

The complaint

Mr B complains that NewDay Ltd trading as John Lewis Partnership Card ('NewDay') unfairly recorded query markers ('markers') on his credit file when he raised a complaint.

What happened

The background to this complaint was set out in my provisional decision dated 7 October 2024, which was as follows:

Mr B made a claim under Section 75 of the Consumer Credit Act 1974 ('CCA') against NewDay. NewDay declined Mr B's claim and he complained (the 'section 75 complaint').

NewDay said as part of its process when a complaint is raised, a flag is applied to the consumer's account to ensure that other areas of its business are aware that there is a complex query under review. And this is reported as such to credit reference agencies, which in this case were Experian, Equifax, and TransUnion. NewDay explained this will then show as a 'Q' (query) or a 'U' (unclassified) marker (I will refer to both as 'markers') on a customer's credit file. NewDay said it updates the relevant credit reference agencies once the complaint is fully investigated and closed. At this point, the marker is removed.

As a result of Mr B's section 75 complaint, there was a marker added to his credit file by NewDay in April 2023. In May 2023, NewDay issued a final response which upheld the section 75 complaint in part and offered Mr B £50 in compensation – the £50 compensation for the section 75 complaint was subsequently added to Mr B's credit card account by NewDay. When Mr B escalated his section 75 complaint to the Financial Ombudsman, the marker was reapplied by NewDay to his credit file. And this was only removed by it in December 2023 when an Ombudsman's decision was issued on the matter.

Whilst his section 75 complaint was ongoing, Mr B made a separate complaint about the markers that were added to his credit file. He considered these markers were having a negative impact on his credit score. He also considered the £50 compensation added to his account for the section 75 complaint, which was showing as a 'minus' figure, was impacting negatively on his credit profile. NewDay applied markers once again to Mr B's credit file following his complaint and these have been showing on his credit file since January 2024.

NewDay rejected Mr B's complaint about the markers. So, Mr B referred his complaint to us.

As part of his submissions, Mr B told us that between September and February 2024, his credit score dropped, which he considered was a direct result of NewDay's reporting of his complaints. He did, however, say his credit score increased again from the end of February 2024. Mr B also noted one credit report contained a 'red hexagon' symbol which indicated a missed payment or another negative status in relation to at least one of his credit agreements. He thought this red symbol had been added to his credit profile as a result of NewDay's reporting.

Our investigator looked into Mr B's complaint but was not persuaded that NewDay had acted unfairly. Mr B disagreed. He provided a credit report showing that markers were still being reported to credit reference agencies by NewDay as of April 2024. And he considered these markers were 'ruining' his credit score. Mr B asked for an Ombudsman to review the matter.

As noted above, when the matter was passed to me, I issued a provisional decision. I upheld the complaint and the reasons for doing so are set out below. Neither party responded to my provisional decision.

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 reconsidered everything, I remain of the view that the complaint should be upheld for the same reasons as set out in my provisional decision, which are as follows:

I did ask for further information from NewDay but to date, it has not replied. However, on reflection I'm satisfied I have enough evidence to make a decision without the further information I requested. I will also note here that whilst Mr B has raised issues about the merits of the section 75 complaint, I will not be making any comment on this case as it has been finalised by another Ombudsman.

In terms of the reporting of the £50 compensation, I can see that this was showing on Mr B's credit file for several months between May and October 2023 as a minus figure. This concerned Mr B as he considered it was an outstanding payment rather than a compensation payment. However, when a credit card account shows a balance below zero it means the credit card company owes the customer money rather than the other way round. And when Mr B's compensation was paid, he had a zero balance, so when the £50 compensation payment was added to his account, it showed a minus figure. Therefore, I am satisfied NewDay hasn't done anything wrong here.

In respect of the way NewDay was reporting Mr B's complaints to credit reference agencies, in its submissions to us it said it was required to report *any* complaint raised by customers. It says this stems from guidance NewDay follows which is issued by the Steering Committee on Reciprocity ('SCOR'). This is a forum made up of representatives from the credit industry including credit reference agencies. NewDay also says it follows the Credit Account Information Sharing ('CAIS') guidance. CAIS is a database run by Experian, which is one of the credit reference agencies used by NewDay. According to Experian CAIS is also governed by SCOR.

In terms of the SCOR's 'Principles of Reciprocity' ('Principles') the main thrust of this is that data is only shared for: *"the prevention of over-commitment, bad debt, fraud and money laundering and to support debt recovery, debtor tracing or to avoid irresponsible lending."* Experian gives some examples of the purpose of the data sharing via CAIS, which as I've said, is based around the Principles, as: *"to help lenders make lending decisions by reviewing financial obligations, identifying consumers with an adverse credit history or make appropriate recovery decisions."*

Looking at Mr B's particular situation, he made a section 75 claim. In brief, section 75 of CCA offers consumers protection when there has been a breach of contract and/or misrepresentation by a retailer or trader by making the credit card company jointly and severally liable for any contractual breaches. Following his section 75 claim, Mr B then made a complaint about NewDay's decision, which as I said, was considered as a separate complaint (i.e. the section 75 complaint).

In my view, in terms of the reporting of the section 75 complaint to credit reference agencies, I don't think this fell within the Principles which NewDay says it was applying in Mr B's case. These Principles which are reinforced by CAIS' guidance, suggests that data submitted by businesses, such as NewDay, to credit reference agencies, is broadly focused on identifying information about debt, repayment history and so on. This is so the creditworthiness of each customer can be established. The section 75 complaint wasn't dealing with any of these issues. And there was no suggestion that NewDay was reporting this matter in order to prevent fraud or money laundering which are other examples given by SCOR. Therefore, I do not think it was fair or reasonable for NewDay to report a marker on Mr B's credit file in relation to the section 75 complaint which went on for several months.

Similarly, I think NewDay has acted unfairly and unreasonably by recording markers for complaints Mr B has made about these markers being added to his credit file. I see no fair and reasonable reason for reporting a complaint of this nature to credit reference agencies.

I appreciate there will be circumstances where it may be appropriate for NewDay to use relevant markers for the type of complaints set out above. I am not seeking to interfere with its policies. NewDay is entitled to make a business decision on what it reports to credit reference agencies. But where a business strictly follows its policies and procedures it can lead to an unfair outcome on an individual consumer. In my view, by applying a blanket policy in reporting Mr B's complaints NewDay failed to treat him fairly.

In terms of the impact NewDay's actions have had on Mr B's credit score, he says that between September and December 2023 his credit score was 875. And this represented a drop from where it was before. He says that from January up until 23 February 2023, his credit score dropped even further to 738. And from 23 February 2024 it had risen to 947 which he says is where it should have been for all of 2023 but he says due to the 'negative' reporting by NewDay, he thinks his credit score was 'irreparably damaged'.

I have taken on board what Mr B says about the impact of markers on his credit profile including the 'red hexagon' symbol appearing on one of his credit reports. But I have to take into account here that there can be many reasons why a credit score can decline. And, while I can understand why the issues affecting Mr B caused him great concern, I have not seen enough to show the reduction he says he experienced in 2023 was caused due to the markers NewDay recorded. This is particularly the case given his credit score increased in February 2024 whilst the markers remained on his credit file. I also haven't seen any evidence which demonstrates that Mr B's ability to obtain credit has been compromised. Or that he has suffered financial loss as a result of NewDay's actions.

All in all, I am not satisfied that NewDay's actions impacted on Mr B in the way he is suggesting such as his credit profile being 'irreparably damaged'. But I do think that the recording of the markers has caused Mr B a degree of distress and inconvenience due to, for example, him having to make enquires about them and for the length of time they've remained on his file. I'm satisfied an award of £150 fairly reflects the impact he has suffered.

My final decision

My final decision is that I am upholding this complaint. To put things right NewDay Ltd trading as John Lewis Partnership Card must:

- Remove the markers which are the subject matter of this complaint, from Mr B's credit file.
- Pay Mr B £150 for the distress and inconvenience he has been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 December 2024.

.

Yolande Mcleod
Ombudsman