

complaint

Mr D is unhappy that he's been charged interest by NewDay Ltd (trading as 'Aqua') on a default fee plan.

background

I sent my provisional decision to both parties on 24 March 2020. A copy of this is attached below and forms part of this final decision. In it I explained why I thought this complaint should be partially upheld. And I said that I felt NewDay should pay Mr D £75 compensation for the inconvenience caused by its poor service, and refund a £10 administration fee he was charged (if it had not already done so).

NewDay accepted my provisional decision and said it agreed to pay Mr D £75 compensation.

Mr D also responded to say that he was willing to accept my provisional decision. Although he was disappointed as he felt I had not addressed the matter of charges he felt were not shown on his statements. He also clarified that NewDay has already refunded the £10 administrative charge incurred when it sent him copies of his statements.

my findings

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

I asked our investigator to let Mr D know that I had checked the list of charges NewDay told him had been incurred on his account, and that aside from the typing error I referred to in my provisional decision, I felt these were shown on his statements.

Mr D hasn't made any further comments, and neither party has put forward any new evidence or arguments for my consideration. It follows that I've reached the same conclusions that I did in my provisional decision. I still think it would be fair for NewDay to pay Mr D £75 compensation for the poor service he's received.

my final decision

My final decision is that NewDay Ltd must pay Mr D £75 compensation for the trouble and inconvenience caused by its poor service.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 27 May 2020.

Jenette Lynch
ombudsman

copy of provisional decision

complaint

Mr D is unhappy that he's been charged interest by NewDay Ltd (trading as 'Aqua') on a default fee plan.

background

In 2017 Mr D noticed that his credit card statement showed he was being charged interest on a default fee plan. He hadn't incurred any default charges that he was aware of, so he contacted NewDay.

NewDay initially told him it couldn't see that he'd incurred any charges either. But it later sent him a letter explaining he'd incurred 6 default charges between 2007 and 2017. It said that 3 of these were late payment fees, and the other 3 were incurred when his account balance exceeded his credit limit.

Mr D said he couldn't see that these charges were detailed on his statements. And he explained that he pays his credit card by direct debit each month, so he didn't think there could have been any late payments. He felt the charges and interest had been added unfairly, and that they should be removed.

He also said that if any charges *were* added to his account he thinks they should have been paid off, as he makes the minimum payment required to the account each month.

He's unhappy that NewDay charged a £10 fee for sending him copies of his credit card statements when he queried the charges. He also says NewDay initially told him that it doesn't have a complaints department, and made it difficult for him to raise his concerns with the business.

NewDay said that the charge it had initially told Mr D was from 2017 was actually from 2007. So the 6 charges concerned were applied to his account between March 2007 and September 2011. It also said that the default fee plan had arisen in January 2009, but hadn't been shown on the reverse of Mr D's statements until July 2017 when the format was updated. It said it could understand why this had caused him some confusion, but didn't think it had made any errors.

Our investigator looked at what had happened and didn't recommend that the complaint should be upheld. She said that she was satisfied the default fee plan was legitimate. And that NewDay had confirmed the default fee plan would be in place until Mr D paid the balance of his account in full.

Mr D disagreed with this view so the case has been passed to me to consider. He still feels that NewDay's definition of 'minimum payment' implies that it will include any default fees, and therefore doesn't think that the default fee plan should have arisen. And he says he can't see any evidence of why charges were added to his account in 2009.

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.

As this complaint relates to matters that occurred some time ago, I think it would be helpful for me to clarify here that where evidence is incomplete or not available; I have to make my decision on balance. That is what I think is most likely to have happened.

Based on the evidence I've seen so far I think this complaint should be upheld in part. I'll explain why.

I appreciate the parties' patience whilst we've made further enquiries about this matter. I can see Mr D feels very strongly about this complaint. And I can understand why he has concerns that he might've been charged fees and interest unfairly here. But I hope he will feel my decision explains what I think happened, and why confusion may have arisen.

Looking at the statements for Mr D's account I can see he incurred an over limit fee on 21 November 2008. I know Mr D has doubts that any default fees were incurred on his account. But I'm satisfied from his statements that his balance exceeded his credit limit at this time, and this fee was legitimate. As it is detailed on the statements he's sent to us, I also think it's fair to say that NewDay took reasonable steps to make Mr D aware he'd incurred this fee.

NewDay has evidenced that the default fee plan on Mr D's account was created two months later in January 2009. I can't see that Mr D incurred any other charges or fees around this time. And NewDay has explained that there would have been a bit of a delay before an initial default fee was converted to the type of default fee plan that is on Mr D's account. So whilst it's hard for me to be exactly certain what happened given the amount of time that has passed, I think it's likely this over limit fee led to the creation of the default fee plan on his account.

Mr D argues that he has always made the minimum payment due on his account by direct debit. So he feels that even if he did incur a default fee it should have been paid off in full by his minimum payment the following month, and a default fee plan shouldn't have arisen. He's referred us to NewDay's definition of 'minimum payment' as is currently shown on his statements, which says it will be equal to the higher of £5 or *"the sum of (i) 1% of the balance shown on your statement (including the and interest payable, Default Fees and arrears) (ii) the amount of any interest and Default last statement plus (iii) the amount of any arrears, which are immediately repayable."*

I've considered this point carefully. But whilst this definition of 'minimum payment' is applicable now, NewDay has confirmed that it wasn't at the time the default fee plan arose. It's told us that at this time the minimum payment was still calculated in line with definition in Mr D's original credit agreement (of which I've seen a copy), which says that *"Each month you must pay at least 3% of the amount you owe us, or £5, whichever is more. If the amount you owe is less than £5 you must pay the full amount. Your statement will show the minimum you must pay and the payment date."*

NewDay says that in this scenario it's likely the minimum payment wouldn't have been allocated in such a way as to clear the default fee in full. And any subsequent payments would have been split between plan balances (i.e. the default fee plan and the main standard purchase balance on Mr D's account). As a result the default fee plan would not have cleared in its entirety. NewDay has explained that the only way Mr D could've cleared the default fee plan completely is by repaying his credit card balance in full.

I understand Mr D has concerns about the amount of interest he's paid on this default fee plan over the years. But I haven't seen any evidence that he's lost out financially as a result of the way NewDay has administered his account here. NewDay has confirmed that interest is charged on the default fee plan at the same rate as it is charged on standard purchases (his main balance). So I'm satisfied Mr D has not paid any more interest on his account than he would have done even had the default fee been added to his main balance and not set up on a separate plan.

Similarly, even if NewDay had allocated the payments he made to his account in a different manner and had treated them as having cleared the default fee plan, the main plan balance on his account would have been higher by an equivalent amount as a result. So Mr D would have paid the same amount of interest on this increased balance over the period as he did the default fee plan.

I can see Mr D is very unhappy with the service he's received from NewDay in relation to this matter. He's told us it took a long time for NewDay to be able to clarify how the default fee plan had arisen, and to provide him information about fees and charges he's incurred on his account. He's also complained that it charged a £10 fee for sending him copies of statements when he queried this.

We did ask NewDay if it could provide us with a copy of any records of contact it has had with Mr D regarding this matter, but it hasn't done so. However I have no reason to doubt what Mr D has told us happened. I understand he also feels NewDay made it difficult for him to complain, and says it didn't make him aware it had a complaints department.

I can see NewDay sent Mr D a letter in February 2018 detailing the default fees that had been incurred on his account. NewDay has since advised that it made a mistake when it said one of these fees had been added to his account in March 2017, and that this actually related to a charge from 2007. But Mr D says multiple members of staff also confirmed this charge related to March 2017 and suggested that the mistake was not adding the charge to his statement.

I appreciate Mr D doesn't have a lot of confidence that NewDay made a typing error here as it's now said. But having looked carefully at his account balance and the interest payments calculated around this time I can't see any evidence a default fee was applied to his account in March 2017.

That said I can understand why Mr D is so frustrated about the difficulties he's experienced getting clarity about the fees and charges that have been added to his account. And I do think NewDay could have provided him with better service here. So to put things right, I think it would be fair for NewDay to pay him £75 compensation for the inconvenience, trouble and upset its poor service has caused him.

Mr D has argued that NewDay's inability to clarify charges and money owed has meant he wasn't able to ascertain what he actually owed it, or to clear his balance in full. I can also see he is unhappy NewDay didn't put this account on hold whilst this matter was being looked into. However I have to consider that Mr D could've made payments to his account and continued to query this default fee plan afterwards. Or, even if he wasn't comfortable clearing the full balance under these circumstances, he could have paid some amount towards the balance and reduced the interest charges that were continuing to accrue if this was of concern to him. So whilst I'm sorry to disappoint Mr D, I don't think I can fairly ask NewDay to reimburse him all of the interest that was applied to his account whilst this complaint has been on-going.

my provisional decision

My provisional decision is that I uphold this complaint in part.

NewDay Ltd should pay Mr D £75 compensation. It should also reimburse him the £10 fee he was charged when he was sent copies of his statements, if it has not already done so.

Jenette Lynch
ombudsman