

The complaint

Mr S complains about NewDay Ltd and their decision to approve two separate credit card applications. He's also unhappy with the credit limit increased applied to one of these accounts.

What happened

In July 2016, Mr S applied for a credit card with NewDay. I'll refer to this as "account one". The application was approved, and Mr S was given a £300 credit limit. This limit was increased to £900 in January 2017 and then £1,500 in May 2017.

In July 2017, Mr S applied for another credit card supplied by NewDay, under another trading name. I'll refer to this as "account two". This application was approved again and Mr S was provided with a credit limit of £450. This limit was never increased.

In April 2018, Mr S made NewDay aware he was experiencing financial difficulties. Initially, NewDay completed an income and expenditure check which suggested Mr S was able to afford the monthly repayments. So, they didn't agree to a repayment plan. But shortly after, this was re-calculated and a repayment plan was agreed for both accounts. In August 2018, NewDay sold Mr S' debt.

In 2020, Mr S complained to NewDay. He was unhappy that NewDay had increased his credit limits, and approved his application for account two, in 2017 when he felt his financial situation showed he'd be unable to maintain the repayments. So, he wanted the interest he'd paid on both accounts refunded to him and he wanted any negative information removed from his credit file.

NewDay didn't agree. They thought they had completed reasonable and proportionate checks when deciding to approve Mr S' applications and his credit limit increases. They felt Mr S failed to make them aware of his financial difficulties until after this and the information they had at the time suggested the credit cards were affordable. So, they didn't think they needed to do anything more. Mr S remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it. She agreed with NewDay that they'd approved account one's application fairly and that the £300 limit was reasonable. But she thought Mr S' use of the card should've led NewDay to complete further checks before offering Mr S a credit limit increase. And she thought if NewDay had completed further checks, in this case requested to see Mr S' bank statements, they would've realised Mr S was placing significant sums of money on gambling transactions and that he was in financial difficulty. So, she didn't think the credit limit increases on account one were fair.

And she didn't think NewDay were reasonable to approve the application for account two. She thought at the time of application, Mr S' debt had increased as well as the number of accounts he had open. She thought this, alongside Mr S' use of account one, should've prompted NewDay to complete further checks. And again, she thought if they had, they'd have recognised Mr S' gambling and declined the application.

So, she thought NewDay should buy the debt back and re-calculate account one to remove any fees and charges applied after the first limit increase. If Mr S still owed an amount, she thought NewDay should arrange a suitable repayment plan or if Mr S was left with an amount owed to him, that this was paid to him plus 8% statutory interest on the overpayments from the date the account would've been paid off. She also thought NewDay should remove any negative information from Mr S' credit file for this account. And our investigator thought NewDay should do the same for account two, from the date the credit card was opened.

NewDay didn't agree. They didn't think it was fair to ask them to buy the debt back or pay interest on any amount owing to Mr S under the outcome suggested by our investigator. They maintained their view that the checks they completed were proportionate and that they had no obligation to request bank statements nor did Mr S' use of account one suggest they needed to request these. And they didn't agree Mr S' credit file should be amended, as they thought they had a duty to accurately report the way he'd managed his account.

Our investigator replied explaining her outcome remained the same. But she changed the actions she thought NewDay should take. For account one, she thought NewDay should do the following:

*“- Refund all interest and charges applied to {account one} above the £300 credit limit and rework credit card account. Any refund due, should be applied to reduce the outstanding balance
- Remove any adverse credit information from his credit file relating to balances over this amount.”*

And for account two she thought NewDay should do the following:

*“- Refund all interest and charges applied to Mr S' account and rework the credit card account. Any refund due, should be applied to reduce the outstanding balance.
- Remove any adverse credit information from his credit file relating to this card”*

Mr S accepted this outcome. But NewDay maintained their view that they'd acted responsibly when lending to Mr S. As NewDay didn't agree, the complaint has been passed to me for a decision.

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'm upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

When considering Mr S' complaint about NewDay's decision to lend, there are two main tests I need to think about. The first of these is whether the checks NewDay completed were proportionate to the initial credit limit, and subsequent increases, that Mr S was provided. There are no set amount of checks NewDay are obliged to complete but I'd expect the checks to consider the limit provided to Mr S against his declared income and provide enough information to satisfy NewDay that the credit was affordable and able to be repaid in a sustainable way. The second test is to consider the information these checks provided and whether I think NewDay assessed this information fairly to ensure their decision to lend was

reasonable. And having considered both these tests, I don't think NewDay have acted fairly on this occasion. And I'll explain why.

I've first thought about account one, as this was opened first. I can see that Mr S declared his annual income as £24,000 and that he was living in rented accommodation. And I've seen at the time NewDay approved the application, Mr S had one other active card, with a total unsecured balance of £100. His credit file did show Mr S had three active defaults, but the most recent was applied 59 months previously. And the file showed Mr S had been able to maintain his accounts well recently with no late payment markers. Having considered this, NewDay approved Mr S's application and provided him with a £300 credit limit. I think this was a modest limit compared to Mr S's declared annual income and I think it was fair, given the information NewDay had available. So, I don't think they did anything wrong at this point.

NewDay then decided to increase Mr S's credit limit to £950 in January 2017. NewDay have confirmed they don't consider a customer's credit file in the same way they do when initially approving an application. And that the increase was based on Mr S' use of his card over the previous six months as they advertise as lender for customers with lower credit ratings who want to improve that. And I recognise this is their business model.

But I also think that a credit limit increase of over 200% within six months of the initial application approval is high. So, I've thought about whether Mr S's use of the account warranted that increase. And from what I've seen, Mr S used his card for mainly cash advances rather than the usual retail spending. While I recognise Mr S was able to use his card in any way he wished, I think the Mr S using his card in this way should've suggested to NewDay that Mr S may have been suffering from financial difficulties elsewhere, due to his need for the cash advances that came with a charge. And I've seen in the month before NewDay applied this increase to Mr S' account, he exceeded his credit limit. So, at the very least, I think NewDay should've completed further checks before providing the limit increase.

And I've seen Mr S' statements from the same time, which showed a large number of gambling transactions. I think, if NewDay had completed further checks, they would've recognised Mr S' gambling and I don't think they would've provided the credit limit increase. Because of this, I don't think the first increase to Mr S' limit was reasonable. And so, it follows that the second limit increase in May 2017 was also unreasonable as Mr S shouldn't have been in a position to spend more on his account in the first place.

I recognise NewDay's comments about their lack of awareness surrounding Mr S's gambling and I don't dispute they weren't aware of this. But I think NewDay should've done more to ensure the limit increases were sustainable considering the information they had from the way he'd used his card previously. And my decision is that, if they had, they would've become aware of Mr S' gambling and I think it's reasonable for me to assume the limit increases wouldn't have been provided at that point due to the increased risk. So, I think NewDay allowed Mr S greater access to credit which in turn placed him in a worsened financial position. I'll discuss the actions I think NewDay should take later in the decision.

I've then thought about account two, approved in July 2017. Mr S declared his annual income as £26,800 so slightly higher than before. His personal situation had changed to co-habiting, meaning his household income had increased. But Mr S' credit file also showed that his number of active accounts had increased from one to seven, with a total unsecured debt rising from £100 to £2800. And I've seen NewDay's underwriting criteria, which stated Mr S as having high indebtedness, compared to low in the previous application.

So, I think Mr S' situation had changed significantly in the year between the first and second application. I think Mr S' credit file showed a sudden need for credit, with the number of searches completed and accounts opened in a relatively short period of time. And I've seen

Mr S' use of account one, which continued to be used to make large cash advances and again, I think signalled potential financial difficulties. Account one also went over the £1500 credit limit in the month account two was approved, which I think again showed Mr S' reliance on credit. Because of the above, I'd have expected NewDay to complete further checks to understand why this was and ensure Mr S' was able to afford another credit account. And in this situation, I would've expected NewDay to ask Mr S for recent bank statements to gain and better understand of his financial understanding.

If NewDay had done so, NewDay would've seen that Mr S had spent significantly on gambling transactions between his application for account two. And because of this, I think it's reasonable for me to assume NewDay would've rejected Mr S' application, due to the risk this would've shown and the instability of Mr S' finances. So, I think NewDay acted unfairly when approving account two.

Putting things right

As I think NewDay have acted unfairly, I've then thought about what I think they should do to put things right. Any award or directions I make are intended to place Mr S back in the same situation he would've been, had NewDay acted fairly.

In this situation, I think NewDay's initial approval of account one, with a £300 limit, was fair. But I think the limit increases in January and July 2017 were unreasonable and Mr S shouldn't have received these. I recognise Mr S received the benefit of the capital amount these increases provided and because of this, he should pay this back. But I don't think it would be fair for NewDay to charge interest or fees on account amount over the initial £300 limit. So, I think NewDay should refund any interest and charges applied to account one on amounts over the initial £300 limit. If this results in Mr S' account being settled, and a refund being left owed to him, the refund should also include 8% statutory interest from the date the interest and charged were applied. NewDay should also remove any negative information reported to Mr S' credit file relating to balances over the £300 limit.

And for account two, I don't think Mr S would've been provided with the credit if NewDay had acted fairly. Again, I recognise Mr S made use of the capital amount and he should pay this back. But I think NewDay should refund Mr S any interest and charges applied to this account. And if this refund settles this balance, any amount left owing should be paid to Mr S plus 8% statutory interest from the date they were applied. And as I don't think Mr S should have been provided with the account, I think a negative credit information relating to this account should be removed from Mr S' credit file.

I recognise NewDay's comments surrounding the amendments of Mr S' credit file and their belief this should be reported to allow other lenders to calculate risk accurately. But as I've explained, I don't think Mr S should've had access to the additional credit on account one and account two entirely, so I don't think it's fair for Mr S' ability to obtain future credit to be impacted by mistakes NewDay made.

My final decision

For the reasons outlined above, I uphold Mr S' complaint about NewDay Ltd and direct them to take the following action:

- For account one, refund Mr S all interest and charges applied to the account about the initial £300 credit limit. If this leaves an amount payable to Mr S, this refund should include 8% statutory interest from the date the interest and charges were applied; and

- Remove any negative information from Mr S' credit file relation to any balance over the £300 limit.
- For account two, refund Mr S all interest and charges applied to the account. If this leaves an amount payable to Mr S, this refund should include 8% statutory interest from the date the interest and charges were applied; and
- Remove any negative information from Mr S' credit file relating to his account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 November 2021.

Josh Haskey
Ombudsman