

## **The complaint**

Mr P complains that NewDay Ltd trading as Aqua (NewDay) has unfairly charged late payment and over the limit fees onto his credit card.

## **What happened**

Mr P had a credit card with NewDay. He said he struggled financially and by NewDay applying what he considered excessive over the limit fees and late payment charges they'd added to his difficulties. He complained to NewDay about the charges they added to his account as he feels this had financially deprived him.

NewDay said the fees were charged in line with their terms and conditions.

Mr P wasn't happy with NewDay's response and referred his complaint to us. He said the terms had been applied unfairly meaning he'd a financial loss of £336.

Our Investigator said the fees and charges applied by NewDay were in line with the credit agreement and had been applied correctly.

Mr P didn't agree and asked for the complaint to be referred to an ombudsman.

## **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.

I understand Mr P's frustration as he feels the charges and fees applied by Newday added to his financial difficulties. And were applied unfairly. But having done so I'm not upholding his complaint. I'll explain why.

As a note, I understand Mr P had brought a complaint to our service previously against NewDay about his credit card account. As an ombudsman has made a final decision about Mr P's complaint I won't comment on any aspects of that complaint. In my decision I will only be looking at Mr P's complaint about the fees and charges that NewDay applied.

I can see in the credit agreement terms and conditions Mr P would have agreed to when he opened the credit card account that the fees and charges are detailed in it. Section 5.2 says:

*"We will charge the following Default Fees if you break this agreement:*

- *Late Payment Fee: £12 each time your minimum payment is not made in full or is not made on time.*

- *Overlimit Fee: £12 when the balance of your account goes over your credit limit. You will be charged an overlimit fee each statement period that your balance stays over your credit limit....."*

And I can see the details of the fees are also clearly shown in each statement Mr P was sent

by NewDay. So, I think it's fair to say that Mr P should have known about these charges when he applied and had several opportunities from the first date the charges being made to when he told NewDay he was having financial difficulties, to have raised this.

Mr P has said the fees were excessive and unfairly applied. In April 2006, The Office of Fair Trading (OFT) said that credit card providers should ensure charges like the ones here are a fair reflection of the cost of extra administration involved in missing a payment or making it late. While The OFT didn't say specifically what a fair charge might be, it did say it wouldn't take further action if charges were set below £12. And following this, most credit card providers reduced their charges to £12. NewDay set their charges at £12, and that's what they've charged Mr P. So, I can't say their fees and charges were excessive as they are in line with the relevant guidance.

Mr P says NewDay had charged 17 over the limit fees and 11 late payment fees since October 2018, a total of £336. I've considered Mr P's payment history. From his statements and NewDay's records I can see Mr P had 12 over the limit fees of £12 each and six late payment fees of £12 each applied to his account, in total £216. A breakdown of the charges and fees and the date applied are detailed below and are reflective of Mr P's credit card statements.

Statement Date	Over-Limit Fee Charged	Date Applied	Fee	Late Fee Charged	Date Applied	Fee
07/10/2018	Yes	07/10/2018	£12	No	N/A	£0
05/11/2018	Yes	05/11/2018	£12	No	N/A	£0
05/12/2018	Yes	20/11/2018	£12	Yes	22/11/2018	£12
06/01/2019	Yes	06/01/2019	£12	No	N/A	£0
05/02/2019	Yes	05/02/2019	£12	No	N/A	£0
05/03/2019	Yes	20/02/2019	£12	Yes	22/02/2019	£12
07/04/2019	Yes	20/03/2019	£12	Yes	22/03/2019	£12
05/05/2019	Yes	05/05/2019	£12	No	N/A	£0
05/06/2019	Yes	05/06/2019	£12	No	N/A	£0
07/07/2019	Yes	20/06/2019	£12	Yes	24/06/2019	£12
05/08/2019	Yes	22/07/2019	£12	Yes	24/07/2019	£12
05/09/2019	Yes	20/08/2019	£12	Yes	22/08/2019	£12
06/10/2019	No	N/A	N/A	No	N/A	N/A
05/11/2019	No	N/A	N/A	No	N/A	N/A
05/12/2019	No	N/A	N/A	No	N/A	N/A
05/01/2020	No	N/A	N/A	No	N/A	N/A
<b>Total Over-Limit</b>			<b>£144</b>		<b>Total Late</b>	<b>£72</b>

From the statements I can also see that the charges and fees were applied when Mr P was over his credit limit or was late in making his contractual payment or both. So, I'm satisfied these have been charged fairly and in line with NewDay's agreed terms and conditions.

I can see that Mr P made NewDay aware in August 2019 that he was struggling financially. The Consumer Credit sourcebook says a lender should treat a borrower who is in arrears

with forbearance and consideration. An example of which is considering suspending, reducing, waiving or cancelling any further interest or charges. I can see from Mr P's credit card statements for October, November, December 2019 and January 2020 that NewDay didn't add any further interest, charges or fees. So, overall I'm satisfied that NewDay acted fairly. I know that my decision will disappoint Mr P but as I don't think NewDay has acted unfairly I can't ask them to do anything more.

I understand NewDay sold Mr P's debt in January 2020.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 20 November 2024.

Anne Scarr  
**Ombudsman**