

The complaint

Mr F complains NewDay Ltd trading as Fluid treated him unfairly in respect of a credit card account after he suffered financial difficulties due to health conditions.

What happened

Mr F holds a credit card account with NewDay. Unfortunately, due to physical and mental health conditions that at times impacted on his ability to work, Mr F found that he was struggling to meet all his financial obligations. So, in August 2023 Mr F contacted NewDay and expressed concerns about the affordability of this account and asked for it to be closed. He also offered a payment plan of £200pm to clear the balance.

NewDay agreed Mr F's proposed payment plan, but it didn't offer to freeze the interest that was being added to the balance. Mr F was unhappy at NewDay's response and made a formal complaint to it as he felt it had acted unfairly and in breach of FCA regulations. He requested that NewDay suspend any interest or other charges applied to the account and pay compensation for its handling of his account closure.

NewDay didn't uphold Mr F's complaint. It said that it didn't agree it hadn't followed the correct process or that it had breached its regulatory obligations towards Mr F. NewDay said that after Mr F had reached out to it in respect of the account, a member of the Customer Care Team had called him to get a better understanding of his circumstances. NewDay said that it had listened to a copy of that call as part of its investigation into Mr F's complaint.

NewDay said that Mr F had been asked by the agent during this call whether the payments were affordable, and Mr F hadn't raised any concerns that they wouldn't be or that maintaining these payments would cause him financial difficulties. It said Mr F had also been told that these payments would, in most cases, cover the contractual minimum due on the account. NewDay said it had set up the direct debit only after receiving Mr F's reassurances about being able to meet the payments and having repeatedly told him that he should get back in touch if he had any concerns about meeting these payments. It confirmed that if Mr F needed further support, then he should make contact with the Customer Care Team.

There followed some further email exchanges between Mr F and NewDay. Mr F became concerned that he couldn't meet the £200pm payments and requested that the payment plan be reduced to £100pm. Mr F says he found the contents of some of these emails from NewDay confusing and stressful. He was also unhappy that having asked NewDay's Customer Care Team to contact him only via email this was declined.

Mr F made a further complaint to NewDay as he said he believed it was not making reasonable adjustments for him in accordance with The Equality Act 2010. Mr F asked NewDay to agree to contact him via email only as per his request for a reasonable adjustment and to pay compensation for its failure in not doing so.

NewDay re-opened Mr F's first complaint and dealt with this issue. It said it disagreed that it had acted unfairly towards him by declining his request for email only contact.

New Day said that didn't agree it had failed to make reasonable adjustments for Mr F in line with requirements of The Equality Act. It said that the reason given by Mr F for the Customer Care Team to contact him via email had been due to his work environment. It said if Mr F provided a reason that was specific to his vulnerability that required it to make such adjustments, then it would consider this. NewDay said that it wasn't required to contact customers via email unless in exceptional circumstances and this was due to security concerns. It said the Customer Care Teams opening hours were flexible and Mr F could also use the online App.

NewDay confirmed it had accepted Mr F's new payment plan of £100pm and that this would, as he had asked, commence at the end of November 2023. It said a breathing space would be applied until then and no interest or charges would be applied.

Mr F was unhappy at NewDay's responses to both his complaints and contacted this service. Our investigator didn't recommend that his complaint to us should be upheld. He said he didn't think NewDay had made any errors in its processes or treated Mr F unfairly.

Our investigator said that closing a credit card account wouldn't mean interest and any charges stopped being added to the outstanding balance. And as NewDay had been satisfied there weren't any affordability issues for Mr F at the time he had requested the closure, then it hadn't acted unreasonably in not freezing the interest and charges at that time. He said that NewDay had also told Mr F if he had any financial concerns about making the payments then he should make contact.

Our investigator said he'd seen Mr F had emailed back to NewDay after re-evaluating his finances and offered £100pm instead. He described a number of email exchanges between Mr F and NewDay during which Mr F had asked for contact via email only, but NewDay had declined this request. Our investigator said he thought NewDay's responses about the use of email only had been fair reasonable. He said NewDay had offered Mr F alternative options for making contact.

In respect of the information provided by NewDay that Mr F said he had found confusing, our investigator said NewDay was under a duty to explain what may happen to an account if there was no payment plan or if payments were too low or stopped. So, it hadn't been contradictory to provide this in its correspondence with Mr F.

Mr F disagreed with our investigator's view. He said that it's due to his mental health issues and their impact, there were exceptional circumstances that should have been considered by NewDay in respect of making reasonable adjustments for contact with him to be via email only.

As the parties haven't reached agreement the complaint has been passed to me.

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.

Mr F says NewDay's has failed to make reasonable adjustments for him in respect of the way it and he communicate with each other. Mr F wanted NewDay to agree that the only method of contact would be via email as opposed to phone calls or letters to the Customer Care Team who are dealing with his account. He says NewDay unreasonably declined this request and had breached its duty to make this adjustment under the Equality Act.

While this has been the only area of his complaint on which Mr F says he doesn't accept our

investigator's view, I think it would be fair for me to consider all the issues Mr F raised about NewDay's handling of the account when making my decision

In August 2023 when Mr F made his first complaint to NewDay about its continued application of interest on the balance of his closed account, he also said that going forward he required contact to be made via email only. NewDay didn't uphold his complaint and wrote to him setting out why.

Looking at NewDay's decision, although interest may be frozen by a credit company for a customer who is experiencing changes to their financial situations, I can't reasonably say that here, by not doing so, NewDay has acted unfairly. Interest would normally be added to balance when an account has been closed.

I've seen that Mr F's offer of paying £200pm was actually in line with the account's contractual monthly minimum payment. Mr F had also reassured NewDay that this payment was affordable for him. And as Mr F was able to keep to the terms and conditions of the agreement in respect of the payment amount then I think NewDay acted reasonably in both accepting his offer and maintaining the interest rate. Particularly as if interest is frozen on an account, then that may have a negative impact on a consumer's credit file because the credit agreement is no longer operating as agreed under the terms and conditions. Here, I don't think NewDay was given a reason to consider that affordability was an issue for Mr F in clearing this balance and so by continuing to apply interest it wasn't acting unfairly towards him.

The final response letter from NewDay to Mr F asked him to contact its Customer Care Team if he was experiencing financial difficulties. This letter also provided the phone number and operating hours of that team which were wider than the general Customer Services Team. Customer Care was open six days a week up to 9pm Monday to Friday.

I've seen that Mr F emailed back on receiving this letter saying he had had problems with the Customers Service Team and that, on review, he wasn't able to afford the £200pm he had offered. He offered £100pm in its place. Mr F also asked again that contact be made via email only.

NewDay responded that Customer Care were actually a different team with a different role and that he should contact Customer Care to discuss his situation. NewDay said it couldn't see a reason why Mr F wasn't able to make contact via the phone. Mr F responded that it was due to his work environment that he couldn't call Customer Care. NewDay said that unfortunately contact couldn't be made directly by email but agreed to place a payment holiday on the account and any interest and charges would be suspended until December 2023. NewDay said this wouldn't impact on Mr F's credit file.

Mr F then sent a complaint via email to NewDay that it was failing to make reasonable adjustments for him. He explained again that due to his work environment he couldn't take or make calls and that when he was off-sick from work it wouldn't be appropriate to speak to NewDay on the phone. However, NewDay didn't uphold Mr F's second complaint. It explained that emails aren't considered a secure medium to discuss accounts and that it wasn't required to communicate via email unless in exceptional circumstances. NewDay said that Mr F hadn't set out why, due to his health conditions, that reasonable adjustments were needed but if he provided a specific reason then it would consider it.

Mr F says this refusal to communicate with him only via email is a breach of the Equality Act 2010. The Equality Act protects people who have protected characteristics from discrimination, harassment and victimisation. Protected characteristics include things like race, religion and health conditions. It places duties on businesses to ensure that their

services are accessible and, if reasonable, to make adjustments for people so that they can use their services.

When looking at Mr F's complaint, I take account of the relevant law, but I make decisions based on whether I think businesses have acted fairly and reasonably. I don't make findings that a business has breached the Equality Act as that would be for a court to decide.

Mr F has provided NewDay with some details about his health, its impact on him, his work situation and that he distrusts phone calls with NewDay's agents because of an earlier issue that was handled by Customer Services (and resolved). However, NewDay says it isn't required to offer email for communication unless exceptional circumstances apply, and it doesn't think Mr F has provided enough information to reach that bar. It says it would review this decision if Mr F provides a more detailed explanation as to the impact and difficulties arising from his health conditions. And looking at the information Mr F has currently provided, I don't think I can reasonably say Mr F has specified why, due to his personal circumstances, email is the only method of communication he can use. I think it's fair to say that this appears to be his preferred method of communication.

And while I accept it is frustrating for Mr F that NewDay hasn't agreed with his request, I've seen that it has offered Mr F other options. He can use the webchat function via the online app and/or post to communicate. Mr F has also raised his limited contactability as a reason why using the phone wouldn't work, but the phone line opening hours for the Customer Care Team are more flexible than the Customers Service Team which would appear to address some of those issues. It's the Customer Care Team who are handling his account. So, I'm satisfied that there are other ways that Mr F and NewDay can communicate with each other without it only being via email.

Mr F says NewDay's correspondence with him as caused him confusion and unnecessary stress which in turn as further impacted on his health conditions. He says he wasn't clear whether he was on a holiday plan and so has been paying the £100 per month as offered.

However, looking at the communications from NewDay, while I agree they contain a lot of information, I don't think they have been particularly unclear. For instance, setting out that statements will continue to be sent but he is not required to make the minimum payments and can ignore these. I also think it was clear that a payment holiday had been agreed (this was also confirmed in a separate letter). While I appreciate being advised that the account may be defaulted should a payment plan not be in place is worrying, it is information which NewDay is required to provide. I can't say that NewDay has said anything that isn't correct, or which was misleading to Mr F in its communications with him.

Going forward, NewDay is aware that Mr F is a vulnerable customer and while his account is up to date via an agreed payment plan it won't default it. It also won't seek to sell this debt on while it is still being handled by the Customer Care Team.

I'm sorry to have read about Mr F's struggles with his health conditions and that he has felt stressed and anxious by the way NewDay has handled this account. But although I appreciate this will be of disappointment to him, I can't reasonably say NewDay has acted unfairly or unreasonably towards him. And for the reasons given, I'm not upholding his complaint.

My final decision

For the reasons set out above I'm not upholding Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or

reject my decision before 27 August 2024.

Jocelyn Griffith
Ombudsman