

## **The complaint**

Mr K has complained NewDay Ltd lent irresponsibly each time it increased his credit limit on his Aqua card.

## **What happened**

Mr K opened an Aqua credit card account with NewDay in December 2011 with a credit limit of £500. Since the account opened, there have been seven increases to the credit limit until February 2016. The first three of these increases were requested by My K, but Mr K has complained about the four increases NewDay offered to him.

The increases in credit limits that NewDay offered Mr K are:

- December 2013 it increased from £1,550 to £2,300
- October 2014 it increased from £2,300 to £3,450
- August 2015 it increased from £3,450 to £4,500
- February 2016 it increased from £4,500 to £5,850

NewDay says it reviewed Mr K's affordability before each of these increases and is satisfied that Mr K passed its affordability checks. And it wrote to him offering him the chance to reject the increases before they were applied. Mr K accepted the increases on each occasion.

Mr K complained to NewDay on 12 August 2019. He said NewDay had increased his credit limits irresponsibly, and that he had used payday loans to meet his requirements because of his financial difficulties. NewDay told him that it didn't uphold his complaint because he had passed its financial difficulty assessment based on external credit bureau data. NewDay went on to explain that although Mr K now says he had borrowed money from a family member to pay a full balance owing, it hadn't known this at the time. And this wouldn't be a reason for it not to allow him further credit limit increases in the future, if he passed its affordability assessment.

Mr K referred his complaint to our service and an investigator looked into what happened.

The investigator said that NewDay is able to lend to customers with a certain credit status, but it would still need to lend responsibly. It did provide Mr K with an option to reject the increases, but the investigator said this doesn't make it fair to offer the increase in the first place if it hadn't carried out sufficient affordability checks.

The investigator suggested that NewDay should refund all interest and charges incurred as a result of the credit card limit increases from December 2013. And pay Mr K £100 for the trouble and upset it caused him. The investigator later clarified that the interest and charges refunded should also include 8% interest.

NewDay didn't accept the suggestion made by the investigator. It said it's not required to review Mr K's income and expenditure when it completes its affordability checks. And that it is generally accepted it can consider a customer's modelled income, less all available discretionary and non-discretionary expenses and credit commitments. NewDay highlighted

that Mr K is currently paying more than the contractual amount due, and Mr K hasn't contacted it for assistance.

NewDay says that it only became aware of payday loan data from March 2016, therefore it followed what was required of it before the final increase in the credit limit in February 2016. It says that the risk data it was provided, and the internal methods it used, are based on industry recognised methods. Additionally, it says it retains a history of how the customer has managed the account alongside any other accounts a customer holds under the NewDay portfolio.

### **What I've decided – and why**

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 to uphold it. I'll explain why.

When NewDay made the decision to offer Mr K a credit limit increase in December 2013, the preceding five statements show that Mr K was up to, and at times over, the agreed credit limit. This led to additional charges being applied to the account, and by this time the minimum monthly payment was £52.72. I consider this is a potential indicator a customer may be struggling to maintain existing commitments, and it should reasonably have prompted further enquiries.

NewDay says it isn't required to check the income and expenditure of a customer when considering an increase in a limit.

I accept NewDay decides how to set its lending criteria. However, having reviewed the Office of Fair Trading (OFT) Irresponsible Lending Guidance that was in place at the time of the first increase, I don't think the checks NewDay completed went far enough. I understand that NewDay may not have had full details of Mr K's other credit at this time because of the nature of the credit checks it choose to complete. But I think it could've completed other more proportionate checks, like asking to see his full credit file or completing a new income and expenditure assessment for example. The OFT guidance says a lender may use of a variety of sources of information which might include its existing records, evidence of income, evidence of expenditure and a credit report.

I consider that Mr K's circumstances suggested it would've been appropriate to do more checks than NewDay carried out. I say this because NewDay was already aware Mr K had recently exceeded his credit limit and additional charges had been applied. The credit report I have seen, shows that by November 2013, Mr K had obtained two further credit cards, and all three of his cards were operating at, or very near to their limits. Mr K's expenditure on these cards was now at least £125 per month.

Taking what I've seen into account, I don't think the decision to approve the significant increase to £2,330 in December 2013, without checking income and expenditure, was a reasonable one. I think it's likely that if NewDay had done better checks, in line with the OFT guidance at the time, it wouldn't have offered Mr K a significant increase in his credit card limit. A reasonable check would've shown he had three new credit cards already operating at their limits, and Mr K's monthly credit commitments had increased significantly within a short period.

The credit limit increase of 50% offered by NewDay in October 2014 was also a significant one. Again, NewDay did not take reasonable steps to assess the affordability of this increase. It did not request an up to date income and expenditure breakdown from Mr K.

I acknowledge NewDay's view that between December 2013 and October 2014, Mr K had cleared his balance with it. But I have seen no evidence that NewDay sought to clarify whether this had come from income, savings or assets. Regardless of this, by October 2014 Mr K was at 75% of his credit limit. And his credit report shows that his other two credit cards were close to their agreed limits, even though the balances had been reduced earlier the same year.

By the time of the subsequent increases, the Consumer Credit Sourcebook (CONC) section of the FCA Handbook gave information on how lenders should assess the creditworthiness of a borrower. The requirement in CONC 5.2 is to assess the customer's creditworthiness when offering credit, and under CONC 5.3 this also applies to setting credit limits. A key element of this is the customer's ability to make repayments as they fall due (or within a reasonable period in the case of running-account credit such as a credit card or overdraft) but this is not a separate obligation. It is a part of assessing creditworthiness.

I think it would've been reasonable for NewDay to carry out better checks than it did at this time because, although the credit cards were being cleared at different times, Mr K quickly took them back, or near to, their limits again. Again, in such circumstances I would've expected NewDay to carry out an income and expenditure assessment, in line with the guidance in the FCA Handbook, but NewDay didn't do so.

NewDay says it didn't know Mr K had borrowed money from a family member. However, the point here is that if NewDay had made suitable enquiries as to Mr K's financial position, it could well have established that information. That would have enabled it to make a better-reasoned decision on whether it was appropriate to significantly increase Mr K's credit limit at this time.

There were then two separate significant increases of 30% to Mr K's credit limit in August 2015 and February 2016. At these increases, NewDay didn't obtain a breakdown of income and expenditure. By this time, NewDay had increased Mr K's credit limit from £1,550 to £5,850 without requesting an income and expenditure breakdown from Mr K. I consider it was inappropriate for NewDay to approve these increases without carrying out greater checks on Mr K's affordability throughout this period.

I appreciate that Mr K is now paying NewDay an amount to reduce his debt that is over and above the minimum he is required to pay, but that doesn't mean that NewDay was prudent in offering Mr K these significant increases at the time. I have seen that Mr K later became more reliant on payday loans to help fund his existing repayments on his credit cards. Although NewDay says Mr K hasn't used the payday loans to fund essential spending, it is reasonably clear to me that the increases it provided led to his debts becoming more persistent and added to his financial difficulty. And he then used payday loans to help fund his credit.

### **Putting things right**

Over a period of a little more than two years, between December 2013 and February 2016, NewDay increased Mr K's credit limit almost fourfold, without carrying out sufficient checks on his ability to repay. During this time Mr K's account conduct was displaying indications of a customer who was potentially in difficulty.

Had NewDay made suitable checks, I think it would have become clear Mr K had more financial commitments and less disposable income than NewDay believed he had. In those circumstances, I consider it unlikely a responsible lender, acting reasonably, would have approved the credit limit increases. I therefore consider this is irresponsible lending and NewDay should put this right.

### **My final decision**

For the reasons I've explained above, I uphold Mr K's complaint. I require NewDay Ltd to:

- refund the interest and any charges incurred as a result of the credit card limits being increased from December 2013 to the present;
- pay 8% annual interest on the refunds and charges for the period; and
- pay Mr K £100 to recognise the distress this has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 6 August 2020.

Paul Lawton  
**Ombudsman**