

## **The complaint**

Mr S complains that NewDay Ltd erroneously accepted a fraudulent credit card application made in his name without his knowledge or consent, which has caused him financial loss and distress and inconvenience.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat everything here. But in summary and based on the submissions of both parties, I understand it to be as follows.

In September and October 2022 Mr S and his partner had a mortgage agreement in principle ("AIP") from a third-party bank, "Bank H". Mr S and his partner consequently made an offer for their "dream house", which would get them on the property ladder, that was accepted by the vendor in early October 2022. Despite the AIP from Bank H, Mr S and his partner then couldn't get the mortgage properly agreed, and the vendor pulled out of the sale on or around 11 October 2022.

Mr S and his partner checked their credit reports and asked their mortgage adviser about things. The mortgage adviser emailed them on 10 October 2022 indicating the failed mortgage application could be due to a number of reasons.

Mr S found that whilst his partner's credit score hadn't materially changed since when the AIP was agreed, his had: with his prior credit score of 854 out of 1,000 now down, on 11 October 2022, to 630 out of 1,000. Believing the failed mortgage application was therefore caused by the drop in his credit score, Mr S looked into why his credit score had fallen. On his credit file he found a default recorded by a debt recovery company (which wasn't previously on his report). Mr S contacted the company which told him it had bought the debt from NewDay, so Mr S contacted NewDay. Ultimately it was then agreed between Mr S and NewDay that the default on Mr S's credit file concerned a NewDay credit card taken out in Mr S's name in February 2022 without Mr S's knowledge or consent. NewDay consequently decided that it wouldn't hold Mr S responsible for the credit card application or debt, and that it'd take steps to make sure his credit status would be corrected.

I understand that whilst Mr S has said that his credit score was then restored back to 841 out of 1,000 by 14 January 2023, he and his partner encountered further delay and trouble securing the mortgage they'd originally hoped to take out in October 2022. First, it was recommended they wait until February 2023 before they reapplied, to give time for Mr S's updated credit score to show on the relevant systems. And then, when they did reapply in February 2023, the application again failed - this time, Mr S said, because of incorrect information on his credit file with TransUnion.

Corrections were then made by TransUnion and Mr S and his partner were then able to obtain a mortgage with Bank H on 30 June 2023 at a rate of 4.69% fixed for five years. But Mr S was unhappy with how NewDay and TransUnion dealt with things, so he referred complaints to us about them. I understand that Mr S's complaint about TransUnion was resolved at our service in 2023 when Mr S and TransUnion agreed to settle that complaint

informally (without the need for an Ombudsman's decision) on the basis that TransUnion pay Mr S compensation of £350. But our Investigator was unable to informally resolve Mr S's complaint about NewDay, so this case has been passed to me for a decision.

I sent Mr S and NewDay my provisional decision on 16 January 2025. Now both parties have had fair opportunity to respond, I'm ready to explain my final 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.

NewDay has said it accepts my provisional decision. Mr S responded to my provisional decision and said, in summary, that he thought more weight should be given to his and his family's stress and medical troubles. He also said that nothing has been mentioned about any actions taken by NewDay to avoid the same thing happening to other people, and he's asked me to ask NewDay to provide a letter about this. But having reviewed everything again, I haven't seen any reason to depart from my provisional decision. I explained in my provisional decision why I considered £600 compensation to be fair and reasonable. Mr S's points haven't changed my mind. It may also help for Mr S to understand that our service doesn't regulate NewDay; so it's not for me to direct NewDay to write to Mr S about any steps it may or may not be taking to address fraud – that is a matter for NewDay and its regulator, and here I can only decide what's fair in respect to this particular case. Having done so, I see no reason to depart from my provisional decision – having reviewed everything again, I've reached the same conclusions and for the same reasons. I've explained my reasons again below.

I've decided to uphold this complaint in part. I think NewDay has caused Mr S unnecessary distress and inconvenience and that compensation of £600 is warranted for this. But I'm not persuaded it would be fair to tell NewDay to pay Mr S compensation for the financial losses he says are a consequence of his mortgage being delayed. I'll explain why.

### Consequential losses

I understand that Mr S has said that the erroneous NewDay credit card default meant he couldn't get the mortgage in October 2022, which meant that he missed out on his "dream house" and instead ended up having to borrow a lesser amount in June 2023 and at a higher interest rate than he otherwise would have got in October 2022 (but for the erroneous default).

To make an award for consequential losses, I need to be persuaded that failings on NewDay's part actually caused the losses Mr S is seeking compensation for *and* that it would be fair to hold NewDay responsible for these losses, bearing in mind such things as whether NewDay could reasonably foresee that its failings would result in losses like this; in other words, I'd need to be satisfied that the losses weren't too remote from NewDay's failings.

The first question is, therefore, am I satisfied that NewDay's acts or omissions unfairly resulted in the NewDay credit card being taken out fraudulently in Mr S's name? My answer to this question is yes. I understand it's not disputed by the parties that the NewDay credit card was taken out fraudulently by a third party in Mr S's name without his knowledge or consent. It wouldn't automatically follow from this that NewDay did anything wrong – it's not reasonable to expect NewDay to be able to prevent every single instance of credit card impersonation fraud. However, NewDay has told us that it did make an error in accepting this application.

Since I'm satisfied that NewDay's acts or omissions did unfairly result in this credit card being fraudulently taken out in Mr S's name, the next question is: did the erroneous NewDay credit card default actually cause Mr S's October 2022 mortgage application to fail resulting in the financial losses Mr S is seeking compensation for?

I've thought about this question carefully and I think the answer to this question is no. In saying this, I accept that the NewDay credit card default would most likely have prevented Mr S's October 2022 mortgage application being successful. However, that is not automatically the same thing as saying Mr S's October 2022 mortgage application would have been successful but for the NewDay credit card default.

I say this because an AIP isn't a guarantee that a mortgage application will succeed; circumstances can change; and a mortgage application will require fuller checks than an AIP. Mr S's mortgage adviser, in an email dated 10 October 2022, said the AIP was already probably borderline and this seems to have been based on the premise that Bank H appeared to be the only available potential option, and Mr S's self-employed status for just one year was noted.

But in any case, however, what Mr S may have forgotten, or may not have realised at the time, is that the September and October 2022 period ended up being an incredibly turbulent time for mortgages. The UK's "mini-budget" of September 2022 had just happened, and there is information about this available in the public domain that Mr S may wish to refer to.

The Moneyfacts September 2022 issue's front page noted, *"Prospective borrowers may need to move swiftly... the Moneyfacts UK Mortgage Trends Treasury Report shows that the average length of time for which mortgages remain on the market has plummeted to a new record low"*. The Moneyfacts October 2022 issue's front page noted, *"Last month's comment started with a warning that 'Prospective borrowers may need to move swiftly...with a new mortgage deal'. Events of the last couple of weeks mean that those words do not do the current situation justice. Data from the latest Moneyfacts UK Mortgage Trends Treasury Report shows that mortgage borrowers already faced diminishing choice and rising rates... However, following the Government's Mini Budget targeting tax cuts and the wild swings on currency markets that saw the pound fall to a record low against the dollar, lenders have rushed to withdraw and reprice mortgages following a steep rise in UK gilt yields. This chaos led the Treasury to issue a statement pledging to set out its approach to managing the public finances, followed minutes later by the Bank of England saying it was watching markets carefully and wouldn't hesitate to increase rates at its next meeting, following speculation it might intervene sooner. Markets now expect rates to rise sharply in the coming months, with some predicting a Base Rate high of 6% next spring."*

What I am saying is that at the exact time Mr S was looking to turn his AIP into a full mortgage offer in October 2022, mortgage providers were rushing to withdraw and reprice mortgages, at a really turbulent time as can be seen from historic information in the public domain. Mr S has indicated he thought he was looking at an interest rate of around 3.94%, but the information I've seen suggests that by the time he applied to turn his AIP into the full mortgage offer, this would have changed, with lenders already pricing in expected base rate rises in the forthcoming months. Moneyfacts shows that in October 2022 Bank H's rates climbed with them by November 2022 being in the 6% region.

Bearing everything I've said in mind, it seems to me that it's most likely Mr S would have had trouble obtaining the mortgage in October 2022 even if the NewDay default wasn't showing. Moving from an accepted offer on a property to full completion including with the appropriate mortgage in place can be less than straightforward at the best of times. There are many reasons why things might not go to plan. But in this case, not only were the normal

uncertainties in play, but mortgage providers were rushing to withdraw products, mortgage interest rates were being increased at some pace, and bearing in mind what the mortgage adviser said about Bank H being the only available lender and Mr S's self-employed status for just one year, I am not persuaded that, but for the NewDay default, things would have been different. Furthermore, Mr S has confirmed his credit score was fixed in January 2023. I appreciate Mr S appears to then have had some trouble with TransUnion. But I understand other credit agencies didn't do what TransUnion did, so I don't think I can say NewDay should be blamed for what TransUnion did. So overall, for the reasons explained, I'm not persuaded I can fairly hold NewDay responsible for the consequential losses Mr S has sought to claim in this case.

### Distress and inconvenience

With the above said, Mr S has said he's suffered significant distress and inconvenience because he missed out on buying the property he wanted, and the delay in being able to move meant he and his partner had to continue to live in accommodation which he's said was crowded and had issues such as dampness, and he's sent us evidence supporting health conditions his family suffered from which made things very difficult. But I've already explained why I don't think NewDay's error actually is the proximate cause of the delay in the AIP being turned into a full mortgage offer. Also Mr S's partner isn't an eligible complainant about NewDay here, and I can't award compensation to Mr S for distress and inconvenience caused to his partner or family. However, I can award compensation to Mr S for distress and inconvenience he has suffered as a result of his family suffering. But in any event, it's clear this would have been a stressful period for Mr S. NewDay should never have made the mistake it did in February 2022 that enabled the NewDay credit card default to appear in Mr S's name. This default, which really ought never to have arisen, would have caused significant concern at a time where Mr S was committed to move and to move quickly, and given all the surrounding circumstances at the time, I think it would be fair for NewDay to pay Mr S £600 for the distress and inconvenience caused.

### **My final decision**

For the reasons explained, I uphold this complaint only in part, and I direct NewDay Ltd to pay Mr S £600.

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

Neil Bridge  
**Ombudsman**