

## **complaint**

Mr R complains NewDay Ltd kept on calling him after he'd asked to be contacted in writing only. He had mental health issues at the time, and this made his anxiety worse.

## **background**

Mr R has a credit card issued by NewDay.

Mr R wrote to NewDay and his other creditors to say that he was in financial difficulties and had contacted a debt management company. Mr R says he asked NewDay and his other creditors to contact him in writing only as he had mental health issues, and telephone calls were making his anxiety worse. Mr R says NewDay continued to phone him despite his request. So he complained.

NewDay investigated Mr R's complaint, but didn't uphold it. NewDay said that it had contacted Mr R by telephone because it hadn't received a response to its letters. NewDay offered to refund three £12 over limit fees it had applied to Mr R's account as a gesture of goodwill. Mr R wasn't happy with NewDay's response so complained to us.

One of our investigators looked into Mr R's complaint. NewDay told our investigator that it didn't take Mr R's letter – that he looked forward to hearing back from them “via letter” – to mean that he only wanted to be contacted in writing. Our investigator disagreed. More importantly, our investigator thought that the number of calls NewDay had made was disproportionate to the amount Mr R owed. They also thought that Mr R had been caused a considerable amount of distress and recommended NewDay pay him £500 in compensation. Mr R accepted our investigator's recommendations and asked if the compensation could be paid directly to him. NewDay didn't accept our investigator's recommendations. It said that it had already stopped calls when Mr R wrote to them at the end of February 2019 to say he was having issues with his mental health. It said that it only called Mr R again when he didn't reply to its letters. So I've been asked to consider this complaint.

## my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done this, I'm upholding this complaint and I give my reasons below-

### 1. *what went wrong*

NewDay says it didn't take Mr R's letter saying he looked forward to hearing from it "via letter" as meaning that he didn't want to hear from them by telephone. Having read that letter, I don't think this was an unreasonable conclusion on NewDay's part. Mr R didn't say he looked forward to hearing from NewDay "only via letter" or "please don't call me." His letter was more ambiguous than that.

Having received Mr R's letter, NewDay put a hold on calls until the end of February. NewDay resumed its calls when it didn't hear back from Mr R after writing to him saying "let's talk". Again I don't think this was unreasonable.

I'm satisfied that when the calls resumed, NewDay was probably unaware of the effect the calls would have on Mr R's mental health. NewDay explained that the calls were made by an automated teller, and as Mr R didn't answer any of the calls, the teller would call at different times of the day to try to make contact. It was only when Mr R raised a formal complaint explicitly asking that contact be in writing only, that the calls stopped.

NewDay was right to stop calling Mr R when he complained – it's clear the calls were having a very negative impact on his mental health. I do, however, think that NewDay could have reacted much faster to stop the calls. It took NewDay two days to put a hold on calls.

NewDay's subsequent response to Mr R's complaint wasn't what I would have expected. I say this because Mr R was very clear when he complained that he didn't want to be contacted by telephone. In other words, there wasn't the same ambiguity as there was in his earlier letter. He said that the constant calls are "*making me distraught*" and "*please I am begging you stop phoning me*" amongst other things.

NewDay recognised in its response that the calls were upsetting Mr R because it said "you're unhappy that you keep getting calls...". But NewDay then went on to say "*If we can't make contact by phone...*" and "*if you would like to get in touch please call...*". In other words, NewDay was still suggesting speaking to Mr R on the phone despite him making it clear the impact calls were having on him. In its final response letter NewDay also provided a customer care number urging Mr R to call them saying "*as I believe that they may be able to help.*"

When NewDay received the emails from Mr R and read them, it really needed to pay attention to Mr R's situation and recognise the impact of the calls on Mr R's mental health condition. NewDay's response suggests it didn't recognise the impact its calls were having, or that it didn't care. That wasn't what Mr R needed. He needed a positive and sympathetic response from NewDay. I think NewDay completely missed the point that Mr R was making, namely that he was unable to deal with matters on the telephone.

My view is that NewDay's correspondence should have referred to a way in which he could deal with it in writing.

## *2. Impact and Compensation*

Mr R has described the calls he received from NewDay as “mental torture” and has said that NewDay was “wrecking” his mental health. He’s also said that NewDay bombarded him with calls for months. I appreciate that this might be how it felt to Mr R, but I can see that NewDay only called once in January and once in February. So I don’t think it’s right to say that NewDay bombarded Mr R with calls for months.

NewDay called Mr R ten times over three days at the beginning of April, after which it didn’t call him again – although it did suggest calling as mentioned above. I don’t think it would be fair to tell NewDay to pay compensation for the impact all of those calls had, given that I’ve already said NewDay wasn’t aware the impact its calls were having until Mr R complained. But I do think Mr R could, and should, have been saved from the distress some of those calls caused as I do think NewDay should have acted sooner. And the distress NewDay’s subsequent suggestions that they speak on the phone should have been avoided too. In short, I think Mr R suffered a degree of unnecessary distress. I agree with our investigator that £500 is fair compensation for the unnecessary distress he experienced. So that’s the award I’m going to make.

### **my final decision**

I uphold this complaint and NewDay Ltd should pay the sum of £500 to Mr R for the impact on him of the calls it shouldn’t have made.

The payment should be made directly to Mr R.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 4 March 2020

Sejal Karia  
Ombudsman