DRN-3059204

The complaint

Mr J is unhappy that NewDay Ltd approved him for several lines of credit which weren't affordable for him at that time.

Mr J is also unhappy that NewDay subsequently increased the credit limit on two of his credit lines on several occasions, all of which he feels were unaffordable for him at those times.

What happened

Mr J applied for three differently branded NewDay administered credit accounts in January 2014, August 2015, and March 2017 respectively. His applications were approved, and he was issued credit cards for all three NewDay administered brands. Subsequently, the credit limit on two of Mr J's credit lines was increased on several occasions.

In 2020, Mr J raised a complaint with NewDay on the basis that he felt that the lines of credit that had been offered to him weren't affordable for him at those times and that this should have been apparent to NewDay if they'd conducted the checks into his financial position that they should have conducted before offering the credit to him.

NewDay looked at Mr J's complaint, but they noted that they had undertaken checks into Mr J's financial position before approving him for credit or for credit limit increases, and that in all instances there had been nothing resulting from those checks that they felt should have made them consider that the credit being offered to Mr J was unaffordable for him at those times. So, they didn't uphold Mr J's complaint.

Mr J wasn't satisfied with NewDay's response, so he referred his complaint to this service. One of our investigators looked at this complaint. They didn't feel that NewDay had acted unreasonably by approving Mr J for the credit accounts in the first instances, but they noted that Mr J's account usage history showed that he maintained the accounts close to the credit limit at all times and usually only paid the minimum required monthly payment amount.

Our investigator felt that this usage demonstrated that Mr J couldn't afford any of the credit limit increases provided to him by NewDay, so they recommended that the complaint be upheld in Mr J's favour on that basis and that NewDay should take corrective action accordingly.

NewDay didn't agree with the recommendation put forward by our investigator, so the matter was escalated to an ombudsman for a final 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.

I issued a provisional decision on this complaint on 1 September 2021 as follows:

It's for a business to decide whether it will offer credit to a customer, and if so, how much and on what terms. What this service would expect would be that, before offering credit to a customer or increasing the limit of a customer's existing credit, the business would undertake reasonable and proportionate borrower focussed checks to confirm that the credit being offered would be affordable for that customer at that time.

NewDay say that they've done that here. In all instances, NewDay say that before approving Mr J's credit account applications they took information from Mr J regarding his monthly income and expenditure to determine that Mr J would be able to afford any potential monthly repayments that might be required on the account, as well as obtained information from a credit reference agency about Mr J so as to better understand Mr J's wider financial position at those times.

Furthermore, at the time of all the subsequent credit limit increases, NewDay contend that they reviewed Mr J's recent account usage to check for signs that Mr J might be struggling to maintain his credit balance, and updated their understanding of Mr J's wider financial position via information sourced from a credit reference agency.

NewDay also contend that, in all instances, there was nothing resulting from these checks that should have given them cause to suspect the Mr J might not be able to afford the credit being offered to him at those times.

Our investigator, in their review of this complaint, recommended that this complaint be upheld in Mr J's favour on the basis that Mr J maintained the balance of his accounts close to the credit limits of those account and usually made only the minimum monthly payments required on the accounts. Our investigator felt that this account usage should have demonstrated to NewDay that Mr J was struggling to manage his accounts such that no credit limit increases should have been offered by NewDay to Mr J.

NewDay don't agree with the position put forwards by our investigator here and contend that it shouldn't be the case that a customer who maintains their account within the credit limit of that account should be considered as being in potential financial difficulty, regardless of the level of monthly payment that customer chooses to make.

I find NewDay's argument compelling here, and I don't feel that it's reasonable to consider that a customer who maintains their credit account within the set credit limit shouldn't be offered an increase to that credit limit. And while it may be the case that a customer only makes the minimum monthly payments required on the account, I don't feel that this in and of itself should be considered as being an indicator of potential financial difficulty, but rather I acknowledge that paying the monthly minimum payment on an account is a choice which a credit account holder is entitled to make.

That isn't to say that there aren't any instances where I'd consider that a customer choosing to make only the minimum payments required on the account isn't a potential indicator of financial difficulty. And it may well be the case that I would give such account usage greater credence where other indictors of potential financial difficulty exist – such as a customer failing to maintain the balance of their account within the set credit limit and incurring over-limit fees as a result.

In this instance, Mr J has three differently branded NewDay administered credit accounts. For ease of reference, I will refer to these as brands A, M, and D.

Brand A

Mr J applied for this credit account in January 2014. NewDay have explained that at the point of application, Mr J confirmed that he was employed with an annual income of approximately £15,300. NewDay have also explained that the information that they received from the credit reference agency didn't show that Mr J appeared to be in any financial difficulty at that time, including that there was no record of any other credit accounts in arrears or that Mr J was in any debt management programmes or repayment plans, and whilst there were defaults showing on Mr J's credit file, these were over 36 months prior to the point of application.

NewDay didn't feel that this information suggested that Mr J might not be able to afford a credit card account, and they approved Mr J for the Brand A credit account with an initial credit limit of £250. And, having considered the information as described above, I'm satisfied that NewDay didn't act unreasonably by approving Mr J for the Brand A credit account with such a relatively low initial limit.

Three months later, in April 2014, NewDay offered a credit limit increase on this account to Mr J – from £250 to £400. The information that NewDay received from the credit reference agency at that time didn't show that there had been any noticeable deterioration of Mr J's wider financial position since the Brand A credit account was opened. Furthermore, NewDay's review of Mr J's usage of the Brand A credit account demonstrated that Mr A had maintained the balance of the account within the agreed limit and hadn't missed or been late with any monthly payments or incurred any over-limit fees or cash advance fees. As such, I'm satisfied that it was reasonably for NewDay to have offered the credit limit increase to Mr J on his Brand A credit account at that time.

The credit limit on Mr J's account remained at £400 for approximately 18 months, until NewDay offered to increase the credit limit to £800 in October 2015. At this time, NewDay obtained information from a credit reference agency to update their understanding of Mr J's wider financial position, and once again this information didn't appear to highlight any apparent deterioration in Mr J's financial position such that NewDay ought to have concluded that the credit limit increase being offered to Mr J might not be affordable for him.

Additionally, the prior 18 months account usage demonstrated that Mr J had maintained the balance of the account within the credit limit and hadn't incurred any over-limit fees during that period. And, while there was one instance where Mr J had withdrawn cash from this credit account, and incurred a cash advance fee as a result, this was an isolated incident which occurred shortly after the credit limit was increased to £400 and well over a year before the credit limit increase to £800 was being considered. Accordingly, I'm satisfied that it was reasonable for NewDay to conclude that Mr J wasn't struggling financially at that time and that he would be able to afford the credit limit increase being offered to him.

However, the picture of Mr J's financial stability that I draw from how he maintained his Brand A credit account becomes less positive soon after this second credit limit increase, and it's notable that in the three months immediately preceding the third credit limit increase – from £800 to £1,400 in April 2016 – Mr J hadn't been able to keep the balance of the account within the credit limit for any of those three months and had incurred over-limit fees on the account as a result.

It's also notable that Mr J had taken two cash advances from his card around that same time and had incurred fees for this also. And, while it isn't necessarily the case that the taking of cash from a credit account is an indicator of potential financial difficulty, given the wider circumstances here – that Mr J wasn't able to maintain the balance of his account within the agreed credit limit – I do feel that the taking of cash advances by Mr J around this time should have given further cause for NewDay to suspect that Mr J might not be able to afford a further credit limit increase, such as NewDay subsequently offered to him.

It follows from this that I don't feel that NewDay increasing the credit limit on Mr J's Brand A credit account from £800 to £1,400 was fair or reasonable, and I will be provisionally upholding this aspect of Mr J's complaint at this point. Furthermore, given that I don't feel that this credit limit increase should have taken place, it follows by consequence that I also feel that all later credit limit increases also shouldn't have taken place, and I will be issuing provisional instructions to NewDay to take the relevant corrective action.

Brand M

Mr J applied for this credit account in August 2015. NewDay have explained that at the point of application, Mr J confirmed that he was employed with an annual income of approximately £15,700. NewDay have also explained that the information that they received from the credit reference agency didn't show that Mr J appeared to be in any financial difficulty at that time, including that there was no record of any other credit accounts in arrears or that Mr J was in any debt management programmes or repayment plans, and whilst there were defaults showing on Mr J's credit file, these were over 54 months prior to the point of application.

Additionally, at the time of this application, Mr J had been maintaining his Brand A credit account without significant incident and had recently had his credit limit on that other account increased to £800. As such, I'm satisfied that it wasn't unreasonably for NewDay to have approved Mr J's Brand M credit account application and to have issued Mr J with a credit card with an initial £900 credit limit.

In December 2015, NewDay increased the credit limit on Mr J's Brand M account to £1,500. NewDay have explained that the information that they obtained from the credit reference agency at this time didn't appear to show that Mr J's wider financial position had worsened, and a review of Mr J's account usage showed that Mr J had maintained the account comfortably within the credit limit since the account was opened and hadn't incurred any over-limit fees and only one cash advance fee. I'm therefore satisfied that there wasn't compelling evidence available to NewDay at that time to suggest that Mr J might not be able to afford the credit limit increase being offered to him and that NewDay didn't act unreasonably by offering such an increase.

Three months later, in March 2016, NewDay increased the credit limit on Mr J's account once again, from £1,500 to £1,800. However, it's notable from the usage of Mr J's account at this time that he had incurred an over-limit fee during this three-month period, and that he'd also incurred a cash advance fee.

It's also notable that this credit limit increase occurred only one month before the credit limit increase on Mr J's Brand A credit account which I have previously stated I feel shouldn't have happened on the basis that it should have been evident to NewDay that that Mr J might have been in financial difficulty at that time. As such, given that NewDay would have been able to cross reference the usage of Mr J's Brand A credit account when considering whether to offer and implement the credit *limit increase to £1,800 on his Brand M account, it's also my position that NewDay ought reasonably to have concluded that Mr J might have been in financial difficulty at this time, such that a further increase to his credit limit on his Brand M account also might not have been affordable for him.*

It follows then that I don't feel that NewDay acted fairly or reasonably in increasing Mr J's credit limit on this account at this time. As such, I'll be provisionally upholding this aspect of Mr J's complaint at this point and issuing provisional instructions to NewDay to take relevant corrective action.

Brand D

Mr J applied for this credit account in March 2017. Given that I've stated that the credit limit increases in March and April 2016 on the previous two credit accounts, as explained above, shouldn't have taken place, it could be argued that I should consider that the approval of this later new credit application also shouldn't have taken place.

However, I feel that the approximate year that had elapsed since March/April 2016 - when I feel that NewDay ought reasonably to have concluded that Mr J might be in financial difficulty - to when Mr J applied for this third account in March 2017, is sufficiently long that it was reasonably for NewDay to have considered this application on its standalone merits.

At the time of this application, Mr J confirmed to NewDay that he was employed with an approximate annual income of £19,000. Additionally, while the information that NewDay obtained from the credit reference agency did indicate that Mr J had other existing credit debt totalling close to £9,000, it didn't show that Mr J was struggling to manage his existing credit obligations including that there were no recent missed or late payments recorded and no instances of Mr J being in any debt repayment plans.

Furthermore, while it remains my position that NewDay shouldn't have offered the credit limit increases to Mr J in March and April 2016 respectively - given the indicators of potential financial difficulty that were present on Mr J's account at those times - the recent account usage on Mr J's other two accounts at the point of this application in March 2017 didn't present any information that I feel should have prompted NewDay to decline this new account application.

As such, I'm satisfied that it was reasonable for NewDay to have approved Mr J's application for a Brand D credit account at this time and to have issued a credit card to Mr J with a credit limit of £900.

Finally, it's notable that NewDay didn't increase the credit limit on this Brand D credit account at any time, and so it follows from this that my provisional decision will be that I don't uphold Mr J's complaint as it relates to this Brand D account.

Summary

My provisional decision will be that I uphold this complaint in Mr J's favour on the basis that all credit limit increases from March 2016 onwards on the Brand A and Brand M credit accounts shouldn't have taken place.

My provisional instructions to NewDay are that they must recall these accounts and reimburse to the accounts all relevant interest, fees, and charges incurred or accrued on those accounts beyond the relevant credit limit increases.

If these reimbursements result in either of these accounts having a credit balance in Mr J's favour, NewDay must pay that balance to Mr J along with 8% simple interest. However, if a balance remains outstanding to be paid on the account, then NewDay must contact Mr J to arrange a suitable repayment plan with him, based on an assessment of what Mr J can reasonably afford to pay.

Finally, NewDay must also remove all adverse credit reporting from Mr J's credit file for the Brand A and Brand M accounts from the relevant dates.

In my provisional decision letter, I gave both Mr J and NewDay the opportunity to provide any comments or further information they might wish me to consider before I moved to a final decision.

NewDay confirmed that they accepted my provisional decision in principle but questioned whether my final decision should include the instruction to remove the adverse credit reporting from Mr J's credit file, especially if following the instructed reimbursements there were still outstanding balances to be paid by Mr J.

I can appreciate NewDay's position here, and there can be cases where I might consider it fair that adverse credit reporting shouldn't be amended in instances similar to this one, but I would only consider this if instructed reimbursements left the balance of a single account higher than the applicable credit limit – i.e. the credit limit which I consider to be fair and reasonable on the account.

This is because in such an instance I feel that there's a reasonable chance that the account holder might have struggled to bring their account back within the contractual terms of the account and might therefore still have incurred adverse credit reporting, even had the credit limit increases I am instructing against never taken place. Additionally, I wouldn't consider it fair to allow a default to remain on a credit file, for instance, if the reimbursements to the account took the account balance below the fair and reasonable credit limit.

However, in this instance, because there are two accounts in question that were active simultaneously and which had separate credit limit increases which I don't feel were fair in a relatively short space of time, I don't feel that it can be reasonably hypothesised that Mr J would in all likelihood still have fallen into trouble on one or both of the accounts had those credit limit increases never taken place. Indeed, I feel that it may have been the case that the two separate credit accounts mutually reinforced the spiral of unsustainable debt in which Mr J found himself.

Because of this, I continue to feel that in this specific instance the fairest outcome here is to instruct NewDay to remove the adverse credit reporting from Mr J's credit file, and it follows from this that my final decision here will be that I uphold this complaint in Mr J's favour on the basis as stated in my provisional decision.

Putting things right

NewDay must recall the Brand A and Brand M credit accounts and reimburse to those accounts all relevant interest, fees, and charges incurred or accrued on those account beyond the credit limit increases that took place from March 2016 onwards. This is the increase from £800 t0 £1,400 on Brand A, and from £1,500 to £1,800 on Brand M.

If these reimbursements result in either of these accounts having a credit balance in Mr J's favour, NewDay must pay that balance to Mr J along with 8% simple interest, calculated to the date of payment. However, if a balance remains outstanding to be paid on the account, then NewDay must contact Mr J to arrange a suitable repayment plan with him, based on an assessment of what Mr J can reasonably afford to pay.

Finally, NewDay must also remove all adverse credit reporting from Mr J’s credit file for the Brand A and Brand M accounts from the relevant dates.

My final decision

My final decision is that I uphold this complaint against NewDay Ltd on the basis explained above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr J to accept or reject my decision before 19 October 2021.

Paul Cooper
Ombudsman