DRN-2221823

The complaint

Mrs B complains NewDay Ltd (trading as Aqua) lent to her irresponsibly. She's unhappy about the level of interest she's been charged and that she wasn't issued a new card when her old one expired. She's also unhappy with the way NewDay responded when she said she was in financial hardship.

What happened

Mrs B took out a credit card with NewDay in September 2014 with a credit limit of £250. The account statements show in February 2015 this was increased to £1,050, in July 2015 it was increased to £1,300 and in February 2016 it was increased to £2,050.

Mrs B says she shouldn't have been lent to – she says couldn't afford this and had multiple defaults and payday loans at the time. She complained that the interest rate was too high and it was then increased, which has left her further in debt. She was unhappy NewDay's collection team couldn't communicate by email and she felt the income and expenditure form she'd been sent to complete was too invasive.

NewDay didn't uphold Mrs B's complaint. They said they took her income and did a credit check prior to the account opening and before each further increase they carried out a further credit check and looked at her account activity. They said the terms of the account allowed them to increase the interest rate and allowed them to withdraw the facility. They explained they'd issued an income and expenditure form when Mrs B contacted them for assistance and they could only communicate with Mrs B by phone or post, not email as she had requested.

Our investigator requested Mrs B's credit file, but this wasn't initially provided. Based on the information he had, he didn't uphold Mrs B's complaint.

He said given the initial credit limit and subsequent increases were relatively small, NewDay had carried out proportionate checks. He explained prior to the account opening NewDay took Mrs B's income and her credit file information showed she had two payday loans in arrears within the previous six months but no other active loans or cards. So he didn't think NewDay had done anything wrong in lending to her.

He said the terms allow NewDay to change the interest rate and seeing as they'd given her two months' notice, this was reasonable. He thought NewDay had assisted Mrs B by advising her to increase her payment in order to reduce the amount of interest she was paying.

He said the terms also allow NewDay to withdraw the card facility, but her account was being maintained as it had been previously, so he thought withdrawing the facility was unreasonable. However, he noted the facility was withdrawn in September 2017 and Mrs B contacted NewDay in March 2018 about her financial difficulties. He felt had NewDay continued to allow Mrs B to use her card during this time, it could've made her financial situation worse. For this reason, he didn't think NewDay needed to do anything to put it right.

Our investigator didn't think NewDay were wrong in asking Mrs B to communicate by phone or post, as their collections team don't have access to emails. He also said there's nothing to suggest Mrs B can't use phone or post. He looked at the income and expenditure form and didn't think NewDay had asked for anything that wasn't relevant, so he didn't agree with Mrs B's comments that this form was too invasive.

Mrs B replied stating she'd had multiple defaults in addition to payday loans and asked us to look at her credit file. Upon reviewing Mrs B's credit file, our investigator upheld the complaint. He thought that the first limit increase and those that followed were not affordable.

He said Mrs B's credit card balance continued to rise and Mrs B exceeded it on one occasion. So he didn't think it was enough for NewDay to rely solely on her credit check and account statements. He thought they should've asked about her expenditure and had they done so, it would've come to light that she had two recent defaults, approximately six payday loans in debt management plans as well as a recent loan of £4,000.

NewDay disagreed. They said they didn't use the same credit reference agency which Mrs B had used to send her credit file to us. They said the agency they used didn't flag up these issues and the regulations in force at the time of the increases didn't oblige them to carry out checks with multiple agencies. They said Mrs B had maintained her payments and had declared an income of £35,000 which would suggest the increases were not unsustainable. They also noted Mrs B didn't contact them for assistance until two years after the last credit limit increase. NewDay asked for an ombudsman's decision.

I issued my provisional decision on 21 August 2020, an extract of which I've included below:

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 reached the same conclusion to our investigator and my provisional decision sets out why.

Unaffordable lending

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. This includes the FCA's Consumer Credit Handbook (CONC).

Having done so, I consider that the increases in the credit limit were unaffordable for Mrs B. The FCA's rules require NewDay to undertake a reasonable assessment of Mrs B's creditworthiness before significantly increasing the credit limit on her account. (CONC 5.2.A). *This includes an assessment of whether the increases were sustainable – in other words, that Mrs B could repay the debt without undue difficulty.*

I'm satisfied that the increases in the credit limit were significant. The limit was initially £250 but Mrs B's statements show in February 2015 this went up to £1,050, an increase of £800 in just five months. In July 2015 the limit increased to £1,300 and in February 2016 it increased to £2,050, a jump of £750 in seven months. So, I consider that NewDay had an obligation to check that the increases were affordable for Mrs B.

Affordability checks should be proportionate so a lender might not do the same level of checks as it does at the opening of an account. But, typically, a lender will consider the information, which it already has about the customer, including how they've managed their account and the customer's ability to make repayments as they fall due. It may refresh checks with the credit reference agencies.

NewDay said when Mrs B opened her account it asked for her gross annual income which she stated was £35,000. It said it carried out checks with a credit reference agency. In their final response letter, they explained Mrs B had no arrears on any active accounts, no public records and no defaults. Based on the screenshots they've provided it looks like they were aware of two payday loans that had been in arrears in the last six months and had defaulted in the last 12 months. NewDay has said they are a second chance lender and allow for negative information on a credit report. It said by having payday loans and other credit this wouldn't be a sole reason to prohibit them from raising a credit limit on an account. Whilst I accept this, NewDay still had an obligation to make sure the lending was affordable for Mrs B.

Before increasing the credit limits, NewDay said it considered the information it already had about Mrs B. It said Mrs B always made payments and she always brought her account back under the limit, so it was satisfied with the way she was managing her account. NewDay also carried out credit checks and these did not indicate any financial or affordability issues.

However, I think NewDay has been selective in the way it has interpreted Mrs B's management of the account. I think there are indications that Mrs B wasn't managing her existing credit limit well, which calls into question NewDay's decision to more than quadruple her credit limit after just four months. For example, Mrs B's statements show she took her account up to the credit limit quickly.

Taken with what NewDay already knew about Mrs B from the checks it did when it opened the account, I think these issues call into question NewDay's decision to increase Mrs B's credit limit. Certainly, before doing so, I think NewDay should have looked more closely into Mrs B's circumstances and had they done so, they would've identified the credit limit increases were unaffordable.

I also think they had reason to carry out additional checks because they were aware of two payday loans that had been in arrears in the last six months and had defaulted in the last 12 months. Mrs B's credit file shows these two accounts defaulted in January 2014 and July 2014.

Whilst this may not have prompted NewDay to carry out additional checks for the initial limit of £250, I think they should've carried out these checks when this was increased by £800 to £1,050 and as mentioned above this happened only five months after opening the account. Mrs B provided her credit file which showed prior to the account opening and credit limit increases there were a high level of payday loans. Mrs B was taking out payday loans frequently. Six of these loans were in debt management plans prior to the opening of the credit card with NewDay.

Our investigator also referred to a loan of £4,000, although it looks like this was taken in July 2016 which was after the last credit limit increase. Mrs B's credit file does show a loan of £5,090 was taken in August 2014 which was only a month before the card was opened. However, I understand this may not have appeared on Mrs B's credit file at this time.

NewDay explained it gave Mrs B the option to 'opt out' of the increase if she felt it was unmanageable in any way. But it was for NewDay to ensure the limit increases were manageable in the first place and I don't think the option to opt out takes away from this responsibility.

It said the information Mrs B provided didn't appear on the checks that it completed at the time. It also said the rules didn't oblige them to use multiple credit reference agencies. It explained it used a different credit reference agency to the one Mrs B had used. However, for the reasons I've outlined above I think the information NewDay had should've prompted *them to carry out additional checks prior to increasing her credit limit.*

NewDay also said Mrs B didn't contact them for assistance until two years after the last increase. Whilst this may be the case, this doesn't mean the limits were affordable to her. And in any event, between April 2014 and November 2018, CONC 6.7.2R required NewDay to "monitor [Mrs B's] repayment record and take appropriate action where there are signs of actual or possible repayment difficulties". Such signs here may include exceeding the credit limit, late payments, missed payments, or frequently making minimum repayments (such that it calls into question the borrower's ability to repay the debt within a reasonable period of time). As such, even where Mrs B hadn't sought help, it seems to me that NewDay itself was required to be on the lookout for repayment difficulties and to step in where they might possibly exist.

In these circumstances, I consider that the increases in Mrs B's credit limit were unaffordable. I think it's fair and reasonable for NewDay to restore her account to the position it was in before the increase in January 2015.

interest rate

Mrs B has complained that the interest she was charged was too high and that it was then increased, which has left her further in debt.

The key question is whether, in light of the interest rate, Mrs B was able to repay this debt in a sustainable manner. I don't think the interest rate itself gives grounds to uphold the complaint in this case.

Our investigator said the terms of the account allow NewDay to increase the interest rate. He explained these terms didn't specify how much notice NewDay had to give but he felt they gave her sufficient notice as they wrote to her on 7 April 2017 and didn't increase the rate until June 2017.

Having looked at the terms, these state NewDay will give at least 60 days' notice before making such a change. I can see NewDay wrote to Mrs B on 7 April 2017 explaining they'd be increasing the interest rate from 13 June 2017, so I think they gave her the correct notice this would happen.

The letter also gave Mrs B the option to 'opt out' meaning she could repay her outstanding balance at the current rate and the account would be closed. However, it seems Mrs B did not contact NewDay to take this option. So I don't think NewDay have done anything wrong in increasing her interest rate.

persistent debt communications

Our investigator explained the Financial Conduct Authority brought out new guidance around persistent debt which came into force from March 2018. These rules explain businesses should warn their customers they can save money by increasing their payments if they've been paying more in interest and charges than off the balance for over 18 months.

NewDay sent a letter to Mrs B in September 2018 and June 2019 explaining she fell into this category and although she was in a repayment plan, they advised her to increase her repayments if she was able to do so. The letter in June 2019 explained if her account was still in persistent debt by March 2020 they may take further action to ensure the balance is repaid in a reasonable period which may include freezing her card. So I think NewDay has followed the guidance and informed Mrs B of what might happen with her account.

I don't intend to make findings as to whether NewDay fulfilled its obligations (which pre-date the FCA's persistent debt rules) to monitor Mrs B's repayment of the account and step in if necessary because I already intend to uphold Mrs B's complaint about the credit limit increases granted after the initial amount was approved.
refusal to provide new card

The terms of the account allow NewDay to withdraw the card at any time and they've said they did this because they weren't happy with the account activity. I can see NewDay wrote to Mrs B on 8 August 2017 to say it wouldn't be reissuing her with a new card due to the status of the account.

Our investigator concluded NewDay didn't act reasonably as the account activity hadn't changed. However, he didn't think they needed to do anything to put this right because Mrs B had contacted NewDay about six months later requesting financial assistance. He thought that Mrs B's finances may have got worse had they continued to allow her to use the account.

I do agree that had Mrs B continued to use the account during this six-month period, she may have continued to spend. So by refusing to provide a new card this helped to prevent her balance increasing.

Although I understand why Mrs B may have been disappointed, I have provisionally concluded that the credit limit granted to her by this time was unaffordable and so I intend to say that it was appropriate for NewDay to have acted in a way that began to wind back her exposure to unsustainable debt.
financial difficulties

Mrs B seems to have contacted NewDay about her financial difficulties in April 2018. She's complained that NewDay's collection team couldn't communicate by email and she felt the income and expenditure form she'd been sent to complete was too invasive.

NewDay have explained their collections team can't communicate by secure email which is why they wanted to speak to Mrs B over the phone or via post. Like the investigator, I don't think this was unreasonable and there doesn't seem to be a reason why Mrs B couldn't communicate by phone or post, although I do appreciate email was her preferred option.

Mrs B said the income and expenditure was too invasive. I have looked at the form that was sent to Mrs B. Although this asked for personal information, I don't think it asked for anything it didn't need. And whilst I understand why Mrs B felt this was invasive, I don't think NewDay were wrong to ask for the information it did.

During the course of our investigation NewDay informed us that a repayment plan had been in place with interest and charges frozen and that Mrs B has been making reduced payment since September 2019. This is the type of assistance I would expect NewDay to provide so I don't think it's done anything wrong here.

Having looked at everything provided by both sides I don't think NewDay has done anything wrong in terms of increasing the interest rate and declining to provide Mrs B with a new card. And I think NewDay have tried to help Mrs B with her financial difficulties.

However, for the reasons I've explained above I think NewDay ought to have looked more closely at Mrs B's circumstances before increasing her credit limit and had they done so, they would've realised this was not affordable. I therefore think NewDay needs to put this right.

My provisional decision

For the reasons I've given, my provisional decision is to ask NewDay Ltd trading as Aqua to:

- *Refund any interest and charges added to the account on any balance over the initial credit limit of £250. Any such refund should be applied to reduce Mrs B's credit card balance.*
- *NewDay should check for any periods where Mrs B's payments would've been enough to clear her balance and, if this is the case, it should pay 8% annual simple interest on any periods she would've been in credit up until the date she would've owed money on her account again.*

Mrs B accepted my provisional decision and NewDay replied to say they had nothing further to add.

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 come to the same overall conclusions as set out in my provisional decision and I uphold this complaint.

Putting things right

NewDay need to provide the refund as outlined in my provisional decision, which I've also set out below.

My final decision

My final decision is that I uphold this complaint. NewDay Ltd trading as Aqua should:

- Refund any interest and charges added to the account on any balance over the initial credit limit of £250. Any such refund should be applied to reduce Mrs B's credit card balance.
- NewDay should check for any periods where Mrs B's payments would've been enough to clear her balance and, if this is the case, it should pay 8% annual simple interest on any periods she would've been in credit up until the date she would've owed money on her account again.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 28 October 2020.

Marie Camenzuli
Ombudsman