

## **complaint**

Mrs D complains NewDay Ltd was wrong to apply late payment fees to her store card account and provided poor customer service.

## **background**

Mrs D says she made regular monthly payments to her NewDay store card account – often double the monthly minimum required. But NewDay won't accept that she made her payments 28 days in advance – and it charged her late fees. Mrs D says NewDay wouldn't listen when she rang to complain. And she experienced a great deal of stress and upset as a result of what happened – causing a tragic loss in her personal life.

NewDay says it applied charges properly – in line with the terms and conditions of Mrs D's account. And it explained how the payment cycle worked – so that Mrs D could re-organise her repayments and avoid late fees. As a gesture of goodwill it has refunded some fees. And it has offered to refund another £60 since the involvement of this service.

Our adjudicator didn't recommend the complaint should be upheld. She has a great deal of sympathy for Mrs D and the circumstances of her loss. But she wasn't able to find that NewDay had mis-applied late fees or provided poor service. And she considers NewDay's offer is a fair response to the complaint.

Mrs D disagrees. She says this doesn't reflect the enormous distress NewDay's actions have caused. And she wants NewDay to apologise and write off the balance of her account.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. I have reached the same conclusions as our adjudicator for much the same reasons.

I can see that Mrs D has had an extremely difficult time and suffered a great personal loss – for which she has my sympathy. And I appreciate that finding repeated late payment charges on her store card account, when she was making regular payments, must have been most upsetting – especially at such a sensitive time.

For me to uphold Mrs D's complaint I must be satisfied that NewDay has done something wrong – that it mis-applied fees or failed to give her good service. So I have considered NewDay's records carefully. And I want to reassure Mrs D that I have taken everything she has said into account.

### *Was NewDay wrong to apply late fees?*

Mrs D often made her payment on the first or second day of the month – on or just before the day her monthly statement was generated. There's no dispute these repayments were received and credited to her account. But some of those payments, while they served to reduce her balance, didn't count as a minimum repayment for that month – because of the timing of the payment.

NewDay says that its payment cycle only accepts repayments made between the date of the statement and the due date displayed in the statement – as the relevant payment for that month. So, if Mrs D made a payment on (or very close to) the date a statement was generated – then that would be credited to the previous month.

I appreciate Mrs D considers she was making payments well in advance each month. But the timing of those payments was so far in advance that they counted as a payment in the previous month. So she entered into a spiral of making regular repayments – but not within the timescale set out in her statements.

I'm satisfied NewDay was entitled to ask Mrs D to make her monthly repayments in the way that it did. And each of her monthly statements set out the date by which the next monthly minimum repayment had to be made. So I can't fairly find NewDay was wrong to apply late fees when it did.

*Did NewDay provide poor customer service?*

Mrs D rang NewDay to ask why she was being charged late fees repeatedly. She says telephone advisers were unhelpful and didn't explain the process properly. So she continued in the cycle of late payments and fees. She found this enormously stressful at a very sensitive time – and believes the situation contributed significantly to a tragic personal loss.

NewDay hasn't been able to provide recordings of Mrs D's phone calls. But it doesn't have to keep such call recordings, so I can't fairly criticise it for that. While I have no doubt that Mrs D found the whole experience distressing, I can't say for certain what was said during those calls.

NewDay has provided its customer service records. I'm satisfied these show some efforts were made to explain the process. So there's not enough evidence for me to reasonably conclude that NewDay didn't try to help Mrs D avoid late fees.

But, even if I were minded to do so, I'm not persuaded that further explanation would have caused Mrs D to reschedule her repayments anyway. This is because NewDay sent Mrs D a letter on 8 January 2014. I'm satisfied that explains the payment cycle clearly. And it suggests how Mrs D could re-organise her monthly repayments to ensure they arrived on time.

But Mrs D continued to make payments too far in advance and incur late fees. I understand this may have been because of her difficult personal circumstances at the time. But it wouldn't be fair for me to hold NewDay responsible for that.

I am very sorry to hear of Mrs D's loss and the difficult experience she has been through. I realise this decision will come as a disappointment to her. But I'm satisfied NewDay applied charges properly to Mrs D's account. And I can't fairly find it provided poor customer service.

So I can't properly order NewDay to refund fees or pay compensation. Like our adjudicator, I consider NewDay's offer to refund another £60 is fair. And I leave it to Mrs D to decide whether she wishes to accept it.

**my final decision**

My decision is that I am unable to uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mrs D to accept or reject my decision before 11 March 2015.

Claire Jackson  
**ombudsman**