's account once the errors had been identified. NewDay subsequently offered Mr A £100 for the upset this aspect of the complaint caused him. So in total, NewDay had offered Mr A £250 for the issues covered by this complaint at this stage.

As Mr A was unhappy with NewDay's response he asked one of our investigators to look into it. Our investigator felt that NewDay hadn't treated Mr A fairly or considered the impact the withdrawal of the card had had on him. After some mediation attempts, he ultimately recommended NewDay should pay Mr A £750 in compensation for the trouble and upset he'd endured.

NewDay didn't accept what our investigator said, so as there was no agreement, the

complaint has been passed to me for a 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.

Having done so, I agree with our investigator that Mr A's complaint should be upheld, but I don't agree with the level of redress he proposed. I issued a provisional decision saying:

"This complaint stems in part at least, from 2013/2014 when Mr A exceeded his credit limit and fell behind on payments. This led to NewDay issuing a default notice and moving his account on to a debt collection company in April 2014. As a result of a complaint from Mr A, NewDay agreed to recall the account from the debt collectors and offered compensation. It gave Mr A the option to refer that complaint to us within six months (as required by our rules) but Mr A didn't, so I assume he was content with that at the time. He's now out of time under our rules to refer that aspect of the complaint to us, but I've mentioned it because it provides useful background to my findings.

NewDay has said that when it recalled the account, it was not its intention that Mr A would be able to use it. The reason for this is that when a lender defaults an account, the credit agreement is terminated which crystallises the position for both the lender and the borrower. Generally this means the account can no longer be used, no further interest and charges accrue and any payments received from the borrower go directly to reducing the balance. At this stage, accounts are usually marked as defaulted for six years with the credit reference agencies, which can make it much more difficult for consumers to obtain credit elsewhere.

When it recalled the account, NewDay also removed the default from Mr A's credit file. It had intended to enable Mr A to repay the debt ensuring his credit file wasn't affected. It's evident that this wasn't properly explained to Mr A and NewDay allowed him to continue to use the account as it failed to place the relevant markers on it.

There is no dispute that NewDay has made mistakes in its handling of Mr A's account. Our usual approach where mistakes have been made, is to try to put the consumer in the position they would have been in had the mistakes not been made.

If NewDay hadn't made the mistakes it did when it recalled the account, Mr A wouldn't have been able to use it. Any repayments he'd made would have reduced the balance. But mistakes were made which had the effect of allowing Mr A to continue to spend on the card. The mistakes weren't identified until Mr A stopped spending and the account fell into NewDay's dormancy process meaning a new card wasn't issued on expiry of the old one.

If the mistakes hadn't been made, Mr A would have had to fund his spending another way. Given he's said he relied on using the card for certain purchases, it's likely he'd have used some other form of credit to fund those. It's more likely than not that such credit will have attracted interest. So in that regard, Mr A is better off as a result of the mistakes made by NewDay as he hasn't been charged any interest since 2014. Therefore, I can see no

financial loss or detriment to Mr A as a result of the mistakes made.

But I can see that having the card withdrawn unexpectedly after so long, will have caused Mr A some distress and inconvenience. He only became aware his card had expired when he needed to use it and the account was withdrawn very soon after a new card was issued. So I think it's right that Mr A is compensated for this and note that NewDay has paid Mr A £150. I've thought carefully about this and I don't think that's sufficient in the circumstances. I

think the fact that he'd had seven years of apparently problem free use of the account will have heightened the distress and inconvenience. I'll return to this later on.

I've looked carefully at the internal emails Mr A has seen and which have caused him distress. I've seen no comments suggesting any wrongdoing by Mr A or that he was at fault in any of this. I think the emails were aimed at working out the best way forward. But they do say that NewDay didn't want Mr A to find out that his account was interest free, wasn't reporting to the credit reference agencies and wouldn't fall into its collection process. I think, from a commercial point of view, it's understandable that NewDay wouldn't have wanted Mr A to know this as it may make it harder to receive its money back. Nothing I've read however, suggests Mr A has done anything wrong – in fact, it acknowledges that it has made mistakes and needs to put them right.

NewDay has accepted that the emails have upset Mr A and initially offered £100 for this. The communications were never intended to be seen by him and don't suggest that Mr A has done anything wrong. But I do think NewDay should have been aware that Mr A could see what it had written (such as through a SAR) so could have taken more care not to cause any upset to him. On that basis, I think the offer it's made in this regard is fair and reasonable in the circumstances.

Mr A says he feels he's been penalised but has done nothing wrong. I agree with him that he's done nothing wrong. But NewDay made a mistake in continuing to allow him to use the account for so long and it's not unreasonable for it to correct its error. I don't think it was wrong for it to close the account once its mistakes came to light.

Putting things right

I've explained above that I think having his card withdrawn unexpectedly after seven years will have caused Mr A distress, and I think the internal emails compounded that. But I also bear in mind that he's not paid any interest on purchases he made with the card since 2014 and the account will remain on an interest free basis until it's repaid. If the mistakes hadn't been made, he would have had to pay interest on the money he's spent on the account since, albeit to a different credit provider.

NewDay credited Mr A's account with £150 to compensate for the errors made by allowing him to continue to use the account. When it sent us its file for his complaint, NewDay offered £100 compensation – later increased to £200 following our involvement - for the upset caused to him by the internal communications. So Mr A's been offered a total of £350 so far for this complaint as a whole.

Our investigator felt a total of £750 compensation was reasonable for all the issues raised in this complaint, but I think that's too high. But I don't think the existing offer of £350 goes far enough to recognise the upset caused to Mr A by the issues complained about.

In the circumstances, I'm minded to instruct NewDay to pay Mr A a total of £500 including what it has already paid, for the issues covered in this complaint."

NewDay accepted my provisional decision, but Mr A didn't.

Mr A says (in summary):

- I didn't cover all aspects of the complaint in my provisional decision.
- He doesn't agree with the level of compensation I recommended. He says that the £150 I've referred to was awarded by NewDay for not sending the new card rather than its error in allowing him to continue to use the account.

- He doesn't agree the £200 I've referred to was offered by NewDay – he says it was “*given*” by our investigator.
- He wasn't awarded £350 and it was wrong for me to include that in my final figure of £500.
- He acknowledged he's not paid any interest but says this “*would have been very little*”.

I've considered what Mr A has said, but it doesn't change my view of his complaint. I say this because:

As I said in my provisional decision, I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've read and considered the whole file, but I've concentrated my comments on what I think is relevant. If I haven't commented on any specific point it's not because I've failed to take it into consideration, but because I don't need to comment on it in order to reach what I think is a fair outcome.

Mr A is correct to say the £150 was awarded when he complained to NewDay that it failed to issue a new card on expiry of his existing one (I've said this in my provisional decision). But NewDay made a mistake by issuing the new card as this allowed him to continue to use the account which it shouldn't have done. So I don't agree with Mr A that it shouldn't be included as part of the redress for the mistakes NewDay made which allowed him to continue to use the account.

When our investigator first looked into Mr A's complaint, he recommended that NewDay should pay Mr A £200 in compensation. NewDay agreed, so it was offered to Mr A, but he rejected it. I don't agree with Mr A that NewDay didn't make an offer of £200 – it did, albeit at the recommendation of our investigator.

So, the £200 offer, when added to the £150 already paid, comes to £350. While I accept it wasn't “*awarded*” to Mr A as he says, the offer of a total of £350 was available for him to accept if he wished. In any event, he didn't accept it, so the complaint was passed to me.

My role as ombudsman is to decide what I feel is a fair and reasonable outcome to Mr A's complaint. Where mistakes have been made by a business, where possible I aim to put the consumer in the position they would have been in had the mistake not happened. To do so, as I've mentioned, I've carefully reviewed the available evidence and thought about the circumstances. I've considered the financial impact on Mr A as well as what he's told us about the trouble and upset the mistakes caused him.

When considering the financial impact on Mr A, I've taken into account the fact that he's paid no interest which he would have had to do had he borrowed elsewhere. I've explained how I came to that conclusion above. Mr A says he feels any interest will have been very little.

Statements provided by Mr A dated between 2014 and 2021, show his balance varying between around £750 and £1,100. Interest on this type of account is typically charged in excess of 30% per year. Had NewDay been charging interest on the account, it's likely he'd have paid in excess of £300 per year each year.

If he'd borrowed elsewhere rather than with NewDay, he may well have found a less expensive card. Nonetheless, he's likely to have incurred interest of several hundred pounds over the seven years he's had the balance outstanding. So I don't agree with Mr A that interest will have been “*very little*” as he's said. Had NewDay not made the mistakes it did, it's likely he'd be worse off as a result of having had to pay interest over the years.

Given the above, Mr A has benefitted in part from NewDay's mistakes. But I don't think it would be fair or reasonable to ask Mr A to repay interest that he probably would have been charged. After all, we don't know precisely what that would have been, and he didn't do anything wrong by using the card - NewDay allowed him to do so.

But I do think it will have come as a shock to Mr A to have a facility withdrawn that he'd been able to use trouble free for seven years, so it's right that NewDay compensate him for that. I think a total payment of £500 is appropriate in the circumstances but note it has already paid £150.

My final decision

My final decision is that NewDay Ltd should pay Mr A a total of £500 including what it has already paid for the issues covered in this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 August 2022.

Richard Hale
Ombudsman