

complaint

Mr C says NewDay Limited, trading as Aqua, has treated him unfairly in relation to his credit card debt.

Background

Earlier this month I issued a provisional decision saying that I was minded to uphold the complaint and suggesting NewDay paid Mr C £350 in distress and inconvenience. I invited both parties to let me have any further submissions before I reached my final decision. Both parties have responded and both have agreed to my position.

My findings

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

Considering the respective positions of the parties I see no persuasive reason to deviate from the position as set out in my provisional decision. So NewDay should pay £350 to Mr C directly for the distress and inconvenience suffered. If he chooses to offset this against his outstanding balance with NewDay it must allow him to do so.

What the business needs to do

Pay Mr C £350 for the distress and inconvenience caused if it hasn't already done so. And once it has done this it should go through its income and expenditure process with Mr C to establish how much Mr C should be paying back on the outstanding amount.

my final decision

For the above reasons and those described in my provisional decision attached NewDay Limited should make payment as I have described above. It should then go through its income and expenditure process with Mr C regarding his outstanding debt.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 24 July 2019.

Rod Glyn-Thomas
Ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr C says NewDay Limited, trading as Aqua, has treated him unfairly in relation to his credit card debt.

background

Due to some tragic circumstances Mr C found himself with significant debt on his credit card and unable to work. He told NewDay of the close family bereavement in December 2017 and a couple of months later informed NewDay that he had cancer. Mr C has provided evidence of these substantial personal issues to NewDay and this service and Mr C's personal circumstances are accepted by all parties.

In June 2018 NewDay sent Mr C a Default Notice asking him to pay £38.12 by the 17th July 2018. This notice says if he doesn't pay then further action "*may*" be taken against him including terminating the agreement, closing the account and asking him to pay the outstanding balance immediately.

Mr C rang NewDay on the 2nd July 2018. NewDay's contemporaneous records of this call include "*Cst has Cancer. Undergoing treatment. Have held 12 months and set (sic) out letter to advise.*"

NewDays' timeline of events in its business file to this service says "*July 2018 - received med evidence from (named) hospital to advise undergoing treatment for cancer - hold for 12 months applied and letter sent to advise.*"

NewDay's letter dated 2nd July confirms that there is a "*hold in place on your account to prevent further collections activity*".

In a separate letter dated 2nd July NewDay says "*We are sorry to hear of your circumstances and considering these we will hold the above account from further collection activity until 2nd July 2019. During this time we will withhold payment on the account and also suspend all interest and charges.*"

On the 11th August 2018 NewDay wrote to Mr C and said "*we've terminated your Aqua Classic Credit Card agreement*". "*Your account is now with NewDay's Debt Recovery Unit and your full balance of £1,905.52 is now due Please call us on (phone number) so we can set up an affordable plan to help you repay what you owe.*"

In NewDay's letter of 28th August 2018 it refers to a call between NewDay and Mr C on 9th July 2018 and says "*The agent to whom you spoke explained that the hold placed on your account, stopped all collections activities and she did advise that even if payments were received from you, interest and charges would not resume until the account was again reviewed in July 2019.*"

On the 6th September 2018 NewDay wrote to Mr C saying "*At the times the Default and Termination Notices were sent, which was on 26 June and 11 August 2018 respectively, we were not actively pursuing payments from you. Therefore, these notices were sent to you for information purposes only.*"

NewDay have recently confirmed that the account is closed and so Mr C cannot use the credit card, but the debt remains and he can pay towards this debt to reduce the amount he owes. NewDay may decide to sell the debt on in future.

Mr C complained to NewDay and it said it had followed its processes so although it had made some payments to Mr C to recognise service failings it wouldn't uphold his complaint about unfairly having his agreement terminated. So Mr C complained to this service.

Our adjudicator upheld the complaint and asked the business to unwind everything that had happened back to July 2018 including reopening Mr C's account. NewDay disagreed and so this complaint has come to me for a decision.

My provisional findings

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

Firstly I should state that I am terribly sorry to hear of Mr C's very sad loss of a family member, which I recognise must be very traumatic. I should also add that his circumstances have been compounded by his illness. These are highly distressing circumstances that Mr C was (and is still) in.

Having considered the adjudicator's views I broadly agree that NewDay has not acted as it should and that this complaint should be upheld. However I think the manner in which this complaint should be resolved is different to what the adjudicator has said. And in the interests of fairness to all parties I think I should give them the opportunity to comment on my proposed settlement before issuing a final decision.

Mr C wants his credit card account reopened and to be able to use the facilities on this account that he used to be able to. However it is not for this service to force parties into contractual relationships which either party do not wish to be in. And it isn't for this service to make binding decisions in relation to the commercial decisions of businesses.

NewDay has decided it no longer wants to provide the credit card facilities to Mr C that it has in the past. And in August 2018 it told him this. As this is its commercial decision this service cannot now force NewDay to reopen Mr C's credit card account even though that is what Mr C wants.

However it is clear NewDay's assurances to Mr C about how it was going to treat him when he discussed matters with it during the summer of 2018 didn't marry up with his reasonable expectations. Mr C has provided strong, consistent and persuasive testimony that he understood NewDay's position to be in essence that it was putting his account on hold and wouldn't be doing anything significant for twelve months. And bearing in mind comments NewDay has made such as his account being on "*hold*" and "*hold the above account from further collection activity*" it seems to me that Mr C's position was reasonable here.

It is also important to note that Mr C has repeatedly said he was told to ignore automated letters from NewDay. And NewDay in its dealing with his complaint has said some letters were sent to him "*for information only*". It seems clear to me that NewDay accepts it's failed to make clear to Mr C what the true situation was. And hence it is unsurprising that Mr C would have been significantly distressed on reading of NewDay's termination letter in August 2019. Particularly considering he had repeatedly liaised with NewDay about his family bereavement and then through his diagnosis with cancer and later treatment.

NewDay is obliged to report on Mr C's credit file his payment behaviours with it. And it is obliged to do so factually and accurately. I have considered its credit file reporting and consider it to be factual and accurate. So I'm not persuaded NewDay has done anything wrong here.

Mr C has always been clear that he accepts he has the debt with NewDay. And although Mr C has faced a terrible situation he is now working again. NewDay is obliged to treat customers in financial difficulty positively and sympathetically. And I can see that it froze interest and charges for an extended period of time. So I'm satisfied it did treat him as it should. Mr C accepts he owes the outstanding balance and NewDay is entitled to pursue him for it if it chooses to do so. So it would be advisable for Mr C and NewDay to come to some mutually acceptable plan for repaying the debt.

It is clear to me that Mr C has made clear his position to NewDay regularly, truthfully and with the support of evidence even though faced with clearly tragic events. He clearly has been somewhat clearer in his position than NewDay has in its position with regard to him.

The crux of this complaint is how NewDay has communicated with Mr C. I'm not persuaded it has acted unfairly or outside of its commercial decision making in what it has done with regard to the debt itself or the reporting of it on Mr C's credit file. However I am satisfied that it has failed to be clear in its articulating its position to Mr C. Especially when you consider it accepts it wrote to him "*for information only*" even though those letters were clearly important, worrying and demanding payment.

As a consequence of this and considering Mr C's particular and rare circumstances in 2018 I think it only fair that I make a significant award of distress and inconvenience here.

NewDay has recently said it was willing to make an offer of £250 to Mr C to recognise his distress and inconvenience. But I don't think this is enough. Mr C was in financial difficulties due to bereavement and then suffering from cancer. He had numerous contacts with NewDay and it told him repeatedly his account was on hold whilst he got better. And then it terminated his account. I am currently minded that £350 better represents what happened here.

NewDay will pay this directly to Mr C and it will be up to him whether he uses that money to reduce the outstanding balance he has with NewDay.

I am also aware that NewDay told Mr C that it wouldn't take action against him before July 2019. Consequently I direct NewDay to reappraise Mr C's income and expenditure in July 2019 by asking him to complete its process at that time. And I remind NewDay in its obligation to treat customers in financial difficulty positively and sympathetically.

my provisional decision

For the above reasons, I am currently minded to uphold this complaint about NewDay limited. I am currently minded to direct NewDay to pay £350 in distress and inconvenience to Mr C. And it should go through its income and expenditure process in July 2019 to establish how much Mr C should be paying back.

I now invite both parties to provide me with any further submissions they wish to have taken into account within the timeline that I've described earlier, after which I will issue my final decision.

Rod Glyn-Thomas
ombudsman