

The complaint

Ms Y complains that NewDay Ltd, trading as Pulse Mastercard, continue to hold her liable for a debt which she considers to be settled.

Specifically, Ms Y says she made NewDay a full and final settlement offer, which it accepted by cashing her cheque. So, it shouldn't pursue her for any remaining balance.

What happened

Ms Y holds an account with NewDay.

On 4 July 2023, Ms Y wrote to NewDay with an offer of £107.89 – and enclosed a cheque for that amount – in full and final settlement of her outstanding balance. Ms Y's letter also set out that, should NewDay not accept the offer, the cheque should be returned to her.

NewDay cashed the cheque on 11 July, and it applied the amount to Ms Y's account. Shortly afterwards, over the course of the following weeks, NewDay continued to make contact with Ms Y about repayment of the remaining balance. Ms Y, under the impression that NewDay had accepted her offer in full and final settlement, was unhappy – so, she complained.

On 11 September, NewDay sent Ms Y its final response letter. Put briefly, it said that it didn't uphold Ms Y's complaint because it hadn't ever agreed to settle her account for the amount that she'd sent it. After some further correspondence from Ms Y, NewDay issued a second letter, on 23 September, reiterating its position.

Ms Y remained unhappy, so she contacted our Service for an independent review. An Investigator here looked at what had happened and, while he could understand Ms Y's view, he didn't think NewDay had done something wrong. Over the course of several interactions with Ms Y he said, in summary:

- Our Service is an informal alternative to the Courts, we cannot make comment on the legality of a firm's actions or, indeed, provide any legal opinion or judgement. Instead, our remit was to try and resolve disputes efficiently with minimal formality.
- NewDay hadn't ever agreed a settlement amount with Ms Y. While there had been prior correspondence about an acceptable figure, there was nothing to indicate that £107.89 had been agreed, or that anything had been agreed at all. In fact, that amount was lower than what NewDay had said would be acceptable.
- NewDay didn't have an obligation to return the cheque, and it hadn't done something wrong by applying the amount, as a partial payment, towards the outstanding balance.
- The terms and conditions, which Ms Y would've agreed to when opening her account, did set out that NewDay could still pursue the full amount outstanding – even if a part payment was marked as payment in full.

Ms Y disagreed with our Investigator, and she asked for an Ombudsman's decision. In response, she largely repeated her stance that NewDay had accepted a binding offer.

As no agreement has been reached, the complaint has now been passed to me to decide.

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.

At the outset, I'll say that it's clear to me just how strongly Ms Y feels about this matter. She's provided detailed submissions, explained her position at length and provided links to some internet research she's carried out on the subject of full and final settlements; and I thank her for taking the time to do so.

With that in mind, I think it's important to explain that I've expressed my findings in considerably less detail – and I haven't addressed each and every point. I certainly don't mean any discourtesy by that; our role is to be an informal service, so my approach here, in keeping things deliberately concise, is simply to align with that purpose.

I also think it's important to address Ms Y's summing up of her complaint. She's questioned, in response to our Investigator, as her summary of the issue: *"Did I or did I not make a legal transaction of 'offer and acceptance'?"*

Although I know Ms Y is aware of this already, while I'll take the law into account, my role here is to determine whether NewDay has acted fairly and reasonably in these specific circumstances. That's what, ultimately, my decision is based upon; more information about our remit can be found in the Dispute Resolution (DISP) Rules – as set out in the Financial Conduct Authority's Handbook – which govern our Service. Ms Y can view those rules online. And for reasons I'll go on to explain, I think NewDay has acted both fairly and reasonably here.

It's not in dispute that Ms Y did indeed set out, in both her covering letter and on the cheque itself, that her offer was made in full and final settlement of the debt. But the fact is that no agreement had been reached between the two parties, for £107.89 or, for that matter, any other amount. As a result, I don't think NewDay was obliged to accept the amount as settlement of the debt, and I don't think it would be reasonable of me to conclude that – in the act of cashing the cheque – NewDay waives its ability to take any further action.

Put simply, I'm not persuaded that writing "full and final settlement", or words to that effect, without first agreeing that a particular figure would suffice, allows Ms Y to extinguish the full debt here. Nor am I persuaded, for much the same reasons, that NewDay has unequivocally entered into a binding agreement by cashing the cheque, rather than returning it to Ms Y.

The terms and conditions which govern Ms Y's account do cover scenarios like this quite clearly. Specifically, those terms state:

"... We process payment automatically so if we accept a part payment marked "payment in full" or similar words, we may still claim the full amount outstanding."

I think that provides a clear view of how NewDay will treat part payments marked in such a way as Ms Y's. And I don't think that any conditions which Ms Y set herself, like the

statement written on her cheque and in her covering letter to NewDay, supersede those terms which she agreed to when she opened her credit card account.

In any event, broadly speaking, my view is that it's not inherently unreasonable of NewDay to ask a customer to repay what they've borrowed from it. Particularly if it hadn't reached any prior agreement to accept a lesser amount.

It may well be the case that a Court would reach a different conclusion here, taking into account relevant case law, precedent or other aspects. But as an Ombudsman, while I take the law into account, I'm not necessarily bound by it. Instead, as I've explained, I base my decision on what I consider to be fair and reasonable. And my view is that NewDay hasn't, in these circumstances, done something wrong.

It follows that I don't require NewDay to take any further action, and I don't uphold Ms Y's complaint.

My final decision

My final decision is that I don't uphold Ms Y's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Y to accept or reject my decision before 24 May 2024.

Simon Louth
Ombudsman