

complaint

Mr H complains that NewDay Ltd increased the interest rate on his credit card without notification. So he didn't have a chance to opt out of any interest rate increases. He wants NewDay to pay him compensation for this.

background

NewDay didn't uphold Mr H's complaint, so he asked us to look at what had happened.

Mr H opened his NewDay credit card account more than 15 years ago. The interest rates for borrowing on his credit card have changed a number of times. When our adjudicator investigated, his opinion was that NewDay hadn't been required to send opt-out letters for any increases that took place before 2009. Information had been included on Mr H's statements giving notice of rate changes – and changes took effect from his next statement date. So our adjudicator felt Mr H had been notified well in advance of those increases. And, on balance, he concluded those increases had probably taken place in line with the account terms and conditions.

But, based on the information NewDay had supplied, he didn't think that rate increases after that were done correctly. So our adjudicator recommended that NewDay should rework Mr H's account to reflect the interest rate that applied before increases were made some time after 2008. Then NewDay should refund Mr H the difference between that amount and the interest applied to his account.

NewDay says it's still trying to find letters which confirm it wrote to Mr H to make him aware of the change in interest rates.

Meanwhile, Mr H says he'd been inclined to accept the adjudicator's compromise proposal. But, given the delay and the fact NewDay ignored his own correspondence, and its failure to adhere to reasonable timescales with no stated excuses, Mr H says he now seeks a full remedy. He wants his account to be reconstituted using the interest rates from the earliest available records (March 2003). He feels his position is solidly grounded legally and that other ombudsman cases he's seen supporting his view are both comparable and relevant. And he's concerned that recent developments have led him to question NewDay's fitness to conduct retail financial services.

So this complaint has now been passed to me to make a final decision. I'm aware that NewDay was hoping to supply some further information. But that was some time ago – and it's now well outside the time frame our adjudicator set for a response. So I think it's unfair to Mr H to postpone making a final decision any longer.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Given what's happened here, I can understand Mr H's frustration. Looked at overall, I agree with the approach taken by our adjudicator.

Here's why I say this.

My role is to look at all the circumstances and consider whether NewDay has acted fairly and reasonably overall towards Mr H. We look at things differently to the way a court would and it isn't up to me to decide issues of legal liability – that would be a matter for a court. We offer an informal dispute resolution service.

Our published decisions are intended to be helpful and provide an insight into our approach. But it's important to remember every case is unique and treated on its own merits. So it wouldn't be helpful to view decisions made in other cases as precedents. I'm concentrating in my decision on the particular circumstances of Mr H's situation.

I agree with our adjudicator's assessment of Mr H's complaint. I say this because there was information about pending interest rate changes included on his statements up to April 2008 which I'd expect Mr H to have seen. And I think the amount of advance warning NewDay gave was reasonable notice for this sort of account. So I can't fairly uphold Mr H's complaint about these changes in the interest rate.

But, as the adjudicator pointed out, after April 2008, the interest rate increased from 21.9% APR to 28% APR for retail purchases. And for cash advances the rate went up from 33.9% APR to 37.9% APR.

NewDay told us that Mr H's statements would have included an option to opt out of the new interest rate before it came into effect. And it would have been applied within the terms and conditions of Mr H's account.

Mr H says he never received any such information. And NewDay still hasn't been able to provide evidence to show that a notice of variation was supplied or any opt-out letter was ever issued to Mr H.

Where the facts aren't agreed, I have to decide what I think is most likely. I'd expect NewDay to be able to provide this information from its records if it was available. And I don't have any reason to doubt what Mr H says. I say this because if he'd had notice of interest changes he wasn't happy to accept, I think Mr H might have acted differently. So, on balance, based on the available information, I can't find that interest changes on Mr H's account after April 2008 were correctly applied after NewDay gave Mr H reasonable notice. So I uphold this part of Mr H's complaint.

I now have to decide what NewDay should do to put things right for Mr H. I think the fairest outcome here is to require NewDay to rework Mr H's account along the lines the adjudicator suggested. It's usual to add interest to our awards and I see no reason not to do that here.

It seems to me that NewDay's delay in dealing with Mr H's complaint has added unnecessarily to his concern and frustration about what's happened here. So I feel it's right to address that lack of customer care by an award of compensation. I consider that £100 is a fair and reasonable amount in line with our usual approach.

my final decision

My decision is that I uphold this complaint in part.

I order NewDay Limited to rework Mr H's account as if the interest rates set out on his April 2008 statement had continued to apply. So NewDay Limited should:

- revert back to the rate of 21.9% APR for standard purchases and 33.9% APR for cash advances made by Mr H after his April 2008 statement
- refund the difference in interest between 21.9% and 28% for standard purchases paid by Mr H between 17 May 2008 (the date by which he was required to make a minimum monthly repayments towards the balance outstanding on his April 2008 statement) and the date of acceptance of my decision
- refund the difference in interest paid by Mr H between 33.9% APR and 37.9% APR for cash advances between 17 May 2008 and the date of acceptance of my decision
- pay Mr H simple interest at 8% per year on the total amount of interest refunded between 17 May 2008 and the date of acceptance of my decision
- and, in addition, pay Mr H £100 compensation.
- NewDay should tell Mr H what it's done to work out the interest refund.
- If HM Revenue & Customs requires NewDay to take off tax from this interest then NewDay must give Mr H a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 September 2015.

Susan Webb
ombudsman