

Complaint

Mr T is unhappy that NewDay Ltd chased him for a debt on a credit card that he didn't take out.

Background

I issued my provisional decision on this complaint on 21 January 2020. In it I said:

An application for a credit card was taken out in Mr T's name in November 2016 – his address details were used, but the email and mobile phone details recorded were not. Spending took place on the account shortly after it was opened, but no repayments were made.

Mr T has given us a letter dated 21 April 2017 from NewDay. It said his account was now closed and there was an outstanding balance due. The letter asked Mr T to get in touch with NewDay to discuss repaying the outstanding debt.

Mr T has given us another letter which NewDay wrote to Mr T in August 2017 and told him they were selling on his credit card debt to a debt collection company. The debt sold on amounted to around £750.

Following this Mr T got in touch with us, and we passed the complaint over to NewDay. They then wrote to Mr T asking him to get in touch with their fraud team so they could discuss whether a fraudulent application had been made for the credit card.

Mr T told us that, in December 2017, he tried to contact the fraud team on multiple occasions and wasn't able to get through to anyone who could help – because he couldn't pass their security.

In January 2018 he was contacted by the debt collection company direct and was told they were passing his debt on to a solicitor. The solicitor got in touch and said if a crime reference number wasn't provided then they'd start legal proceedings.

In February 2018, following some communication between us, NewDay and Mr T, he agreed to get in touch with NewDay and discuss the fraud.

Mr T though didn't do this. He told us he received a letter shortly after this to say the account was being closed. He thought this meant the matter was resolved – and he's said he was the subject of fraud previously, and that got resolved very quickly, so he assumed this one had now been resolved too.

In June 2019, NewDay wrote to Mr T to let him know he wouldn't be held liable for the debt. They said in this letter his credit score wouldn't be affected, but they'd register his details on a fraud prevention database to protect him, and he may find future credit applications take longer to complete because of this.

Mr T told us he was relieved about this but wanted to complain about matters because of the impact this had on him. Mr T has given us a detailed explanation. I've read all of this, and my summary of it is as follows:

- *This is the second time fraud has happened to him in this way – the first time everything was sorted with one phone call, so he doesn't understand why that's not happened this time.*
- *He didn't receive a lot of letters from NewDay, or other parties involved, because his mail was regularly being intercepted. He says this was happening both at the time of the credit card application, and since.*
- *When he first became aware of it – and on multiple occasions since – he believed the matter had been resolved because of information he was told or letters he was sent.*
- *He doesn't understand how NewDay could hold him liable based on the information they had – specifically around IP checks and his address.*
- *The impact on him was that he couldn't increase his credit card limit to cover a flight, he wasn't able to hire a car, and he wasn't able to get a re-mortgage which meant he couldn't take up a job opportunity.*

Our investigator considered the complaint. He said that as the fraud issue has now been resolved he's focused his investigation on NewDay's actions since they became aware of the complaint in November 2017. Having done so, he felt that NewDay should pay Mr T £200 compensation.

Mr T replied and explained he didn't agree with this recommendation. In summary he said:

- *While the issues around credit availability car hire were stressful, there's no mention of the time taken to get this matter resolved and the stress, anxiety and amount of time taken.*
- *The other lender resolved this so much quicker, so he understood this to be the way to resolve matters.*
- *There's no mention of a message from NewDay in November 2017 to say the matter had been resolved.*
- *Our investigator's findings suggest it's not his or NewDay's fault, but he says it is their fault, and not making this finding allows them to do this again.*
- *NewDay had access to information that showed it wasn't a genuine application in November 2017 – how has this been allowed to go on for so long if information backing up his claim was ready and available.*
- *He's concerned that we believe had he made more phone calls he could have resolved it earlier – he did the best he could under the circumstances.*
- *He's pleased we agree NewDay could have done better, but £200 doesn't cover the issues he's mentioned.*
- *He's had nothing further from NewDay to confirm the matter is closed and how to check his credit file has been corrected. He says he's contacted one of the credit reference agencies, and their automated identity check couldn't verify his identification – so he can't get access to a report.*

NewDay also replied and disagreed with the outcome. In summary they said:

- *They don't agree they could have done anymore – they say it was clear what Mr T needed to do, i.e. phone their fraud line.*
- *They couldn't have told us what information they needed from Mr T, because that information is specific and may vary as the conversation goes on.*
- *They agree that the entries on the fraud database are strong indicators that this was a fraudulent application – and it's likely the information was reviewed in November 2017. But their procedures still required them to speak to Mr T before taking any further action.*
- *Because of the above, they don't think any compensation is due.*

As neither party is happy with the outcome proposed, the complaint's been passed to me to decide.

My provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And I think it's important to emphasise to both parties I've read in detail all of their submissions, but my role is to decide the outcome I think is appropriate – rather than comment on each issue as it's been raised.

Because the issue around the application has been concluded, like our investigator, I'll just focus on matters since NewDay became aware of the complaint in November 2017.

From all of the information I've seen, it seems that NewDay have always been open to the possibility that this was a fraudulent application. I can see at times Mr T has been given conflicting information from the debt collection company – but even then, in one of the letters they explain if there's a problem Mr T should contact NewDay directly and take it up with them.

NewDay have told us they only keep call recordings for a limited time – so couldn't provide the calls Mr T says he made when we asked for them. But Mr T has been clear and consistent in telling us he called NewDay in November 2017 to try and get the matter resolved. He's said he was unable to pass their security because they asked for some of the fraudulent details to do so.

Because there's no call recordings I can't know what questions were asked or what answers were given. And I'm not going to comment on NewDay's procedures for verifying someone in this situation. But in Mr T's case if he's complaining that someone has applied for a credit card fraudulently in his name – it does seem likely some of the details provided won't match his.

In addition, NewDay have told us it's likely they checked a fraud database and some of these details matched Mr T's. I think this adds more weight to Mr T's argument that NewDay could have done more to help him at the time.

So, I'm satisfied that Mr T called up in November 2017 and I think it's more likely than not NewDay could have done more to try and help him resolve this issue.

But as noted above the issue around the fraudulent application wasn't actually resolved until June 2019 – so I need to consider what's taken place in between.

Mr T was sent a large number of letters from NewDay, their debt collectors and the solicitors the debt collector employed to recover the balance owing. Mr T says he didn't receive all of these – given this relates to a fraudulent application where NewDay seem to have since accepted he didn't receive the card and PIN, this seems plausible to me.

So, this will explain some of the delays that have prevented this issue from getting resolved. But it doesn't explain all of them, because Mr T has also told us he did receive some letters. Mr T has told us on a number of occasions that he made one phone call when a similar incident happened before, and it all got resolved. Up to a point, it was therefore not unreasonable that he might have expected that this time. But different financial businesses will have different processes. And in the event of Mr T not being able to resolve the issues as simplistically as he was able to do previously, in the circumstances here, I don't think it's unreasonable to expect that Mr T should have done more himself to sort his concerns.

For instance, from what I can see Mr T was told on a number of occasions to call NewDay's fraud department. I've accepted he tried this in November 2017, but given he kept receiving further letters I think it's reasonable for him to have accepted this wasn't going to be resolved without more of his input. I can see he doesn't agree he should have had to do this, but at the same time I don't think that means he isn't required to respond when NewDay ask him to – or is absolved of all consequences if he chose not to.

NewDay's procedures require the individual to call their fraud line and speak to them. I'm satisfied Mr T tried to do this in November 2017, but I do think there were other opportunities for Mr T to do so – which could have significantly lessened the time this issue has taken overall.

I don't doubt this was a difficult time for Mr T – he's told us as much – and naturally being the victim of fraud is going to be a worrying and stressful time. But NewDay's procedures required more from Mr T, and what they asked doesn't seem unreasonable.

Mr T could point out he received letters which were confusing and at times contradictory. I'd agree with that, and will factor that communication from NewDay (alongside the debt collector and solicitors, as their actions were on behalf of NewDay) in to the overall compensation I think is appropriate. But I also think the letters he received would have made it clear to Mr T that he still needed to try and engage with this process to get everything resolved.

Taking everything into account I think NewDay could have done more to help Mr T bring this matter to a more timely conclusion. But I don't hold them entirely responsible for the delays that have occurred, as at times I think Mr T should have known he needed to do more.

Our investigator recommended £200 compensation and referenced the impact of Mr T's credit file not being updated earlier. Mr T has made it clear there are three issues around his credit file. These are not getting a credit limit increase to pay for an important flight, not being able to hire a car, and a lost job opportunity because of not being able to re-mortgage.

Mr T has also talked about the time taken and the stress and anxiety this has caused him. I don't doubt for a moment this has had quite a significant impact on him.

But looking at everything in the round I think £350 is a fair and reasonable award to make on this case. NewDay (alongside the debt collectors and the solicitors) haven't helped matters.

Their procedures appear to have stopped Mr T from getting this resolved earlier, they sent confusing and contradictory letters and didn't seem to recognise early enough how best to communicate with Mr T. But I don't think I can safely say NewDay should be held responsible for all the issues Mr T has had around his credit file.

I don't think there's sufficiently compelling evidence to suggest that the impact Mr T describes, e.g. the failure to secure the job opportunity, was caused simply by the manner in which NewDay had added information to his credit file. It's simply not adequately established that NewDay's actions directly and solely prevented Mr T from successfully re-mortgaging, moving and taking on the new job.

And for the reasons I've previously explained, I also don't consider NewDay is responsible for the entire time this has been going on - when I think there's more Mr T could have done to get the matter resolved earlier.

My proposal for NewDay to pay Mr T £350 in full and final settlement of this complaint, I consider, reflects the above.

I've noted Mr T's comments about his credit file – and if he continues to have issues accessing it online he may wish to try and call the relevant company and see if they can help him that way.

Responses to my provisional decision

Mr T replied and said he didn't have any additional points. He also said he'll agree to what I've said, but it fails to uphold the impact on his freedom to make decisions about his future.

NewDay didn't reply by the deadline set.

My findings

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

Because Mr T has accepted my decision, albeit with reservations, and NewDay didn't reply I see no change to change my original decision.

My decision

For the reasons I've explained above I uphold this complaint, and order NewDay Ltd to pay Mr T £350 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 March 2020.

Jon Pearce
Ombudsman