

The complaint

Ms H has complained that NewDay Ltd lent to her irresponsibly and continued to increase her credit limit when she couldn't afford it.

What happened

In November 2014, Ms H took out a credit card with NewDay, with a limit of £300.

Over the course of the next few years, the credit limit increased as follows:

Date	Old Limit	New Limit	Requested By
February 2015	£300	£1,300	NewDay
June 2015	£1,300	£1,900	NewDay
October 2015	£1,900	£2,650	Ms H
October 2016	£2,650	£3,650	Ms H
February 2017	£3,650	£4,900	NewDay

Shortly after the final increase, Ms H fell behind on her payments, and the account defaulted in July 2017.

Ms H says NewDay shouldn't have initially lent to her as she was studying at the time, and they shouldn't have increased her credit limit as she couldn't afford it. She's asked for a refund of charges and for her credit file to be adjusted.

NewDay say they followed their lending criteria and acted responsibly.

I sent Ms H and NewDay a provisional decision on 21 August 2020, to explain why I thought the complaint should be partially upheld. In that decision, I said:

NewDay needed to take reasonable steps to ensure that they lent responsibly. In practice that means that they should have carried out proportionate checks to make sure Ms H could repay her borrowing in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts, and the consumer's income and expenditure. In the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

With this in mind, I don't think it was unreasonable for NewDay to have lent to Ms H initially. According to the information they gathered, including what Ms H told them at the time, she was employed with a good income, wasn't in arrears, didn't have any recent defaults, had a relatively low amount of unsecured debt, and her initial credit limit was modest. There doesn't seem to have been any indication that she was studying rather than working, nor that she was in any financial difficulties at that point.

Similarly, for the first two credit limit increases – in February and June 2015 – Ms H was up to date with her payments, paid on time, broadly stayed under her limit, and seemed to be managing her account well. Again, there doesn't seem to have been any strong indications of financial difficulties. And on each occasion, NewDay offered the new limit and Ms H didn't opt out.

However, by the point of the third increase in October 2015, I think NewDay should reasonably have seen that further lending was unsustainable or otherwise harmful.

After her previous limit increase in June 2015, Ms H almost immediately spent up to the new limit, which was a significant increase in the card's overall balance from the start. She then either kept her card maxed out or even exceeded her credit limit each month. She only made the bare minimum payments, and was sometimes late – and this was a sudden negative change in her repayment behaviour. Further, NewDay's credit check showed that she'd recently fallen into arrears with at least one other account. This was her third limit increase in less than a year, and it put her at nearly nine times the original approved limit.

Any one of these factors should've been a cause for concern for NewDay. But putting all of them together, I don't think it was fair or reasonable that they granted Ms H this limit increase or the subsequent ones.

Indeed, by the next increase, in October 2016, Ms H had gone over her limit in six months out of the last twelve, was otherwise keeping the card maxed out, and was again only paying the minimum amount – and not necessarily on time. And by that stage, the credit check showed financial difficulty markers.

So I'm upholding the complaint from October 2015 onwards.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 18 September 2020. Both Ms H and NewDay responded, and I'll go through what they said below.

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.

Ms H broadly agreed with the decision, but she felt it was still irresponsible of NewDay to have lent to her before October 2015, too. While I understand where she's coming from, I explained in my provisional decision that NewDay only needed to make checks that were proportional to the lending. And in the earlier stages of her lending relationship with NewDay, there doesn't seem to have been any indication that Ms H was studying rather than working, nor that she was in significant financial difficulties.

NewDay argued that maxing out one's card didn't necessarily show that one was in financial difficulties, and nor did going over the limit, making only minimum payments, missing payments, or being in arrears elsewhere. But they are causes for concern. And we don't look at these factors in isolation, as NewDay are suggesting. We look at the whole situation. And given all of these factors *put together*, as well as other factors such as the large and frequent limit increases, negative changes in repayment behaviour, late payments, and later financial difficulty markers, it was not fair or reasonable that NewDay continued to increase Ms H's limit from October 2015 onwards.

NewDay argued that their checks already assumed that the customer will use their full limit, per the regulations. But they also argued that they were only giving Ms H the *option* to use more credit, and so they weren't responsible if she did use the whole limit. These two points appear to be contradictory, so I'm not sure what NewDay's logic is here. In any case, NewDay were required to lend responsibly, including checking that Ms H could reasonably afford any limit increases. And for the reasons I went through above, I do not agree that they did enough to make sure she could afford the new limits from October 2015 onwards.

NewDay pointed out that Ms H wasn't in arrears at the point of the October 2016 limit increase. But per my provisional decision, she had exceeded the limit in six months out of the last twelve, was otherwise keeping the card maxed out, was only paying the minimum amount, made late payments, and had financial difficulty markers on the credit check. NewDay should have realised that further increases were not sustainable.

They also pointed out that Ms H repaid the debt in mid-2020. I don't see the relevance of this in this case. The fact that Ms H's situation may or may not have improved a good number of years later does not somehow make it retrospectively acceptable for NewDay to have lent irresponsibly back when she was in difficulties years before.

NewDay felt it was unfair to award 8% compensatory simple interest, as Ms H wasn't out of pocket. As I explained in the provisional decision, the compensatory interest is only to be added onto Ms H's *overpayments*. That's where she paid too much due to the unfair limit increases and associated interest and charges – and in those situations (if applicable), she would indeed have been out of pocket.

Lastly, NewDay explained that they were allowed to decide their own lending criteria. That may be the case, but they still have to lend responsibly. Here, I have found that they did not.

So having reconsidered the case, I've come to the same conclusions as before.

Putting things right

I direct NewDay Ltd to:

- Rework the account so that from October 2015 interest is only charged on the first £1,900 outstanding, to reflect the fact that no further credit limit increases should have been provided
- Remove all late payment and over limit fees from October 2015 onwards
- Deduct the payments Ms H made from October 2015 onwards from the reworked account balance. If, by doing this, the account balance drops below zero, the extra she paid should be treated as overpayments and refunded to Ms H

- Add simple interest at the rate of 8% simple a year onto any refunded overpayments (if there were any), payable from the date the payment was made until the date of settlement[†]
- Remove any adverse information from Ms H's credit file from October 2015 onwards

[†] HM Revenue & Customs requires NewDay to take off tax from this simple interest. NewDay must give Ms H a certificate showing how much tax they've taken off if she asks for one.

My final decision

I partially uphold Ms H's complaint, and direct NewDay Ltd to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 19 October 2020.

Adam Charles **Ombudsman**