

## **complaint**

Mr B complains about the service he has received from NewDay Ltd and the action it took when he was unable to access his Aqua credit card account on-line.

## **background**

Mr B says he was locked out from NewDay's credit card on-line system so he couldn't verify the balance and transactions on his account. As a result he received several telephone calls from NewDay's collections team because he'd missed a payment. But Mr B says these calls were received on a Sunday. Yet when he tried to call back via customer services, he found that NewDay's office was closed to incoming calls on a weekend. Mr B says these business practices were unfair and that NewDay had breached the terms of his account.

Mr B agreed to clear the arrears on the account and said he intended to set up a monthly payment to repay 10% of the balance outstanding. But the account wasn't closed; he accrued further interest and received more calls from the collections team. Mr B says this is unfair when he'd made an agreement to bring the account back into order and made a reasonable proposal to settle the debt.

Mr B also asked for evidence of his signed credit agreement and for paper statements to be sent to him so he could verify the transactions and balance outstanding. But he says he didn't receive the statements and that NewDay cancelled his direct debit and subsequently sold his outstanding balance to a third party.

Mr B feels that NewDay is treating him unfairly when he's told them he has a medical condition and that the problems he was experiencing stemmed from being locked out from the online system which he'd already made it aware of.

NewDay says that in April 2018 Mr B's direct debit payment was returned unpaid by his bank. Consequently, his credit card account went into its collections process. It says it wrote to Mr B on two occasions to let him know that it had not been able to collect his direct debit and his payment of £61.51 was overdue. As the payment wasn't made, its collections team contacted Mr B by phone.

NewDay acknowledges that Mr B did ask for his account to be closed and this didn't happen straight away. But it goes on to say that as there was an outstanding balance, the account could only have been closed for further purchases and that interest and charges would still accrue on the debt outstanding and regular payments were still required to be made. So the account could not have been recorded as settled. The account was subsequently closed for further purchases.

It says it continued to correspond with Mr B and acknowledges that he cleared the initial arrears and covered the next payment due. But a further direct debit payment for £63.23 was returned unpaid by Mr B's bank and he incurred the relevant late payment and returned direct debit payment charges. So it cancelled Mr B's direct debit payment to prevent any further charges. But it says this was done with Mr B's agreement.

NewDay says it explained to Mr B – when he asked why he was not receiving paper statements, that he requested statements to be sent by e-mail when he opened his account. And that this can only be amended by him on-line. But when it tried to provide Mr B with the details he needed to re-set up on-line access, Mr B declined the offer. It says it ultimately provided paper statements in June 2018 after a Data Subject Access Request was made.

NewDay also acknowledges that Mr B made it aware of his medical condition. And it did offer to refund some over limit charges as a gesture of goodwill. But it was unable to consider Mr B's request to refund interest/reduce the interest rate on the account as he declined to complete an income and expenditure breakdown. It also pointed out that the 10% payment Mr B offered to make was more than the minimum monthly contractual payment required. But it says that as no further payments were received the account was defaulted and subsequently sold to a third party in line with the terms of the account.

Unhappy with NewDay Mr B referred his complaint to us. One of our investigators has looked at Mr B's complaint but she didn't think NewDay had acted unfairly so she didn't uphold the complaint.

Mr B remained unhappy saying - in summary, that he doesn't think it's unreasonable to expect NewDay to provide paper statements; asking for income and expenditure information is unreasonable for an account closure request; he hasn't been able to verify the balance, it's possible the balance sold to the third party is fraudulent; and, that NewDay didn't offer any reasonable adjustments for him to access his account.

And so the complaint has come to me for a final decision.

### **my findings**

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

Mr B has made a number of detailed points, which I have read and considered. And he's made his strength of feeling about this matter very clear. But as an informal dispute resolution service, we are tasked with reaching a fair and reasonable conclusion with the minimum of formality. In doing so, it is not necessary for me to respond to every point made, but to concentrate on the main issues.

And the crux of the issue here is the action NewDay took and the customer service Mr B received when he missed a payment to his credit card account because he couldn't access his account on-line. So I've thought about all of this very carefully. But having done so, I don't think NewDay did anything substantially wrong that would make me think it needed to take any further action in respect of this complaint. I know Mr B will be disappointed, so I'll explain why.

Firstly, I can understand that it was frustrating for Mr B when NewDay's customer service department wasn't open when he tried to call it on a Sunday – especially as he'd received a call from the collections department on that day. But NewDay's operating hours for its various departments are for it to decide and not something we can tell it to change. And although Mr B couldn't speak to NewDay on a Sunday, I can see that he was able to successfully speak with NewDay on several other occasions about the status of his account and his concerns.

I don't dispute Mr B was unable to access his account on-line or that he wasn't receiving paper statements. But it seems Mr B opted for e-mail statements when he opened the account. And having listened to the telephone calls between NewDay and Mr B, I'm satisfied that NewDay explained that if he wanted paper statements, its system required him to alter his preferences on-line. And that NewDay tried to provide Mr B with the information he needed to reinstate access to the account, so he could do that.

But I note Mr B has – in response to our investigator's view, said NewDay didn't offer him any reasonable adjustments to help him in this respect given his medical condition. The term 'reasonable adjustments' means I have to think about what steps are reasonable (in all the circumstances) for me to expect NewDay to take while bearing in mind I can't require it to change its systems. And having thought about this carefully, I think NewDay has taken the reasonable steps required by offering to give Mr B the information he needed to re-instate access to his account on-line. I say this because Mr B was able to successfully operate his account on-line before he accidentally locked himself out. And I haven't seen any reason why he couldn't have continued to do so had he chosen to re-instate on-line access using the information offered to him. But I note Mr B has since received paper statements after he made a Data Subject Access Request.

NewDay hasn't disputed that it didn't close Mr B's account when he first asked it to. So I've looked to see if Mr B has lost out as a result of this. But having looked at Mr B's account statements, I'm satisfied these show that a debt was outstanding. So while the account could have been closed sooner (for new purchases), it couldn't have been fully closed as a debt was still outstanding. And as a debt was owed, NewDay was entitled to continue to apply any interest and charges in line with the terms of the account.

In this respect, I should explain, that even if an account holder is disputing the terms of an account or the balance owed, I'd expect the account holder to continue to make the contractual payments due while the matter was being looked into. Had it transpired that the account holder had - for example, 'overpaid', or incurred charges when they shouldn't have, or the business had done something wrong, I would then expect this to be put right. But here - as I understand it, after the initial arrears were cleared no further payments were received into the account.

Mr B has said that it was unreasonable of NewDay to ask him to complete an income and expenditure breakdown. And I acknowledge that Mr B was asking for his account to be closed. But I'm satisfied he was also asking NewDay to either refund interest or reduce the interest rate on his account. So I don't think it was unreasonable for NewDay to ask Mr B for an income and expenditure breakdown so it could understand his wider financial circumstances to enable it to consider making changes (particularly reducing) the contractual terms of Mr B's account. But as Mr B didn't provide the information NewDay required and because Mr B indicated he was able to pay a monthly payment greater than the minimum payment required under the account's existing terms, I don't think it was required to consider Mr B's request further.

I note that Mr B has said that NewDay cancelled his direct debit payment. And NewDay hasn't disputed this. But it says it did so with Mr B's agreement. And I'm satisfied that Mr B agreed with NewDay - in a further telephone call, that the direct debit would be cancelled to prevent any further charges from being applied as a result of payments being returned by his bank. I also note that NewDay wrote to Mr B to confirm that the direct debit had been cancelled.

During a telephone conversation with NewDay, Mr B asked it to provide a copy of his credit agreement. It's not clear if this was ever provided. But during that call, Mr B did suggest the credit agreement may not be valid as it didn't contain a 'wet' signature. So I should explain that it's not for this service to decide the validity of a credit agreement (or if a credit agreement is enforceable) – that would be for a court to decide. But as Mr B took out and used the credit card, I find it difficult to see how I could fairly say that NewDay was not entitled to ask him to continue to repay the outstanding balance.

And I'm satisfied that during the telephone conversations with Mr B, NewDay made Mr B aware of the balance outstanding on his account and what was required to bring it back into order. In light of this, I'm satisfied that Mr B was aware that payments were still due on his account. But the statements show that no further payments were received to the account. As a result, NewDay took the decision to default Mr B's account and sell the outstanding balance to a third party collection agent in line with the terms of the account. As payments weren't being made to the account, and as I'm satisfied a debt was outstanding, I don't think NewDay did anything wrong when it did this.

Mr B has suggested that there was a lack of notifications about the debt being sold. But NewDay has provided a copy of a default notice issued to Mr B in August 2018. This notice explains what would happen if the account was not settled - this included selling the debt to a third party. So I think NewDay did notify Mr B about the implications of not settling his debt.

Mr B has also suggested the balance outstanding on the account could be fraudulent. And that it could have been bought for a reduced cost by the third party. But from the statements NewDay has provided, I've not seen anything to suggest that the balance outstanding when the account was closed was not the genuine balance accrued by Mr B. And if NewDay decided to sell the debt for less than was outstanding then I think it's entitled to make that decision.

### **my final decision**

For the reasons given above, I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 November 2019.

Sandra Greene  
**ombudsman**