

complaint

Mr R is unhappy that NewDay Ltd incorrectly told him that he was eligible for a 0% balance transfer rate on his credit card.

background

Mr R holds a credit card account with NewDay. In April 2019, he emailed it to check whether any balance transfer offers were available. It emailed him back that he was eligible for 0% interest on a balance transfer for six months. He phoned in to take up this offer (so that he could transfer money over from another card) – but was then told that it wasn't in fact available. He says NewDay agreed to call him back about this, but never did. So he raised a complaint.

In response, NewDay said Mr R wasn't entitled to the 0% balance transfer rate. It admitted that its email had mis-informed him about this, and credited £10 to his account to apologise. Unhappy with this, Mr R referred the matter to us. He wanted £50 to cover his call costs, stress, and the interest incurred on his other card due to not getting the 0% rate.

When our investigator reviewed this complaint, she explained to Mr R that he hadn't lost out on the balance transfer offer as it wasn't available to him in the first place. And she considered the £10 offer was fair compensation for what had happened.

Mr R didn't agree with our investigator's view. He said NewDay's email about the balance transfer offer showed it had made a mistake. And when he phoned in, it kept him on hold and then didn't call him back as promised. He reiterated that £10 didn't cover his interest, time or call costs. So his case has been passed 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. Having done so, I've decided not to uphold it.

Mr R would be entitled to a remedy from NewDay if, for example, there were evidence of loss as a result of its breach of contract and/or negligence.

Breach of contract

However, I can't see there was ever a valid contractual agreement for NewDay to provide Mr R with a 0% balance transfer facility. In law, a valid contract only exists where there is a 'meeting of minds' and 'consideration' from both parties. Importantly, a trader who advertises goods or services on certain terms and conditions is not usually in fact making an offer but merely an 'invitation to treat'. In other words, it's the customer who makes the offer by responding to the invitation by indicating a willingness to purchase goods or services at the advertised price or terms. There is only a binding contract once the trader accepts the customer's offer and there's a genuine meeting of minds and mutual consideration, e.g. in return for paying X the trader agrees to supply Y. It's a common misapprehension that a seller is bound by the advertised price even if it's only an honest error. Whilst many retailers may honour mispriced goods for commercial reasons and goodwill, there is in fact no legal or equitable obligation to do so.

Applying these fundamental principles about the formation of contracts to the circumstances of this case, it seems to me that NewDay isn't bound by what now appears to have been just an erroneous invitation to treat. The 'offer' actually came from Mr R when he phoned to take up the invitation. But there was no subsequent meeting of minds (or binding contract for this service) because NewDay realised its mistake in time—and, accordingly, declined the offer to contract on those terms. It therefore didn't act in breach of any contract, so isn't liable for any actual or perceived consequences of Mr R not having the 0% facility.

Mr R says he paid more interest on another credit card because he couldn't make use of the 0% balance transfer rate. But the 0% rate wasn't actually available at the time of his enquiry. NewDay has provided internal records to show that this rate was a promotion which expired in February 2019. I appreciate that NewDay's email said it was available until June 2019, but the internal records show this was clearly a mistake. I therefore don't consider it fair or reasonable to instruct NewDay to honour this rate.

Negligence and causation

Even if there's no contract (or breach of contract), a party can still be liable for the reasonably foreseeable consequences of their negligence when they owe a duty of care to someone (as a credit-card provider owes to its customers or potential customers). And that can include any economic loss suffered as a result of negligent misstatements, such as a misleading promotion or email response.

NewDay does accept that it accidentally mis-informed Mr R about the rate. And in principle I accept that this was negligent, as such firms do have a statutory duty to provide information that is clear, fair and not misleading. But even if it *hadn't* made this error—i.e. if it had told Mr R from the start that no promotional rates were available—he would've still needed to pay any interest contractually due on his other card or seek alternative 0% arrangements through other providers. I don't consider this to be an economic loss caused by any error on NewDay's part. Fundamental to any successful claim in negligence is evidence of loss or damage. If the damages claimed weren't reasonably foreseeable at the point of breach, were too remote from the breach, or were more directly caused by some other circumstance (such as an intervening or pre-existing act), then the negligent party isn't legally responsible despite his breach of duty, so can't fairly be ordered to provide a remedy. The law on causation limits the liability of wrongdoers to only those consequences which wouldn't have happened *but for* their negligence, breach of statutory duty, etc.

Distress and inconvenience

I have to take account of the law but am not bound by it—because our enabling statute and rules say we ultimately decide cases on the basis of what's fair and reasonable in all the circumstances. So, although there's no *legal* right to compensation for distress and inconvenience with regard to a contract that's neither for pleasure nor peace of mind, our rules do allow such awards where we're satisfied a complainant has been put to trouble and upset by a firm's wrongful acts or omissions.

Mr R has told us that NewDay's error caused him stress. And that he spent time and money calling to try and claim the offer. So I've considered the impact this situation had on Mr R – to decide whether more compensation is due.

It seems that Mr R's call with NewDay lasted around 30 minutes. That's what he told it when he complained:

“I was kept on the phone for about 25-30 mins only to be told this offer was not available. This wasted my time...”

It's also what he told us when we first took on the case:

“...[I] was kept on the phone for 30 mins, only to be told this offer was not available.”

Mr R hasn't been able to provide any information about how much this call cost him. He says he would've been able to do so if we'd asked him earlier. But it's not our responsibility to substantiate Mr R's case; that's down to him. Ultimately, I can't quantify his call costs. So I can't reasonably conclude that the £10 offered is unfair.

I appreciate that it was upsetting for Mr R to find out that the rate he wanted wasn't available. It's also unclear what happened with the follow-up call he says he was promised. But the quotations I've set out above suggest that Mr R left the call understanding that the 0% rate wasn't available. That limits the impact of the error. Once it was clear that the rate wasn't available, Mr R could've pursued balance transfer options with other credit card companies.

Ultimately, even when a business makes a mistake, I'd only award compensation if the impact on its customer went beyond minor trouble or upset. For the reasons set out above, I do consider the impact to have been limited in this instance. So, taking everything into account, I'm satisfied that the £10 NewDay has already paid is sufficient to address any distress, inconvenience and call costs Mr R incurred because of its error – and is in line with awards we've previously made in similar cases.

my final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 December 2019.

Rachel Loughlin
Ombudsman