

**complaint**

Mr E complains that NewDay Ltd unfairly charged late payment fees to his credit card account and then registered a default on his credit file. As a result his mortgage application was declined.

## **background**

In October 2017 Mr E took out a NewDay credit card during an online purchase. He made two small purchases with it. He says he tried to set up repayments by direct debit online with NewDay but that option wasn't available. He said he rang NewDay to set up repayments by phone but couldn't get through. He therefore didn't make his first repayment and NewDay added a late payment charge.

In January 2018 Mr E rang NewDay and paid the sum he owed for his purchases, but disputed the late payment charges. He also tried to close the account, but NewDay wouldn't allow this. As Mr E's account continued to show a balance, and he made no more repayments, late payment charges continued to accumulate.

NewDay sent regular letters to Mr E about his balance and the fact that he wasn't making the necessary minimum repayments. These letters included contact phone numbers so that he could discuss any financial difficulties he might be having. They also included contact details for debt advice organisations.

After some months NewDay sent Mr E a statutory default notice, and when he failed to respond to that within the stated time period, NewDay registered a default on his credit file and sold his debt to a third party.

Having complained initially to NewDay Mr E then complained to us.

Our adjudicator didn't think Mr E's complaint should be upheld. She commented that although Mr E had said he didn't receive his account statements by post, and therefore didn't know he had an outstanding balance, she could see that he had accessed his account online in December 2017. His statements were available on the account and showed his outstanding balance. Furthermore, having used his card for purchases he should reasonably have known that he would be expected to make a repayment.

And although Mr E had said the website hadn't allowed him to set up direct debit repayments, our adjudicator said that it did include a direct debit option. But in any event there were a number of other repayment mechanisms open to Mr E.

Subsequently, when Mr E failed to respond to any of the repayment reminders sent by NewDay, the business issued a default notice and then recoded a default on Mr E's credit reference file. Having considered all that had happened here our adjudicator didn't think that NewDay had done anything wrong.

Mr E asked for an ombudsman's decision. He said that the default had been unfairly recorded by NewDay and had resulted in his mortgage application being refused. The consequences of the default had therefore been severe and disproportionate.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The terms and conditions attached to credit card accounts require card holders to make minimum repayments by the due date. If they do not then late payment fees will be incurred.

Having taken out a NewDay credit card and made two small purchases with it, it was incumbent on Mr E to ensure that he repaid the minimum sum required each month. Mr E said he tried unsuccessfully to set up a direct debit on the website, and to ring NewDay. But whilst I accept that he may indeed have done so the fact that he wasn't successful doesn't absolve him from the responsibility to pay what he owed. The website lists alternative ways that customers can make repayments and Mr E should have pursued one of these.

Having failed to make the minimum repayment by the due date NewDay applied a late payment charge to the account, which it was entitled to do based on the account terms and conditions. Mr E believed that this had been unfairly applied and although he paid off the purchase element of the outstanding balance he refused to pay the late payment charge and complained to NewDay.

As he made no further repayments he inevitably continued to incur monthly late payment charges. NewDay wrote regularly about the non-payment and suggested that he rang them to discuss help that might be available if he was in financial difficulty. After some months NewDay sent Mr E a default notice giving him 28 days to take action. But he didn't and a default was recorded on his credit file. NewDay also sold the debt to a third party.

Having considered the detail of what happened here I'm afraid that I cannot conclude that NewDay has done anything wrong. Mr E didn't make the necessary repayments and so late fees were validly applied. As this situation continued his account was defaulted. I note however that NewDay agreed to refund two late payment fees, which it was not required to do.

Mr E believes the default on his credit file prevented him from getting a mortgage. This may be true although mortgage companies take a range of factors into account in determining whether to approve an application. Although I am sorry about this, and about the possible adverse implications of the default on any future applications Mr E may make for credit, I'm afraid that I cannot reasonably conclude that NewDay has done anything wrong here.

### **my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 23 May 2019.

June Brown  
**ombudsman**