

The complaint

Mr D complains about NewDay Ltd making several service errors and unfairly applying a marker to Credit Reference Agencies (CRA's) when he complained.

What happened

I issued my provisional decision on 14 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 28 November 2023. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr D complains about NewDay Ltd making several service errors and unfairly applying a marker to Credit Reference Agencies (CRA's) when he complained.

What happened

NewDay were changing the credit card partnership from Company A to Company B and, in August 2022, they sent Mr D an update. Mr D received an alert from NewDay, on their on-line portal, informing him that an email was waiting for him in his account mailbox.

However, Mr D couldn't access this on either the NewDay app or website, so he made multiple calls between 16 August and 20 August 2022. Mr D says a NewDay agent explained what the message was about, and he made a request for a letter to be posted to him.

Mr D is dissatisfied that he didn't receive this letter until 29 September 2022. In addition, Mr D complained about the following:

- He feels an agent gave him on incorrect reward point information, saying he needed 10000 points rather than 1000 points to earn £10*
- He believes his credit score has decreased due to NewDay unfairly notifying CRA's with query markers*
- He is dissatisfied that refunds and compensation payments didn't reduce his direct debit payment*
- His complaints have been "bundled together under one reference"*

NewDay explained a technical problem had occurred and apologised for Mr D being unable to access their email. They also apologised for giving incorrect reward points information and offered Mr D £55 compensation. This compensation amount was later increased to £100.

Regarding the credit score issue, NewDay said "when a customer has an ongoing complaint

with us we report that the customer has a 'query' with us" and a "query marker is classed as neutral". And they told Mr D he would need to discuss this with the CRA's.

Mr D complained to our service and our investigator said NewDay should remove the query markers and increase their compensation to £350.

Mr D accepted this. However, NewDay disagreed and continued to apply markers. 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 also upholding this complaint, but I require NewDay to increase the amount of compensation and I'll explain why.

I should first explain that I can't tell a business to make alterations to their systems, services, procedures or processes including reporting. I say this because we aren't the regulator of the financial services industry. Also, it's not for this service to assess whether NewDay have breached the Equality Act 2010, as that's an issue for the courts.

Furthermore, as explained by our investigator, there are rules (known as DISP Rules) laid down by the Financial Conduct Authority which means complaint handling is not a regulated activity. So, specific complaints about how NewDay manage complaints, including how Mr D's complaints were "bundled together under one reference" can't be considered by our service.

However, what we can do is consider each individual case and, where we think a business hasn't acted fairly and reasonably in the circumstances, our role is to decide what should be done to put right any financial or non-financial losses that a consumer has experienced. So, we can ask a business to pay a proportionate level of redress.

NewDay accept they made some errors here. They have apologised and offered redress for the difficulties Mr D experienced accessing their email / letter and confirming reward points. So, I first considered a fair and reasonable amount of compensation for these two errors. Assessing compensation isn't an exact science and our approach when making awards for non-financial loss is detailed on our website and tends to be modest.

From reviewing the file I'm persuaded that Mr D couldn't access NewDay's letter, which contained important information, without receiving a hard copy. So, although Mr D received a summary of the contents, I can understand his request for a copy of the letter. Also, his anxiety, frustration and disappointment in having to wait approximately 5 weeks to receive it and subsequent discovery that it wasn't addressed properly. So, considering this and Mr D's time and trouble in requesting the letter, I think £100 is a fair and reasonable amount of compensation.

Regarding the incorrect reward points information from a NewDay representative, I'm not persuaded that this had a high impact on Mr D. But I can see how this caused Mr D additional frustration and a loss of confidence. So, I think NewDay should pay Mr D an additional £50 compensation.

I then looked closely at NewDay's reporting of query markers, to see if it was fair and reasonable for them to do so and whether the query markers had a detrimental impact upon Mr D's credit score.

As mentioned above, I can't tell NewDay what they should and shouldn't report. However, I can't see that it was fair and reasonable for them to make reports to the CRA's. This is because there was no dispute, merchant or payment issue, so I also can't see how the

raising of complaints about NewDay's service fits with the following definition that NewDay say guided their action:

"Where a query exists on an account, for example, a merchandise complaint or a dispute over a defaulted account, the record should be flagged with the letter 'Q' and a status of U or eight as appropriate for the term of the query."

Due to reporting by other businesses, I agree it isn't possible to say that NewDay's actions have directly impacted upon Mr D. However, as I consider this to be an error, I'm going to ask NewDay to reverse their reporting here.

As I don't think NewDay have treated Mr D fairly, I then further considered the impact of their action in order to assess a fair level of compensation for this error. From reviewing Mr D's submissions I'm persuaded this reporting caused Mr D a high level of inconvenience and distress over a number of months. Also, I'm persuaded that this issue, together with the other strands of his complaints, caused him considerable anxiety and his insomnia and other medical conditions to flare up.

In addition, I found that NewDay aggravated Mr D's distress. They incorrectly advised him that a fraud marker was present on his account rather than the above-mentioned query marker and then, having said they would lift the marker, they reapplied it. So, considering the aggravated distress together with the time and trouble NewDay caused Mr D, I think a fair and reasonable amount of compensation is £300.

Finally, I considered whether it was fair and reasonable of NewDay not to adjust Mr D's direct debit payment in light of their refunds and compensation payments. Having looked at NewDay's terms and conditions, I can't see that Mr D would know that either refunds or compensation wouldn't count towards monthly payments. And considering some of the examples Mr D has given, including where he paid more than the minimum balance, yet his direct debit wasn't collected, I can understand why Mr D feels NewDay have been inconsistent and unfair here. So, although I again can't instruct NewDay on this matter, I think they should also compensate Mr D and I think £50 is a fair and reasonable amount.

So, having considered all the above, I require NewDay to remove the CRA query markers and pay Mr D £500. The compensation breakdown for the five complaints strands is as follows:

- 1. Letter technical issue and delay in posting - £100*
- 2. Agent mis-advice on reward points - £50*
- 3. Application of query markers - £300*
- 4. Refunds and compensation payments not impacting on Mr D's direct debit payment - £50*
- 5. Complaints "bundled together under one reference" – no compensation*

My provisional decision

For the reasons I've given above, it's my provisional decision to uphold this complaint. I require NewDay Ltd to remove the query markers and pay Mr D £500 compensation less any amounts already paid.

I'll look at anything else anyone wants to give me – so long as I get it before 28 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 Mr D and NewDay the opportunity to provide any comments or new information they might wish me to consider, before I moved to a final decision.

Both Mr D and NewDay agreed to my provisional decision.

So, having reconsidered everything including the responses received, I see no reason to depart from my provisional decision, which I adopt in full as part of this final decision.

My final decision

My final decision is that I uphold this complaint. I require NewDay Ltd to remove the query markers and pay Mr D £500 compensation less any amounts already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 January 2024.

Paul Douglas
Ombudsman