

The complaint

Mr B complains that his wife's credit card limit with NewDay Ltd was reduced while his remained the same. He advises that he is autistic and further complains that NewDay failed to make reasonable adjustments when communicating with him and closing his account.

What happened

In August 2022 Mr B's wife's credit card limit was reduced by NewDay whilst his remained the same. He complained of discrimination and asked for his account to be closed. The account was duly closed but Mr B didn't receive any information about it before closure. He also complained about the way NewDay communicated with him and said this was discrimination on the grounds of his disability.

NewDay said there was no discrimination in the way it dealt with his account. It apologised for not adding one email to an email trail (as he'd requested) and for not giving him the closure information required before closing his account. It offered him £60 for the trouble and upset.

On referral to the Financial Ombudsman Service our Investigator said that NewDay should write to Mr B explaining what was considered when it reviewed his account, and pay him a further £200.

NewDay disagreed, though did say that its final response letters could have been clearer. It offered a further £50.

I issued a provisional decision. In it I said that I thought NewDay had acted reasonably. I pointed out that I had based my decision on what I thought was fair and reasonable and if Mr B wanted a decision that NewDay had breached the Equality Act 2010, then he'd need to go to Court.

I understand that the initial £60 offered by NewDay hasn't yet been paid.

NewDay accepted my provisional decision.

Mr B was unhappy that I had gone against the recommendation of a payment of £200. He further said that:

- In the Ombudsman's view, keep to this email trail only, does not mean keep to this email trail. How to say you discriminate against autistic people without saying it.
- Also the Ombudsman plays on semantics regarding neurodiversity.

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.

My provisional findings are set out below, in italics:

“not reviewing the credit limit

First of all Mr B’s original complaint is that NewDay discriminated against his wife and for that reason was closing his account. He later expanded on that to complain that NewDay was positively discriminating in his favour.

I don’t intend to discuss Mr B’s wife’s account here for data protection reasons. NewDay didn’t take any steps in relation to Mr B’s account either positive or negative. So I don’t think it could be said it was acting in a way that was unfavourable towards Mr B. And as no action was taken by NewDay in respect of his account, any explanation it gave would be to describe a hypothetical situation. So I can’t really see what further action it could take. I note NewDay’s offer of a further £50 . Whilst I note the offer I won’t be requiring it to pay that. It’s a matter for NewDay if it wants to pay it voluntarily, and for Mr B if he wants to accept it..

communication

Mr B complains that having asked for communication in one email trail, and for communication by email NewDay sent him two letters by post and failed to attach one email to an email trail. I agree that it should have followed Mr B’s instructions in that respect. In his original letter of complaint Mr B said “I am autistic and work with clarity, order and organisation. Keep to this e-mail trail - and do not start a new one.” He didn’t specifically say he preferred all communication by email until his email of 27 October 2022. He received two letters by post, dated 20 October 2022, one acknowledging the complaint and the other advising that the investigation was taking longer than expected. Whilst I can understand that Mr B didn’t want to receive letters by post, these were automatically produced and before Mr B told NewDay he preferred email communication.

Mr B also complained of the language used in NewDay’s communications with him, saying it was passive aggressive and discriminatory in respect of his disability. Without going into detail about the emails themselves I don’t think there was anything wrong in the language used, and I think NewDay acted reasonably in that respect.

closure of the account

Mr B said in his first communication with NewDay that he wanted his account closed. But he thought he’d be receiving instructions about what he should do in preparation for closure. So he was disturbed to find when he attempted to look up his account, that it had been closed. NewDay said it should have given him details as to what would now happen before closing his account. It apologised for not doing this, and paid Mr B £60 for the trouble and upset caused. I understand that Mr B wanted clarity and that it would have been disturbing to him to find the account had been closed without any instructions or advice coming to him from NewDay. But I think NewDay acted reasonably in paying him the £60 and apologising.

Mr B has complained that NewDay has failed to make reasonable adjustments for him. In other words it has failed in its duty to make reasonable adjustments under the Equality Act 2010. I’ve taken the Equality Act 2010 into account when deciding this complaint – given that it’s relevant law – but I’ve ultimately decided this complaint based on what’s fair and reasonable. If Mr B wants a decision that NewDay has breached the Equality Act 2010, then he’d need to go to Court.”

To be clear, the £200 was recommended by our Investigator at the Financial Ombudsman Service. The FCA (Financial Conduct Authority) hasn’t been involved with this complaint. Mr B was advised (in our Investigator’s email of 31 March 2023) that if the Ombudsman’s

conclusions are different (from the Investigator's), they will explain why and let him (Mr B) reply before they give (him) their decision. This was the reason for my making provisional findings.

I'm sorry that Mr B feels that I didn't consider his request that NewDay keep to the email trail. And that I played on semantics. All I can say is that as I have found, NewDay did fail to keep to the email trail in respect of one email. And that the letters were sent automatically before Mr B said he wanted all communication to be by email. That said I can understand his annoyance at getting two letters by post at the same time.

I understand that the £60 proposed by NewDay in its final response letter hasn't been paid – I will remedy that by making an award for that sum. This is different from the further £50 offered by NewDay after our Investigator's view which, as I said in my provisional finding, I won't order it to pay – it's a matter for NewDay if it wants to pay it voluntarily, and for Mr B if he wants to accept it.

I remain persuaded by my provisional findings. These are now final and form part of this final decision.

My final decision

NewDay has already made an offer to pay £60 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that NewDay should pay Mr B £60.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 October 2023.

Ray Lawley
Ombudsman