DRN-2877665

The complaint

Mr F says that NewDay Ltd ("NewDay") should not have increased the credit limit on his credit card on a number of occasions and that this was irresponsible lending and has caused him financial difficulties. He would like a refund for all interest and charges, his outstanding balance wiped and negative information on his credit report removed.

What happened

Mr F says that he took out a credit card when he was under severe financial strain and this has caused him more financial difficulties and ruined his credit history. He says that he was given multiple credit increases when he was constantly getting charged for being over his limit and that none of the increases should have been offered. Mr F says that he spent his credit to the limit on gambling sites and regularly missed payments but then would be offered an increase once he had made a few payments on time. He says that this behaviour should have stopped NewDay from offering the increases.

Mr F says that he was suffering with depression at the time and his financial position caused him severe stress and anxiety. He would like a refund for all interest and charges, his outstanding balanced wiped and negative information on his credit report removed.

NewDay has set out that it offers 'second chance' lending so it is not unusual for customers with a poor or absent credit history to apply for an account. It has a 'low and grow' strategy as opposed to other lenders who may give a customer a credit limit which is relatively high from the outset but which remains the same during the lifetime of the account. It says that this explains why it may appear that the increases are in quick succession of each other or that the ratio of the increase is higher than average.

When making a decision to offer credit, NewDay says that it considers the information supplied on the customer's application form and information from credit reference agencies. NewDay says it regularly reviews a customer's account and makes a risk-based assessment to ensure it is lending appropriately, which may result in either an increase or decrease to the credit limit. Mr F's account was reviewed in June 2014, June 2016 and March 2017 and he was eligible for the credit limit increases to £750, £1,350 and £1,950 respectively.

When increasing Mr F's credit limit, NewDay states that it used internal and external data and this showed that Mr F had maintained his payments each month (with the exception of February to May 2015, when its notes indicated there was a direct debit reversal due to incorrect payee details). Although there were some over limit fees charged, the increases were still offered within its policy. It says that its credit reference agency check reported no arrears or financial difficulty indicators when the increases were offered, nor was Mr F on any affordability watch.

NewDay says that Mr F was given the opportunity to opt out of the increases within 40 days but it has no record of him contacted it to do so. As the credit increases were applied within seven, five and six days respectively of being offered, this suggested that Mr F had proactively accepted the credit limit increase offers.

NewDay states that it was never informed of Mr F's financial difficulties whilst the account was active. It says the last payment made by Mr F was in May 2017. The account went into arrears and then defaulted in July 2017. It went to debt recovery in September 2017 and the debt was sold on to a third party in December 2017. NewDay says it was only aware of Mr F's financial difficulties when he complained after this.

Our investigator looked into the matter and was satisfied that reasonable checks were carried out by NewDay when Mr F applied for the credit card and was given an initial limit of £250. However, she found that the credit increases were significant and the data NewDay received from Mr F's credit file suggested he was in financial difficulty from September 2014. Prior to this Mr F was repeatedly going over his credit limit, making small repayments and using the card for cash withdrawals once the limit had been increased.

The investigator therefore concluded that NewDay should have carried out further checks to assess Mr F's ability to repay. She found that, had more in-depth checks been carried out in June 2014, it's likely this would have shown the increase wasn't affordable for Mr F. He wasn't using the account in a sustainable way and was unlikely to be able to clear the debt within a reasonable time. Despite this, NewDay continued to increase Mr F's credit limit up to £1,950 without carrying out detailed checks to ensure this was affordable.

The investigator therefore upheld Mr F's complaint and recommended that NewDay remove any associated interest and charges from the date of the first credit increase in June 2014 and should remove any associated interest and charges from that date accrued on a balance of over £250. She found that NewDay should have realised Mr F's account was no longer suitable from December 2014 and frozen it, not allowing any new purchases after this date - so recommended that all interest and charges should be removed from this date. It was also recommended that any negative information be removed from Mr F's credit file.

NewDay disagreed with this so the case came to me to make a decision. I set out in my provisional decision dated 17 May 2021 (reproduced below) why I was minded to uphold this complaint on the basis that Newday acted irresponsibly in increasing Mr F's credit limit above £250 from June 2014 and that it shouldn't have done this. I invited both parties to let me have any further comments and evidence by 16 June 2021.

NewDay hasn't made any further comments. Mr F has provided information showing that he has now settled his debt with the third party.

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.

In my provisional decision I set out the following:

> "I've taken into account the relevant regulations and industry good practice in place at the time of the increases to Mr F's credit limit.
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> Having looked at the evidence I share the investigator's view for broadly the same reasons. However, I have proposed a different way for NewDay to put things right, bearing in mind the circumstances of it no longer owning the debt. I've explained my reasons further below.
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> When NewDay told Mr F that it was increasing his credit limit, I would expect it to have given him sufficient notice of the increase along with the option not to have the increase, in line with the regulations. I've looked at the letters NewDay sent to Mr F

and I'm satisfied that it gave him the option to keep the current limit if he didn't want it to be increased. There's nothing to indicate that Mr F wanted to opt out of the increases.

However, I've also thought about the checks NewDay should have done when offering to raise the credit limit. The regulations required NewDay to carry out an assessment of Mr F's creditworthiness when setting a credit limit, establishing his ability to afford and sustain repayments without experiencing significant adverse consequences. The assessment needed to be proportionate to factors which could include the amount of the credit, Mr F's financial position, his credit history and his existing financial commitments. It should have been based on sufficient information obtained from Mr F, where appropriate, and a credit reference agency, where necessary.

I can see that at the time of Mr F's application in December 2013, he declared an income of £15,380 and unsecured debt of £700. NewDay checked his credit file which showed an outstanding balance on payday loans of £685. Although he had previously had five defaults on his credit file, the last of these had been 19 months prior to the application. Based on what I've seen, I think the checks carried out by NewDay at this stage were proportionate and that the initial credit limit of £250 was reasonable in the circumstances. It was relatively low compared to Mr F's income and there was nothing to indicate that it would be unaffordable for him at that time.

Whilst I accept that NewDay offers 'second chance' lending and therefore the limit may be low initially and then increase, NewDay is still required to ensure that any increase is affordable for a customer at the time of that increase.

The first credit limit increase was in June 2014 from £250 to £750, which was an increase of 200%. Whilst the increase in the credit limit was significant, this in itself doesn't mean that this was irresponsible lending. So I've also looked at the evidence NewDay considered when making the decision to increase Mr F's credit limit.

By the time this increase was offered, Mr F had had his credit card for six months. The information on NewDay's risk data spreadsheet shows that he had used the entire £250 limit in cash transactions within the first month of his card application. The statements show that the £250 had in fact been used for four gambling transactions all on the same day two weeks after the application, as a result of which he was charged cash advance fees which took him over his limit.

NewDay has said, in response to the investigator's view, that Mr F's retail spend was nearly £300 by the first increase so it had no concerns that his spend pattern was disproportionate. I don't accept NewDay's position here as, following the £250 gambling transactions and prior to the next increase, Mr F didn't make any further transactions. He only paid £25 a month off the balance each month and the overlimit fees and interest charges added to the account meant that he remained over his agreed limit until his direct debit came out in June 2014. He was offered a £500 increase the same month.

It is my view that this information should have prompted NewDay to carry out further checks before offering a credit increase. The information which was available should have alerted it to the fact that the borrowing may not have been affordable for Mr F and that he was not making repayments sustainably. This is because he spent the entire limit on gambling in one day and over the course of the next six months was unable to make any significant inroad into that debt, only servicing the fees and interest and being between £1 and £27 over his agreed limit for the duration of that

> time until June 2014. Given that he failed to reduce his balance by this extra amount (£1 to £27) to be within his credit limit, it is my view that this did not show Mr F to be creditworthy to the extent of a further £500. This is particularly bearing in mind it was only 11 days after he had managed to reduce the balance to within his agreed limit for the first time since he had begun using the card. So I don't think NewDay acted fairly in increasing Mr F's credit limit in June 2014.
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> Following the first increase Mr F went over his new limit of £750 within a week. The majority of these transactions were for gambling websites and were therefore classed as cash transactions (his annual statement from January 2015 showed that £680 of the entire £755.51 transactions by that stage related to cash withdrawals including gambling). Mr F remained over his limit until December 2014, only making minimum repayments until February 2015, when no repayment was made for two months. The account was brought back to just under the limit in May 2015. NewDay's risk data also indicated possible financial difficulties from September 2014 into the early part of 2015 as it showed increasing debt and missed payments.
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> Mr F's balance remained close to or over the agreed limit of £750 until the second increase up to £1350 was offered in June 2016. By this time a further credit report available to NewDay showed that Mr F had taken 3 payday loans and was in almost £4,400 of debt. This had increased to almost £6,700 by the time of the third increase in March 2017. Again, and despite the information it had about Mr F's financial situation from his credit file, NewDay didn't carry out any further checks to determine whether a credit increase was affordable for him. I think if it had have done, this would have shown that these increases were also not affordable and that Mr F would not be able to repay sustainably as his financial situation appeared to have deteriorated since the first credit increase. So I don't think NewDay acted fairly and I'm satisfied that Newday acted irresponsibly in increasing Mr F's credit limit on each occasion from June 2014."

I also set out what NewDay should do to put things right:

> "I have considered what would be a fair way to address these errors. Although Mr F should not have been given the higher limit, he has had the use of the funds spent on the credit card transactions. So I don't think it would be fair to ask NewDay to write the outstanding balance off. However, I don't think Mr F should be held responsible for the costs associated with the increased limit on the credit card once this was increased above £250 – the interest, and any charges, applied to them. Had the credit increases not been granted, as I think should have happened, Mr F wouldn't have had to pay these amounts, so I don't think it is fair that he should pay them now. I also don't think any negative information should be recorded on Mr F's credit file in respect of the credit card from June 2014. Without the errors by NewDay, the higher limit wouldn't have existed and I don't think it's fair on Mr F to show a poor payment history given that this was an inevitable consequence of the lending decisions.
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> In relation to the investigator's view that the account should have been frozen in December 2014 and no more purchases allowed, I disagree with this. Mr F had not notified NewDay that he was having financial difficulties at this stage and I think it's most likely that he would have continued to maintain the account in a similar way, which I don't think would have warranted any pro-active intervention from NewDay to the extent of freezing the account as Mr F had not defaulted. So, whilst I think NewDay should have carried out more checks before offering a higher credit limit in June 2014 and that an increase shouldn't have been offered for the reasons above, I don't think that it would have been necessary for NewDay to have done anything further In December 2014 had the limit remained at £250. Mr F notified this service

that NewDay had started court action in November 2020. NewDay confirmed that the debt had been sold to a third party in 2017 but said that it had requested its recoveries team to ask for any court action to be paused until this service had made a final decision. However, Mr F received notification of a Sheriff Court Decree in March 2021 and a County Court Judgment is now showing on his credit file. He has recently told this service that the third party has started enforcement proceedings.

Whilst, I accept that this has understandably increased Mr F's anxiety and added unnecessary stress to himself and his family, it appears that NewDay did contact the third party in order to pause court proceedings. It will be a matter for Mr F to contact the third party in relation to any proceedings against him and to inform them of any financial difficulties as his debt is with the third party and not with NewDay. So this aspect does not form part of this complaint against NewDay. Any complaint about this aspect would need to be raised against the third party as previously advised by our investigator. It is of course open to Mr F to apply for a notice of correction in relation to any adverse information on his credit file relating to the third party.

As NewDay no longer owns the debt and sold the account balance some years ago, it is unable to remove the interest and charges applied from June 2014. The money owed by Mr F is also now subject to a County Court Judgment in proceedings brought by the third party, so the amount of this judgment cannot now be amended. So, instead, NewDay should calculate the amount for any interest and fees which shouldn't have been charged since June 2014 and pay them off of Mr F's debt with the third party.

Mr F has said that this matter has caused him severe stress and anxiety. And I can understand why having this debt would've been distressing. Given that I don't think NewDay should have increased Mr F's limit above £250, in addition to effectively removing the costs associated with the additional lending, NewDay should pay a further £100 to Mr F to compensate for the distress he's been caused."

Following this provisional decision, Mr F has provided evidence to show that he has now paid off his debt to the third party owner of the debt in full as of 1 June 2021. In light of this, I have slightly amended the redress proposed previously, simply to reflect the fact that the amount owed to Mr F by NewDay should be paid directly to Mr F as opposed to being paid to the third party.

Putting things right

For the reasons set out above and in my provisional decision, I uphold this complaint and require NewDay to:

1. Calculate the total interest and charges levied on any balance owed over £250 (the credit limit prior to the June increase) on Mr F's account from 20 June 2014 to the date the debt was sold.
2. Pay Mr F the amount in 1., along with 8% simple interest* per year, calculated from 1 June 2021 (the date the debt was cleared by Mr F to the third party) to the date NewDay pays this settlement.
3. Remove any adverse information in relation to the credit card from Mr F's credit file from 20 June 2014 onwards.
4. Pay Mr F £100 in recognition of his distress and inconvenience.

*HM Revenue & Customs requires NewDay to take off tax from this interest. It must give Mr F a certificate showing how much tax has been taken off if he asks for one.

My final decision

For the reasons set out in my provisional decision and above, I uphold this complaint and require NewDay Ltd to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr F to accept or reject my decision before 15 July 2021.

Rachel Ellis
Ombudsman