

The complaint

Mr W complains that NewDay Ltd pursued him for a debt taken out fraudulently in his name. And that this affected his credit score which impacted his credit facilities with other lenders.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

In September 2021 NewDay received an application for credit in Mr W's name that was used to make a £999 purchase. A further purchase of £1,349 was attempted on 30 September 2021 but refunded the same day. The credit account was reviewed by NewDay's fraud team and they wrote a letter to Mr W which said:

"We have recently received an application for credit in your name, therefore would you please contact us on [telephone number] as soon as possible between the hours of 9am and 5pm Monday to Friday, If you confirm you have made the application, it may be a little delayed while we confirm your identity..."

NewDay didn't receive a response to this letter. NewDay then sent monthly statements to Mr W pursuing him for the amount owed, along with a default notice letter on 25 December 2021. Mr W wrote to NewDay on 11 January 2022 explaining he'd received letters saying he held an account with them that had been suspended, and which was in arrears. Mr W confirmed he hadn't opened an account with NewDay, nor did he know of any such amount that he owed to anyone.

Mr W contacted the Financial Ombudsman in late February 2022 as NewDay hadn't responded to his letter and were still pursuing him for the debt. A complaint was raised to NewDay about the matter with Mr W explaining that, due to this issue, two credit card providers had reduced his borrowing facilities from £10,000 to about £550. Mr W wanted NewDay to confirm he had no debt with them and to retract their reporting to his credit report.

NewDay responded to the complaint on 5 April 2022. They didn't uphold it as they said they'd followed correct business process. And, under the *"How I came to my decision"* section, they said:

"Thank you for contacting us with your concerns. Please be advised that due to the status of the account, I cannot address your concerns.

Please contact our Fraud Team on [telephone number] ..."

Mr W remained dissatisfied as he considered NewDay had failed to explain the origin of this debt, or evidence the amount allegedly owed was valid. And so, his complaint was considered by one of our Investigators. NewDay then confirmed, after speaking with Mr W in February 2023, that they wouldn't be holding him liable for the account as it was opened

fraudulently. And that they would be removing all details of the account from Mr W's credit report.

Our Investigator thought this was reasonable but that NewDay should also pay Mr W £150 compensation for the distress he'd experienced in dealing with the matter. In short, she said:

- NewDay accepted the application in good faith and carried out checks before approving the account. They also wrote to Mr W in September 2021 asking him to contact them about the application. Had Mr W done so, the matter could've been resolved sooner.
- She considered Mr W says he doesn't recall receiving NewDay's September 2021 letter but, if he did, he may have thrown it away due to suspecting it as spam mail. And she thought this was understandable given the letter didn't say credit hadn't been agreed, but rather only a recent application had been received.
- She didn't think NewDay's response to Mr W's complaint made the importance of calling them – so they could investigate the fraud – clear. She thought NewDay could've done more to highlight they couldn't carry out an investigation unless Mr W called them.

Both Mr W and NewDay disagreed with our Investigator and so the matter has been passed to me to decide.

Mr W, in short, has said:

- In reference to the Investigator's claim the matter could've been resolved sooner had he contacted NewDay, this doesn't explain or excuse the aggressive stance NewDay took.
- NewDay's lack of response to his complaint also cannot be construed as an affirmation. And he was unable to contact NewDay without registering on their website or using a telephone number that's associated with fraud warnings.
- When he did get in touch with NewDay, by letter in January 2022, they threatened him with a "*bad credit report*". This must've been due to malice opposed to carelessness.
- The £150 compensation would be barely adequate for the time he has wasted with this matter. It also doesn't compensate him for the distress he's suffered or the loss of close to £10,000 of credit.
- He would accept £5,300 of compensation – comprising of £5,000 for the loss of credit and £500 for the distress and inconvenience.

NewDay, in short, has said:

- They didn't think compensation was warranted as they wrote to Mr W in September 2021 asking for him to contact them. Mr W didn't however speak to them until February 2023 when their Fraud Team called him. There were prior attempts to speak with Mr W but he explained he wasn't comfortable discussing the matter and that he'd call them back.

- They had no control over whether Mr W threw away the September 2021 letter they sent. But this letter made it clear that if Mr W had made a genuine application, it may be delayed while they confirm his identity. As Mr W hadn't made the application, they would've expected him to have contacted them as requested.
- They issued their letter of September 2021 to inform Mr W about what happened so they could resolve it. And so, they acted fairly, reasonably and efficiently after identifying the account as fraudulent.
- Their final response letter couldn't go into any details due to the account's status since they couldn't speak to Mr W before issuing it. This is why they requested Mr W speak to their Fraud Team, and they're satisfied their request for him to contact them within their final response letter suits the circumstances at the time. And Mr W would've been aware of the required information they needed upon contacting them.
- They appreciate Mr W was given a telephone number for NewDay that wasn't active. But, having listened to a call between their agent and Mr W, they believe Mr W may have incorrectly recorded another telephone number that he attempted (as two digits were in the wrong order their agent provided).
- The delay in the fraud being resolved is due to Mr W. They provided the relevant contact details to Mr W so he could speak to them – including within their final response letter of 5 April 2022.
- Mr W had at least two valid telephone numbers to contact them to speak about the fraud.
- They must issue regulatory letters and report accurate information to credit reference agencies. And until Mr W contacted them they had to treat the account as genuine – which meant they reported to the credit references agencies as usual. Once they found Mr W wasn't liable, the account was removed from his credit report.
- The first contact to NewDay about the fraudulent account came from the Financial Ombudsman in March 2022. They didn't receive any letter from Mr W in January 2022, which is why they didn't respond.
- They're sorry Mr W has had his credit facilities lowered with other lenders. But since they've confirmed he isn't liable and removed the account from Mr W's credit report, they hope these lenders will reinstate any previous limits.
- They accept Mr W will have experienced trouble and upset but this was due to the fraudster's actions. They cannot see where they've made any failings in dealing with this fraudulent case.

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 appreciate Mr W has been impacted by the debt taken out fraudulently in his name with NewDay. And I don't underestimate the trouble and upset this may have caused. But, for similar reasons as our Investigator, I think £150 is a fair amount of compensation here. I'll explain why.

NewDay has accepted the account was opened fraudulently in Mr W's name. I haven't seen anything to show NewDay were at fault for this happening – as they accepted the application in good faith with the details submitted matching those of Mr W. Nevertheless, NewDay has confirmed Mr W isn't liable for the debt and removed the account from his credit report. I think this is fair and in line with what I'd expect, so I don't intend to consider this aspect of the complaint further. Instead, I'll focus on whether NewDay's consideration and handling of the fraud claim was reasonable.

The second attempted purchase of £1,349 prompted NewDay to have concerns the account had been applied for fraudulently. So, they wrote to Mr W on 30 September 2021 and explained they'd received a recent application for credit in his name and requested he contacted them as soon as possible. I think this was reasonable in the circumstances.

Mr W says he can't recall receiving this letter but, if he did, he likely threw it away due to suspecting it was spam (as he hadn't made any such application). I can't be certain whether this letter was received or not. But given it was correctly addressed and most mail is successfully delivered, and he received future correspondence from NewDay, I think it's likely Mr W did receive it. And while I appreciate Mr W may have questioned the legitimacy of the letter, I don't think I can hold NewDay responsible if Mr W disposed of it. I think they acted appropriately by sending the letter and asking Mr W to contact them.

Mr W did however write to NewDay in January 2022, following the letters he received regarding the debt, to inform them he hadn't opened an account or owe any such amount. NewDay say they didn't receive this letter, which is why they didn't respond. But Mr W has provided evidence to show this letter was sent by recorded delivery and that it was signed for. While NewDay say otherwise, I'm satisfied – given it was correctly addressed and signed for – that it was received by them. It follows that I think NewDay failed to respond to Mr W's January 2022 letter.

NewDay subsequently sent their final response to Mr W's complaint in April 2022. They said they couldn't address Mr W's concerns due to the status of the account. But asked Mr W to contact their Fraud Team by telephone. NewDay has since explained that their final response couldn't go into detail due to them not being able to speak to Mr W, to carry out their investigation, beforehand.

I accept NewDay's final response letter does ask Mr W to contact them. However, I agree with our Investigator that it ought to have been clearer as to why this was necessary. In short, it would've been reasonable for NewDay to have explained that they needed to speak with Mr W to consider his fraud claim. I'm not persuaded NewDay's letter makes this sufficiently clear. I also don't think rejecting a complaint because business process had been correctly followed, as well as being unable to address Mr W's concerns due to the status of the account, gave an adequate explanation or response to the complaint that would've allowed Mr W to understand the situation either. I'd further add that, if NewDay needed to speak to Mr W to consider the fraud claim and appropriately respond to his complaint, it would've been reasonable for NewDay to have written to Mr W explaining this before sending their final response. I can't see that this happened.

I have however taken into consideration that NewDay did attempt to contact Mr W by telephone prior to the conversation of February 2023. But, as I understand, Mr W didn't feel comfortable talking to them and would call them back. Mr W has however said the telephone numbers he attempted didn't work. NewDay has since confirmed that one of the telephone numbers was indeed inactive and, while the other was active, it seems from the conversation in which their agent provided the telephone number Mr W may have recorded it down incorrectly.

Although Mr W had difficulties trying to contact NewDay by telephone, I don't think I can reasonably contribute this solely to NewDay. This is because, although one inactive telephone number was provided, I'm satisfied NewDay gave Mr W telephone numbers that did work – such as within the monthly account statements and the final response letter. So, I don't think Mr W had to register on NewDay's website to call them. The charges for these telephone numbers were also shown to be at, or no more than, standard national rate. So, while I appreciate Mr W has raised concerns about the cost of making such calls, these

weren't premium telephone numbers. And although Mr W found reviews online suggesting one of the telephone numbers was associated with fraud, NewDay provided their genuine telephone numbers and cannot control online reviews posted on independent websites.

I therefore consider that both parties contributed to the length of time it took for the fraud to be dealt with. This is because, although I consider NewDay could've communicated more clearly and proactively with Mr W, I likewise think Mr W could've done more to resolve the situation himself – specifically by contacting NewDay by telephone as they requested before February 2023.

I'm aware Mr W found NewDay's correspondence about the debt to be aggressive and threatening. Although I understand the concern receiving such letters would've caused Mr W, NewDay were required to provide such warnings – highlighting the consequences of not repaying the amount owed – in line with their regulatory obligations. So, I don't think NewDay acted inappropriately in this respect.

On a final note, I understand Mr W's credit score was impacted due to the fraudulent opening of the account. This, in turn, led to his borrowing limits with other lenders reducing. And Mr W feels £5,000 compensation would be a fair amount to recognise the credit facility he's lost. I've considered this but I don't think it would be fair. This is because Mr W hasn't suffered a financial loss but rather, his ability to borrow was reduced. Given however that his credit report has since been corrected, Mr W is free to contact these lenders – or others – to enquire about his credit limits being increased.

Putting things right

Taking everything into consideration, I think NewDay has taken appropriate steps to correct the fraudulent account being opened. But I do think they could've handled the matter better and communicated with Mr W more clearly and proactively. For this reason, I think compensation is warranted for the trouble and upset caused. After careful consideration, I think £150 is a reasonable amount to recognise this.

My final decision

My final decision is that I uphold this complaint. I direct NewDay Ltd to pay £150 to Mr W.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 June 2023.

Daniel O'Dell
Ombudsman