

## The complaint

X complains about NewDay Ltd, trading as Pulse, as they've closed X's credit card account and X can no longer transfer the balance to another bank.

## What happened

I issued my provisional decision on 4 November 2023, and this is what I said:

*I've considered the relevant information about this complaint.*

*Based on what I've seen so far, there will be a different outcome to what our investigator proposed. Before I issue my final decision, I wanted to give everyone a chance to reply.*

*I'll look at any more comments and evidence that I get by 27 November 2023. But unless the information changes my mind; my final decision is likely to be along the following lines.*

### *The complaint*

*X complains about NewDay Ltd, trading as Pulse, as they've closed X's credit card account and X can no longer transfer the balance to another bank.*

### *What happened*

*NewDay were changing the credit card partnership from Company A to Pulse and customers, who wanted to continue having a credit card account, were required to 'opt in' to Pulse.*

*NewDay sent out an 'opt in' deadline, instructions (with questions and answers) in both an email and letter.*

*X didn't read the email or receive the letter. X explains that the reason was because X felt the "not long before you switch" subject line suggested no action was necessary.*

*X subsequently tried to transfer X's balance to another bank and discovered that, because X missed the 'opt in' deadline, X's account had been closed and X wasn't able to complete any balance transfers.*

*X complained to NewDay as X was unhappy X's account was closed, and X couldn't transfer X's balance to another card with a lower interest rate.*

*NewDay were satisfied X had received their letter and that X's account was correctly closed within the terms and conditions of X's credit agreement. They said they were unable to re-open X's account and explained that it wasn't technically possible to make a balance transfer from a closed credit card.*

*X complained to our service seeking compensation for the inconvenience and distress caused. Also, as X felt the email was unclear about the requirement to 'opt in' and the balance transfer consequences, X felt X had been treated unfairly and would like NewDay to allow a balance transfer so X could consolidate and pay off X's debt.*

*Our investigator didn't think NewDay had treated X fairly. To put things right they said NewDay should honour the terms of the balance transfer promotion X had received from another bank and suppress any interest being applied to X's balance for 31 months. Also, that NewDay should refund any interest that it has already applied.*

*However, NewDay disagree so this complaint has been referred to me to look at.*

*What I've provisionally 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'm not upholding this complaint and I'll explain why.*

*My role is to consider the submissions presented and, where I think a business hasn't acted fairly and / or reasonably in the circumstances, to decide what should be done to put right any financial, or non-financial losses that a consumer has experienced. In cases where information is incomplete, inconsistent or contradictory, I must reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available information.*

*I looked closely at the file and NewDay's communications. I could see that X didn't realise there was a requirement for X to 'opt in' and thought X would automatically receive the new credit card with Pulse. Also, that NewDay had tried to implement a seamless transition and thought they had clearly communicated the necessary actions to X.*

*Regarding the email NewDay sent to X. It is called a "reminder" and this and X's understanding that X would be automatically 'opted in' and didn't need to take any action, suggests the switch was not unfamiliar. So, I think this, together with the fact that X was actively using X's credit card account and had used a large amount of X's available credit, should've at least precipitated a review of the email. Had X done so, X would have noticed the first paragraph which was highlighted in red and said, "You will need to opt in to make the switch, if you haven't already". And this is likely to have prompted X to take the 'opt in' transition action which would've prevented X's account being closed.*

*I think NewDay could've done more, in the email header, to emphasise the importance of the message. However, although I think this, customers have a responsibility to read communications, especially if they've requested them electronically.*

*To reinforce their communication, NewDay followed the email up with a letter. The letter was a more formal communication and a final call for action giving sufficient time before the 'opt in' deadline.*

*Although X says X didn't receive NewDay's letter, I'm satisfied NewDay communicated the change to X's in a responsible way. I say this because they made a copy of this letter available to X on their e-services. Also, file notes show X's preference was to receive information electronically and X's account, which was set up to receive electronic statements, was accessed online multiple times between 9 August 2022 and 6 November 2022. So, I think it was reasonable of NewDay to consider that they had communicated necessary actions to X and made X aware that X's account would be closed if X didn't take any action.*

*X doesn't feel X has been treated fairly here because the implications of a closed account were unclear. So, I closely examined NewDay's email and letter together with their attached questions and answers.*

*I considered and understood NewDay's points, including that it is both inferred and industry practice that no transactions, including balance transfers, can be completed on a closed account.*

*I found NewDay to be unclear on whether a customer with a closed account could undertake a balance transfer. Although a closed account suggests transactions can no longer be completed, I couldn't see that all customers would realise this. And, although I think NewDay's communications were detailed, I think they should've included a clear explanation that a closed account would mean an inability to make a balance transfer.*

*However, although I understand why X feels X hasn't been treated fairly, the fact is X didn't read NewDay's communications. So, even though I think NewDay should've been clearer about the implications of a closed account, including the inability to make a balance transfer, the same outcome would've still occurred even if they had modified and improved their communication.*

*I found NewDay's messaging to be clear. They explained in a timely manner that accounts would be closed if customers didn't opt in and communicated a deadline date. They also highlighted a telephone number and encouraged customers to contact them if they had any questions. So, any customer contemplating a balance transfer in the future could've made an enquiry about whether this would be possible on an account that would no longer be open.*

*Having considered all the available information here, I think X should've read NewDay's communications and although I think NewDay's communication should've been clearer I'm not upholding this complaint.*

*My provisional decision*

*For the reasons I've given above, it's my provisional decision not to uphold this complaint. I'll look at anything else anyone wants to give me – so long as I get it before 27 November 2023.*

*Unless that information changes my mind, my final decision is likely to be as I've set out above.*

## **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.

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

I only received a response from X. X disagreed with my provisional decision and X's submission included:

- A belief that NewDay didn't act in an equitable way when managing the transfer. X says "NewDay applied different treatment to their customer base in so far as both 'opt in' and 'opt out' scenarios for continuing with the services were arbitrarily allocated to all accounts. So, there were unequal consequences for inaction for the customer base."
- Disagreement with my following comment which X considered to be "a slight against

*my character and my capabilities”:*

*‘However, although I understand why X feels X hasn’t been treated fairly, the fact is X didn’t read NewDay’s communications. So, even though I think NewDay should’ve been clearer about the implications of a closed account, including the inability to make a balance transfer, the same outcome would’ve still occurred even if they had modified and improved their communication’.*

This is because X believes an assumption was made *“that no matter how NewDay communicated, I would still not have read the email, and the same financial consequences would have followed”*. X added *“For ‘opt in’ customers, a simple industry standard heading for emails – [Action required] - would have clearly indicated that the email contained information regarding action required by customers”*.

- Disagreement that the email was a ‘reminder’ as the heading was *“X, not long before you switch to Pulse”*. X said *“There is no reminder there or a call to action. All it is communication is that soon I will be a customer with Pulse instead of NewDay”*.
- Pointed out *“The average person receives over 120 emails per day, it is not unreasonable to expect a business to clearly label actionable emails as to stand out, instead of using a subject line that implies no action is required. Additionally, account closure due to inaction did not come until the end of the email. Scanning the first few paragraphs would not lead to everyone to clearly understand that if you do not opt in – then your account is closed.”*
- Regarding my comment that *‘I considered and understood NewDay’s points, including that it is both inferred and industry practice that no transactions, including balance transfers, can be completed on a closed account’*, X points out that *“knowledge of such industry standards is not universal and is most visible to people and institutions within that industry. Therefore, assuming that the knowledge is universal results in treating the customers inequitably by not being transparent about the industry standard practice. Putting a heavier burden of responsibility on the customer to investigate those industry standards violates the principles of equality, diversity, and inclusion in practice, which all businesses are required to follow in their communication”*.
- Explained my provisional decision *“disproportionately impacts me by locking me into an account and high interest without ability to consolidate debt and pay it off”* and *“will affect me more than the business in both mental, physical, and financial sense. Especially, if you consider that other’s customers who did not have to act because of being in the ‘opt out’ scheme and not reading their emails are not facing the same consequences.”*
- Explained that the financial impact of the provisional decision was neither in X’s or NewDay’s best interest.

I considered all of X’s submission and reviewed the file again.

I don’t have full information on NewDay’s transition approach and it’s possible some customer didn’t have to opt in. However, that would be a commercial decision for NewDay and, in this particular case, I’m satisfied that X wasn’t singled out or treated in isolation here, as NewDay sent the same communications to a large number of Company A card holders requiring them to ‘opt in’. And my role is to consider if, when doing so, they treated X fairly

and reasonably. I should also point we aren't the regulator of the financial services industry which looks at business policy.

In X's submission, X focusses on NewDay's email, and I recognise the word "reminder" was at the start of the email rather than in the header. However, NewDay also sent X a letter and as X's preference was to receive information electronically and X's account was set up to view a letter electronically, they also made the letter available through this method. In addition, I've seen evidence that X's account was accessed online in the period the letter was sent out.

So, although I appreciate X didn't open the email or electronic letter, my comments that the same outcome would've still occurred if NewDay's communications content had been better, were in the context of NewDay communications not being viewed despite them sending it to X by several different methods some of which I think X would more likely than not have received.

I've seen the email NewDay sent to X and it was a reminder. Although I acknowledge X's points about email volumes and the header not highlighting a call for action, due to the email being a reminder and X thinking X would automatically be 'opted in', I don't think the switch was unfamiliar. So, as X was also actively using NewDay's credit card account I think X should've looked out for and viewed updates by all communication channels.

I appreciate X's points about account closure and agree that NewDay should've been clearer on the implications. However, although I think this, closure suggests a completion, or an ending, so I can understand the point NewDay make that it *"infers that the customer could not complete any further transactions"*. Also, NewDay's communications including frequently asked questions and they highlighted an enquiry line for customers requiring further information on account closure.

I recognise and am sympathetic to X's point about feeling locked into NewDay's interest rate. Although it is tentative suggestion, I think X should consider the following from NewDay or explore other similar options:

*"We advised X that an alternative could be to see if Y (the other bank) would provide the same promotional offer if the customer were to action a money transfer and then use the funds to clear the balance. NewDay has no influence on Y's ability to complete the balance transfer nor the agreeing to any alternatives"*.

I am also sympathetic to X's financial situation and the current and future impact on X. Whilst I understand the point X makes, that my provisional decision is *"not a palatable option for any interested party"*, I must point out that my role here is to be impartial and objective when considering a dispute that has been referred to our service.

I appreciate X will be disappointed but having considered all the above my final decision is to not uphold this complaint.

### **My final decision**

For the reasons given above, my final decision is that I'm not upholding this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 26 December 2023.

Paul Douglas  
**Ombudsman**