

## **complaint**

Mr B is unhappy with how NewDay Ltd handled the matter of someone fraudulently accessing his Aquacard credit card account. And he's unhappy with the impact the whole matter has had on his credit file.

Aquacard is a trading name of NewDay, but for the purposes of this decision I will only refer to NewDay.

## **background**

To better understand this complaint, and for context only, it's helpful to understand what happened earlier in relation to Mr B's account.

Mr B first complained to NewDay about a problem he had making a payment of £343.70 towards his credit card on 2 August 2018. He had attempted to make two payments on that day, but only one was successful.

It took NewDay some time to find out what had happened to the missing payment. The payment was eventually located on 28 August 2018 and backdated to Mr B's account. In light of the payment being delayed NewDay adjusted interest and a fee that had been applied and paid Mr B some compensation for the trouble caused. However, as Mr B wasn't satisfied with this, he brought the complaint to our service and it was dealt with as a separate complaint to this one.

This complaint is about what happened next.

Before the missing payment mentioned above had been located and added to Mr B's account, Mr B received emails and texts telling him he had changed his address - I've seen an email dated 23 August 2018 to Mr B which let him know his address had been changed. Mr B got in contact with NewDay about this on 31 August 2018 after speaking with our service to find out what he should do because he said he had not changed his address.

NewDay's internal records show that on 23 August 2018 the account passcode and password were re-set as too many incorrect attempts had been made to access the account – so the account was blocked on 23 August 2018.

When Mr B spoke with NewDay on 31 August 2018 he says the account was 'frozen' and while the fraud team and our service looked into his various concerns, he requested all charges be 'frozen'. Mr B says he was promised a call back about this, but the call didn't happen.

On 5 September 2018 a letter from NewDay to Mr B confirmed they'd cancelled his direct debit mandate as he had requested. And they let him know what other ways he could make payment to his account. They also reminded Mr B that he still needed to make payments to the account. Mr B has said he cancelled the direct debit while things were being looked into.

On 8 October 2018 a letter from NewDay was sent to Mr B highlighting that he'd missed a payment and he needed to pay £156.41. This letter was incorrectly addressed.

On 10 October 2018 Mr B received a letter from the fraud team (correctly addressed). This confirmed they did not think Mr B had done anything wrong. And it said they weren't holding

Mr B responsible for any disputed sales made on the account. (Mr B has been clear throughout that he has not disputed any sales (transactions) on the account). NewDay also registered a protective CIFAS marker on Mr B's credit file and provided Mr B with some information around what this meant. NewDay says a new card was issued to Mr B as well (so card ending 1362, replaced card ending 5002).

On 15 October 2018 NewDay wrote to Mr B at his correct address to confirm his account had been suspended and he needed to make an immediate arrears payment for £156.41, as well as his contractual minimum payment of £162.75. The new balance on the account was £3,920.17.

A notice of the default sums (the late payment fee of £12) was issued to Mr B on the same day to the same address.

Mr B received a further missed payment letter from NewDay (to the correct address) on 22 October 2018.

On 24 October 2018 NewDay sent Mr B an email saying he'd missed a payment for account ending 1362 and would therefore be charged £12 for a late payment. The email explained a missed payment could be reported to the credit reference agencies and impact Mr B's credit rating. The email explained what Mr B needed to do to bring the account back up to date. And let him know what support was available if he needed it.

On 1 November 2018 NewDay wrote again to Mr B at the correct address to say he'd missed his payment – and explained he needed to pay £156.41 as soon as possible.

NewDay wrote to Mr B on 15 November 2018 (to the correct address) with further correspondence confirming firstly, the account had been suspended and that Mr B was over his credit limit and had missed last months contractual payment. The minimum payment now due was £187.41 and there were now arrears of £319.16. And secondly, they sent him a notice of sums in arrears. The FCA (the regulator, the Financial Conduct Authority) information sheet sent with the letter said, *Doing nothing could make things worse – The lender could take legal action against you, and you could end up paying more interest and charges.*

An email was sent to Mr B on 23 November 2018 saying that due to a missed payment he would be charged £12. Again, explaining missed payments may be reported to the credit reference agencies, that this could impact Mr B's credit rating and he needed to bring the account up to date.

On 30 November 2018 NewDay issued Mr B with a default notice under section 87(1) of the Consumer Credit Act 1974. The notice was addressed correctly and set out that Mr B needed to now pay £319.16 by 21 December 2018. And if he didn't do this, then the credit agreement would be ended, his account closed and the full balance would be asked for straight away. The letter also explained NewDay could sell the account to a third party.

On 16 December 2018 Mr B received a further letter confirming again the account was suspended and he needed to make payment. A notice of default sums was again issued.

On 17 December 2018 NewDay's internal records show Mr B spoke with them and confirmed he had received the letter that he would be defaulted. At this time Mr B also made a Subject Access Request (SAR).

It wasn't until 20 December 2018 when Mr B again spoke with NewDay that he made a payment of £156.41 as the NewDay staff member had said this would be to clear the oldest part of the arrears. The staff member notes that Mr B was told, as he had missed the payment cut off time (for NewDay to process the payment) it wasn't guaranteed that this would prevent the account being taken to the next step of NewDay's collections process.

This is the last payment Mr B made to the account.

NewDay wrote to Mr B on 21 December 2018 (to the correct address) to confirm the account had been terminated. The letter said Mr B's account had been moved to the debt recovery unit and a full balance of £4,217.89 was now due. It also invited Mr B to speak with NewDay to see whether interest and fees on the account could be reduced, and offered him the details of other services available that could help him. The current balance at that time was £4,217.89 – the credit limit having been £4,050.

On 18 January 2019 NewDay's contact notes show Mr B expressed his concern that questions he was raising about his account weren't being answered (something he had mentioned previously in conversations with NewDay). And said he wasn't happy with how anything was being handled – including not getting call backs when promised. Mr B spoke with NewDay again on 19 and 20 January 2019 about his concerns.

NewDay has confirmed that on 31 May 2019 Mr B's account was defaulted and sold to a third party.

Mr B's further concerns about fees and interest were addressed in NewDay's letter to him dated 15 July 2019. For the most part, NewDay did not feel they had done anything wrong by charging interest or fees to Mr B's account while the fraud team investigated things – they explained this was in line with their terms and conditions. But they said there had been a lack of information and offered Mr B £30 to recognise this. The letter also explained the SAR request was raised on 20 December 2018 a few days after Mr B had first requested it, and that the information had been sent to Mr B on 7 January 2019. The letter also acknowledged Mr B's point that he'd never received a new credit card. But NewDay said this had been sent correctly.

Mr B's complaint was reviewed by our investigator. In summary, they thought it fair that NewDay had applied fees and interest to Mr B's account. And there was no evidence available which suggested Mr B had been promised that interest and/or fees would not be applied while the account was being reviewed. The investigator also didn't agree that Mr B had cleared his balance once the £343.70 had been paid to the account. Ongoing spending meant there was still an outstanding balance. They also noted Mr B had not disputed any transactions on the account. And overall, the investigator said NewDay had acted fairly with regards to registering the default. The investigator did however feel that NewDay should increase their offer from £30 to £75 to reflect the upset the matter had caused – which NewDay agreed to.

Mr B didn't accept the investigator's conclusions.

### **my findings**

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

I'm aware that a lot has happened since Mr B's initial complaint (dealt with under the separate reference). And while not every single communication has been noted in detail above, I have reviewed all the submissions available.

I can understand Mr B's frustrations with how NewDay has handled things for him as he's sought answers about what happened with his account.

In the submissions I can see Mr B expressed concern about NewDay's role in what happened with his account. He said he found it odd that he was being told NewDay had received the payment for £343.70, but it wasn't on his account and they were promising him that it would be. And that it then took NewDay a long while to resolve this. Mr B also expressed concerns that he thought NewDay were unable to give him any real detail about how someone had been able to access his account. And he said that NewDay had been giving our service wrong information.

Taking Mr B's submissions all together I can see how he has become upset and concerned about all of this. Understandably, Mr B has wanted some reassurance that his personal and financial information is safe. I'm aware that Mr B made a SAR and he has been made aware of how to contact the Information Commissioner's Office.

However, while I am very mindful of everything Mr B has said, having reviewed everything I agree with the conclusions reached by our investigator as I will explain.

As the other decision has dealt with the payment for £343.70, I turn now to how the address was changed on Mr B's account.

#### *change of address on the account*

Firstly, it's important to note NewDay accepted Mr B hadn't changed his account details himself and that this had been done by an imposter. NewDay therefore arranged a protective CIFAS marker to be placed against Mr B's credit file and issued a new credit card. I think this was the right thing to do.

NewDay has been able to confirm the imposter accessed Mr B's account and changed things online -not on the phone, as it seems this had been the suggestion earlier on. Mr B says this contradiction hints that NewDay was providing misleading information – but there's nothing to suggest there was any such intention. And it's not entirely clear to me how this confusion happened. But I'm satisfied the change was made online.

Mr B has asked for more detailed answers around what happened. But sometimes, this just isn't possible to know. As Mr B himself noted in his submissions, it is at least accepted that there is enough to show it wasn't Mr B who changed the address on his account.

And as Mr B has maintained he's not disputing any transactions, there is nothing to remedy here – fortunately, Mr B's account was not actually used by the imposter.

#### *fees, charges and default*

As our investigator noted, there is nothing available in the submissions to suggest Mr B was guaranteed that charges and interest wouldn't be applied to his account. And under the terms and conditions it explains Mr B's responsibility to maintain his contractual minimum

payments each month, even if he doesn't receive a statement or has not been able to access a statement online. The terms say that a customer can contact NewDay for the information needed. The terms also explain interest and fees will still be charged even if statements aren't received.

As Mr B was in contact with NewDay while he didn't have access to his account online, I think it's reasonable to say he would have been able to find out what payments he needed to make. And as I've already said, I've not seen anything to make me think it had been agreed that Mr B wouldn't have to make any payments.

Mr B also hadn't cleared his balance on the credit card with his payment of £343.70 in August 2018 – further spending using the card meant another balance had accrued on the account relating to transactions he had made. So Mr B was required to pay for those. I note that Mr B has never said he couldn't make the payments either. It therefore still remained Mr B's responsibility to make the required payments to the account, especially when he chose to cancel his direct debit instruction.

As I've described above, several communications were sent to Mr B about needing to make payment to his account. The communications were sent to Mr B's correct contact details and Mr B told NewDay on 17 December 2018 he'd received the Default Notice. So it's difficult to say Mr B was unaware payments were required or what could happen if these payments weren't made. I also think it's reasonable to say Mr B had time before the deadline given in the Default Notice to make the required payment.

I understand Mr B was still seeking answers to various questions about his account and that he had general concerns about NewDay, but in the circumstances I can't ignore that Mr B still had a responsibility to pay back the credit he'd borrowed.

NewDay has already recognised that they could have been clearer earlier on with Mr B that interest and charges were not being frozen while his concerns were being investigated by the complaints team and fraud department. In their letter dated 15 July 2019 NewDay apologised that their collections associate (at the end of August 2018) could have been better at highlighting to Mr B that he should continue with his payments as per the terms and conditions of his account. I think the agreement to pay £75 to recognise this remains fair in the circumstances, as while NewDay could have been clearer earlier on, Mr B went on to receive several communications about making payments to his account.

NewDay issued the Default Notice on 30 November 2018. And from what I've seen, I'm satisfied they followed the required process around this. So I'm unable to say NewDay has done anything wrong here.

### **my final decision**

For the reasons above, my final decision is that Mr B's complaint is upheld in small part and that NewDay Ltd pay Mr B £75 if it has not already done so in relation to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 April 2021.

Kristina Mathews  
**ombudsman**