

The complaint

Mr M complains that he's been charged late payment fees by NewDay Ltd trading as Marbles due to his direct debit not being taken as a result of a system error. He's also unhappy that his account was defaulted and terminated.

What happened

Mr M opened a credit card account with Marbles and set up a direct debit to pay the balance each month.

Mr M's direct debits weren't taken due to a system error. This resulted in Mr M being charged late payment fees, and his account defaulted and terminated.

Mr M complained to Marbles. He said that when he looked on his account, it said that there was no direct debit instruction, when he knew he'd set one up. Mr M was unhappy that his account was in arrears due to the direct debits not being collected.

Marbles upheld the complaint. It acknowledged that there had been an error in the administration of Mr M's account and credited the account with £50 by way of apology. It also refunded £60 worth of fees which had been applied to the account. Marbles said it couldn't find any error with the closure of the account.

Mr M remained unhappy and brought his complaint to this service.

Our investigator partially upheld the complaint and recommended that Marbles refund all the late payment charges up until March 2023 (minus the charges already refunded). The investigator said that Marbles had sent letters to Mr M in January – March 2023 advising him that there was no direct debit in place and that he'd had a reasonable opportunity to bring his account up to date before it defaulted.

Mr M didn't agree. He said the issue with the direct debit was due to a systems error which wasn't his fault. He said he wanted his account reinstated.

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.

Marbles has acknowledged that there was an error in the administration of Mr M's account which meant that his direct debit wasn't set up and collected.

The information provided by Marbles shows that the issue started in October 2022. This led to late payment fees, over limit fees and unpaid direct debit fees being applied to Mr M's account.

In its final response letter, Marbles said it had resolved the issue in January 2023. However, looking at the letters which Marbles sent to Mr M in February and March 2023 in which

Marbles advised Mr M that he didn't have a direct debit set up, I don't think the issue had been resolved.

Because the issue was ongoing in February and March 2023, I don't think it's fair that fees were applied to Mr M's account during this time. I agree with the investigator that these fees should be refunded.

I've gone on to consider whether Marbles acted fairly when it issued the default notice and terminated the account. I can see that Mr M contacted Marbles in March 2023 to find out why his direct debit payments weren't going through. So it's clear that by March 2023 Mr M was aware that there was an issue and that no payments had been made to his account. Mr M would have by that time received the letters sent to him by Marbles in February and March 2023 advising him that his direct debit wasn't set up and that he'd exceeded his credit limit.

At this point, I think it's reasonable to expect that Mr M would've taken steps to make sure that a payment was made to his account manually. I say this because ultimately, it's a consumer's responsibility to make sure that payments are made.

I can see that Marbles sent Mr M a default notice dated 14 April 2023. This required Mr M to make a payment of £62.10 by 5 May 2023. Based on my review of the account, Mr M didn't make a payment. As a result, the account was defaulted and terminated.

I appreciate that Mr M feels that all the issues with his account were caused by Marbles' errors. However, although (as I've already said) I don't think it's fair that fees were applied to Mr M's account in February and March 2023, I think Mr M ought reasonably to have been aware by March 2023 that he needed to make a payment to bring his account up to date.

I'm satisfied that Mr M had a reasonable opportunity to bring his account up to date before the account was defaulted and terminated. In the circumstances, I'm unable to say that Marbles acted unfairly or unreasonably when it terminated the account, so I won't be asking them to reinstate it.

Putting things right

For the reasons I've explained, I'm partially upholding this complaint.

To put things right, NewDay Ltd trading as Marbles must refund all late payment charges, over limit fees and unpaid direct debit fees up until March 2023 (minus the fees already refunded).

My final decision

My final decision is that I partially uphold the complaint. NewDay Ltd trading as Marbles must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 January 2024.

Emma Davy
Ombudsman