

The complaint

Mr C complains NewDay Ltd unreasonably terminated his credit card agreement.

What happened

Mr C says he was unable to access his Aqua credit card account online in 2022 and that he was therefore unable to keep up to date with the account. Contractual monthly payments were missed from August 2022 which led to NewDay terminating the agreement in November 2022. While there is an outstanding balance to be paid NewDay has kept the agreement open to facilitate payments to the account, and it has reported the account as active to Credit Reference Agencies (CRAs).

Mr C says he didn't receive notices sent by NewDay informing him that payments weren't being made in line with his agreement; and that the account would be terminated if it wasn't brought up to date.

Mr C complained to NewDay and it issued a final response in November 2022 not upholding his complaint. Mr C complained to NewDay again in December 2023 and it issued a further final response in January 2024. NewDay has said it terminated Mr C's account in line with the terms and conditions of his credit agreement; and that it had sent Mr C letters in September, October and November 2022 detailing the account status and the action that would be taken in the account wasn't brought up to date.

Mr C brought his complaint to our service; NewDay consented to our review of the case.

Our investigator considered the available evidence and didn't uphold the complaint. He said NewDay had reasonably made Mr C aware of the status of his account and what would happen if payments weren't made. As such he concluded NewDay hadn't acted unreasonably by terminating the credit agreement in November 2022.

NewDay didn't respond to our investigator's view; Mr C responded and didn't accept it. In summary he maintained his position and said:

- NewDay didn't support him in regaining online access to his account in 2022
- The letters sent in September, October and November 2022 setting out the status of his account and the action that would be taken if the account wasn't brought up to date weren't received. Mr C suggests as NewDay can't evidence the letters were received the law deems the correspondence as not being sent
- NewDay continued to add interest and charges to his account after it had been terminated; and that this all happened while he had an ongoing complaint

Mr C wants NewDay to reinstate his account, or close it and report it as such to CRAs, and pay compensation.

Mr C asked for an ombudsman's review, so the complaint's 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.

Having done so I've reached the same outcome as our investigator, for broadly the same reasons. I appreciate this will be disappointing to Mr C.

The information in this case is well known to Mr C and NewDay so I don't intend to repeat it in detail here. I'd like to assure Mr C and NewDay that I've carefully reviewed all of the evidence on file, but I've focused my decision on what I consider to be the key points of this complaint. I don't mean to be discourteous by taking this approach, but this simply reflects the informal nature of our service.

Mr C says in around mid-2022 he was unable access his account online and therefore effectively manage his account. He's said he didn't know the status of his account and was unable to review his statements. Mr C has also said he was unsuccessful in resolving his online access during phone calls with NewDay, and that he was unable to receive details about his account over the phone.

I acknowledge Mr C has set out that his preference to manage his account is online; and that he wanted to review transactions on the account before making his monthly payments, to ensure there was no fraudulent activity. I can understand not having access to his account online will have been inconvenient; especially as his monthly statements were generated online. But it is still Mr C's responsibility to maintain his contractual monthly payments to his account, in line with his credit agreement.

I say this because the terms and condition relevant to the account state under the heading '*Where do you find out about payments made to and from your account?*':

'You must make the contractual minimum payment due each month even if you do not receive a statement for any reason or have not accessed your statement online. In these cases you must contact us to find out the contractual minimum payment due that month.'

So, while Mr C may not have had the ability to review his statements online, and therefore review the minimum payment due each month, I consider it reasonable to suggest he was aware that he needed to make some level of payment each month in line with his obligations under the credit agreement.

Mr C has said he was unable to discuss his account on the phone when he couldn't access it online; and that NewDay didn't support him in regaining his online access. NewDay hasn't been able to provide our service with calls dating back this far. So, while I don't doubt Mr C's testimony about what happened during the calls in 2022, I can't be certain what was discussed, and I therefore can't safely conclude Mr C's online access wasn't restored due to NewDay's actions (or inactions). But I've seen Mr C was able to restore online access to his account in January 2023. I also consider, on balance, it more likely than not that NewDay would have been able provide Mr C with information about the account, including its status and what monthly payments were contractually required, during a call if he'd passed its required security procedures. So, Mr C would have been able to discuss transactions and details about minimum payments required.

I've seen Mr C's monthly payments had historically been paid by direct debit, so there was no need for Mr C to have manually made payments. In July 2022 Mr C's direct debit was returned unpaid. Mr C appears to have made a manual payment a couple of days later to cover the missed payment, suggesting he was aware there was an issue with his payment

method. But from August 2022 onwards when Mr C's direct debits continued to be returned unpaid Mr C made no alternative arrangements to cover the missed payments. I've seen NewDay continued to send Mr C his monthly statements setting out the position of the account and the action needed to bring it back up to date, although I acknowledge Mr C didn't have sight of these. But as I've found above, that doesn't remove Mr C's responsibility to ensure he made the monthly contractual payments.

Referring to the terms and condition of the account under the heading titled '*Can we refuse to authorise a transaction, suspend your account or decrease your credit limit?*' the terms and conditions also state:

'We may refuse to authorise a transaction or reissue a replacement card, or we may cancel or suspend your use of the account or reduce your credit limit if not doing so would put us in breach of any legal requirements that apply to us or we reasonably:

- believe that there is an increased risk that you may not be able to repay the amount you owe us (this could be because of the way you manage this account or other accounts you have with us...)*

So, the terms and conditions of Mr C's credit agreement provide for situations where it may cancel or terminate an account. I've therefore gone on to consider if NewDay acted reasonably when terminating Mr C's account; and how it has reported it to CRAs since.

NewDay sent Mr C a letter in September 2022 setting out the arrears status of the account and the action needed to bring the account up to date. NewDay sent Mr C a default notice in October 2022 again setting out the action needed to prevent the account from being terminated. NewDay wrote to Mr C in November 2022 explaining it had terminated the account as no payments had been received.

Mr C says he didn't receive the letters NewDay sent about his account; and as he had no access to view his account online, he was unaware of its status.

NewDay has provided a log of the letters sent on Mr C's account; and has confirmed correspondence of this nature is sent by post to customers, rather than by email or online, even though that was Mr C's preferred method to receive correspondence. There's no suggestion within what I've seen that these letters were incorrectly addressed to Mr C.

Taking the above into account, I consider it more likely, on balance, that these letters were sent by NewDay to the correspondence address it held for Mr C in 2022. I consider this is further supported as contact notes from 2023 detail returned correspondence from Mr C's address – suggesting he was no longer at the address NewDay held from some point in 2023. Later contact notes appear to confirm this and that Mr C had refused to provide NewDay with his updated address details when requested.

It therefore follows I consider NewDay met its obligations by reasonably ensuring Mr C was made aware of the status of the account and possible consequences should it not be brought back in line with the credit agreement.

Although Mr C says these letters weren't received, contact notes from September and October 2022 suggest Mr C was aware of the status of his account in any event. I say this because in September 2022 Mr C looked to complain about fees and charges on his account. The notes from October 2022 specifically reference Mr C being told that the account was with NewDay's collections department; and therefore suggesting the account wasn't being maintained in line with the credit agreement.

So, based on what I've set out above, I don't consider NewDay acted unreasonably when terminating Mr C's account in November 2022.

NewDay has confirmed by terminated Mr C's credit agreement it prevented further use of the credit facility. But the account is still active to facilitate payments to be credited to clear the outstanding balance, and Mr C has been making payments. So, while there's an outstanding balance and Mr C is actively making payments to clear it, I don't consider it's unreasonable for the account to remain active; and for NewDay to report it as active to CRAs.

Mr C has referred to a number of service issues as part of complaint, including when he was looking to resolve his online access to his account in 2022, NewDay terminating his account while he had an ongoing complaint, and it continuing to charge interest and fees.

Having reviewed the evidence available to me I've not seen anything which leads me to conclude NewDay has acted unreasonably in relation to these matters.

So, for the reasons set out above, I don't consider NewDay needs to take any further action in resolution of this complaint.

Mr C has told us, in a recent email from November 2024, that he has experienced problems when calling NewDay to look to make payment to the outstanding balance. As this is a new issue it's not something I will comment on within this decision; but I would set out to NewDay that it needs to reasonably engage with Mr C when looking to recover the outstanding balance on the account.

My final decision

My final decision is that I'm not upholding Mr C's complaint about NewDay Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 January 2025.

Richard Turner
Ombudsman