

The complaint

Mr B complains that NewDay Ltd, trading as Aqua, lent to him irresponsibly by giving him a credit card and later increasing the limit of what he could borrow using the card.

What happened

Mr B took out a credit card with NewDay in May 2016. The initial credit limit was £900.

In December 2016 NewDay increased the amount Mr B could borrow to £1,550. It increased the credit limit again in April 2017 to £2,550.

Mr B's credit limit was then reduced to £650 from September 2017.

Mr B complained to NewDay in late 2019 that it had lent to him irresponsibly. He said it should not have provided the credit card to him as he was over extended at the time of applying, which NewDay should've identified, as well as having a serious gambling problem. He also questioned why NewDay hadn't restricted his access to credit, as his problems with gambling had continued for some time and he'd also fallen into arrears on his credit card frequently.

NewDay said it didn't think it had made a mistake by providing the credit card as, based on the information provided by Mr B when he applied, he met its lending criteria. It also noted it was unaware of his gambling issue at that time. And it also felt the first increase to his credit limit had been appropriate. But it said, having reviewed the second limit increase, in light of the information Mr B had now provided about his situation, it didn't think this should've been granted. As a result, it refunded charges (totalling £216) and interest (£28.60) to the account. NewDay also paid Mr B £85 for any upset caused.

Mr B then raised with NewDay that, when it had sent him its final response, it hadn't paid the postage correctly. So, he'd had to pay to have the letter released to him. I can see that NewDay then refunded the amount for postage to Mr B's credit card along with a further £10 for the inconvenience.

Mr B then asked our service to consider his complaint as he didn't think the offer made by NewDay, in respect of his complaint about the lending decisions, went far enough.

I understand the outstanding balance was repaid in full in March 2020 and the credit card account closed.

One of our investigators considered Mr B's complaint. She felt that the initial decision to provide the credit card was reasonable. But she felt that the decision to grant both of the credit limit increases was inappropriate. So, she recommended that NewDay refund all excess charges and interest applied from the point the credit limit increases took effect.

NewDay did not agree with the investigator's opinion as it still felt the first credit limit increase had been fairly assessed and granted.

As NewDay did not agree with the investigator's opinion, the complaint has been passed to

me to make a final decision on the matter.

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.

Businesses are required to make sure that, where they agree to lend, they do so responsibly. How they go about determining this is a matter of their own judgement – as there aren't set requirements of what a business must do in every instance. But generally, it is expected that they will carry out appropriate and proportionate borrower focused checks, taking account of the applicant's financial situation, before lending.

NewDay has provided a copy of the information it says it relied on when it initially provided the card. This included income information provided by Mr B and details of the amount of borrowing he held with other financial businesses, obtained from credit reference agencies. So, the reviews carried out prior to lending seem to relate to information specific to Mr B and I think were borrower focused.

Mr B has said he had significant borrowing elsewhere and has provided a copy of his credit report to support this. I can see that he did already have borrowing with several different lenders. But the information NewDay has shown it relied upon also reflects this, so I think it considered this. And already having borrowing does not mean further lending is necessarily irresponsible. Mr B's recent credit report, and the information NewDay obtained at the time, suggest Mr B wasn't behind with any of his borrowing at the time. And in the context of the income information he provided, I don't think there was any indication that the new card from NewDay would be, or make the other borrowing, unaffordable.

Mr B has mentioned that the majority of the existing debt was as a result of gambling. But the information NewDay got from credit reference agencies wouldn't show this. And as he had no other accounts with NewDay, it couldn't have observed this from other accounts. So, it couldn't have known about Mr B's situation unless he had made it aware – and I haven't seen anything to suggest he did before the card was agreed.

With all of this in mind, and given the relatively modest credit limit initially agreed, I don't think NewDay acted unreasonably when agreeing to provide the credit card to Mr B, or that it acted irresponsibly when doing so.

Turning to the decision to increase Mr B's credit limit to £1,550 in December 2016, NewDay has again provided evidence to show it relied on information from credit reference agencies to show how much outstanding borrowing Mr B had elsewhere. It has said it didn't obtain up to date information about Mr B's actual income though and instead used an estimated figure for his disposable income. NewDay has indicated this is in line with its usual processes. I'm not commenting on the processes NewDay chooses to use. I'm simply looking at whether, on a fair and reasonable basis, I think it did enough to check that the lending decision here was appropriate.

Mr B had held the credit card for six months at the point this proactive increase to the credit limit was granted by NewDay. Immediately after the card was first provided, in the space of five days, Mr B had used the full credit limit for spending – specifically gambling. And in fact, had exceeded the credit limit. And the account had remained over its credit limit for the first three months. And then, when the balance had been brought under his credit limit, the payments made by Mr B were the minimum monthly ones required.

I think that the account immediately exceeding its credit limit and remaining there for three

months should've prompted NewDay to do more when considering whether further lending was affordable – as I think these represent potential warning signs in terms of affordability. And I don't think using estimated data around what Mr B could afford went far enough here. So, I don't think NewDay did enough to check that the decision to increase the borrowing available to Mr B, by over 70%, was appropriate. NewDay has said it gave Mr B the opportunity to opt out of the credit limit increase. But giving this option doesn't excuse or allow a business to lend in an unaffordable way.

And I think, if NewDay had done further checks, as it should have, it is unlikely it would've increased the credit limit. As I've said, the usage of the account – which was data now available to NewDay – showed that all of the spending had been in relation to gambling. And while that is not prohibited, it ought to have prompted NewDay to potentially make further enquires. And the amount Mr B owed to other creditors had increased significantly between the initial decision to provide the card and this subsequent credit limit increase. So overall, I don't think NewDay acted responsibly by increasing Mr B's credit limit to £1,550.

In respect of the later increase of the credit limit to £2,550, NewDay has already said in its final response that it didn't think this was appropriate. So, I don't intend to comment much further on this point other than to say I agree with NewDay, for largely similar reasons to why I don't think the first credit limit increase was appropriate.

So overall, I think there have been errors here by NewDay. While I think the initial decision to provide the credit card was appropriate, I think the checks it carried out in relation to the later increases to the credit limit didn't go far enough. And if further checks had been carried out, I think that additional lending would've been deemed unsuitable and NewDay would not have provided it – so wouldn't have increased the available credit from £900 to £2,550.

So, I've thought about what NewDay should do to put that right.

As I've mentioned, I understand the credit card account is now closed, and there is no outstanding balance due. So, there is no balance to be reduced, and therefore any recommendation I make would be a refund to Mr B of amounts paid previously.

I don't think it'd be reasonable to ask NewDay to refund the principal amount borrowed by Mr B through spending on the card. But I do think the costs incurred, associated with the additional lending that wouldn't have been granted without the errors I mentioned, should be refunded.

So, I think NewDay should refund all interest and charges applied to Mr B's credit card, on balances above £900, from December 2016 onwards.

I've seen evidence that some of this has already been refunded when NewDay dealt with the original complaint. So, this does not have to be refunded again. I'm also conscious the information I've seen indicates that balance on the account only exceeded £900 for a period of two months, and has since remained significantly below that level – particularly as the credit limit was reduced to £650 from September 2017 onwards. With this in mind I think NewDay should provide Mr B with a summary of how it has calculated the refund it makes.

I've thought about whether NewDay should pay interest on top of the amount to be refunded. And I think it would be right to do so. Mr B made a large payment to the account in March 2017 that brought the balance well below £900. If the credit limit increases hadn't taken place, the level of payment he'd have needed to make at that time would've been less. So, Mr B has been without money he wouldn't otherwise have had to repay, since that time, so I think it'd be fair for NewDay to pay interest, equivalent to 8% per year, on top of the amount refunded from March 2017 onwards. In the case of the amount it refunded when handling

the original complaint though, I think it'd be fair for NewDay to only pay interest on that amount, from March 2017 to the point the refund was made.

Turning to Mr B's argument that NewDay shouldn't have allowed him to continue to use his card, due to him gambling regularly, I don't think NewDay has done anything wrong. I've not seen anything that indicates that Mr B made NewDay aware of his situation before he complained about the lending decisions – with the last significant spending taking place on the account in early 2018. And so, I don't think it would've been fair for NewDay to prevent Mr B from using his card - as gambling transactions are not prohibited and as I've explained I don't think it made an error in providing the card. I'm also conscious that NewDay did in fact reduce Mr B's credit limit from £2,550 to £650 in September 2017 – limiting the amount of spending that could take place. So, for these reasons, I don't think NewDay has made an error by not closing or blocking the account sooner.

My final decision

For the reasons given above my decision is that I uphold Mr B's complaint in part.

To put things right NewDay Ltd, trading as Aqua, should;

- Calculate the amount of interest and fees Mr B paid on his credit card on all balances over £900, following the increases to his credit limit in December 2016, and refund this amount to him.
- NewDay can deduct the amount it has already refunded directly to the card from this amount.
- NewDay should pay interest equivalent to 8% per annum on this amount from March 2017 to the point the refund(s) is / were made.
- NewDay should send a copy of the calculation of the above to Mr B for reference.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 July 2021.

Ben Stoker
Ombudsman