

complaint

Mr B complains that NewDay Cards Ltd a trading partner of a retailer processed a credit application for him, potentially recording a search on his credit file, when he only wanted to check if he had a valid store card. He wants compensation and related searches removed from his credit file.

background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 30 January 2015; a copy of which is attached and forms part of my final decision. In my provisional decision I explained why I was departing from the adjudicator's conclusions and why I felt Mr B's complaint should not be upheld.

In summary, Mr B already had a store card with the retailer. When he bought some goods the shopping assistant told him he could save 10% if he got a store card. Mr B says he answered some questions which he thought were to see if his existing store card was still valid. However, he later received a letter saying he had been turned down for the card because he already has one. Mr B says he never applied for the card and wants compensation.

I invited further comments from the parties before I reconsider the complaint. New Day responded to say that it accepted my provisional findings.

In summary, Mr B responded to say he did not agree for the following reasons;

- the law has not been properly considered. There was no contract as there was no offer.
- the balance of probabilities has not been properly applied. On the balance of probabilities Mr B believes his version of events should be accepted. He points out there is no documentary evidence to prove he applied for a card.
- as a matter of common sense he would not apply for a card twice.
- there is a lack of supporting evidence for example no signature.
- Mr B does not agree with my conclusion that a single declined application will impact on his credit.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have not upheld this complaint for the same reasons as set out in my provisional decision.

the law

Mr B sent in a very detailed response setting out why he did think the law has not been properly applied. This is not a legal process and my decision is not based on contract law. I have to decide what is fair and reasonable based on the available evidence and arguments. Having done this, I do not uphold this complaint for the reasons set out below.

burden of proof

Mr B does not believe I have correctly applied the burden of proof. 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 light of the available evidence and the wider circumstances. I note that Mr B says his version

of events should be accepted. Further he says there is no documentary evidence. There is not a signed application, but there are letters from Mr B about his application. On balance, from the evidence I find that Mr B did apply for a new card and was aware he was doing this. In particular, on a letter dated 6th June 2014 from NewDay, rejecting his application, Mr B wrote “...I already have an account, to get an additional discount, I applied for a new card hoping my old card had expired...”. Mr B also mentioned applying for a new card in a letter to a credit reference agency.

lack of common sense

Mr B says it makes no sense for him to apply for a card twice. Relying on what Mr B says, I find he applied for a new card as he was hoping he could take advantage of the discount. Unfortunately his old card was still valid. In the circumstances, NewDay was entitled to process his credit application. As it was entitled to process the application it is not unreasonable to record the outcome of that application with the credit reference agencies.

credit file

I appreciate that Mr B does not accept that a single declined application is unlikely to have any impact on his credit file. Nothing turns on this point as I have found that Mr B did make an application and NewDay was entitled to process it. NewDay was entitled to record the outcome of the application with the credit reference agencies.

For the above reasons I do not uphold this complaint.

my final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr B to accept or reject my decision before 1 May 2015.

Clare Hockney
ombudsman