DRN-3169475

The complaint

Mr B complains that NewDay Ltd, trading as Aqua, (NewDay) irresponsibly provided him with a credit card and limit increases on that card, which increased his debt.

What happened

In November 2013, Mr B applied for an Aqua branded credit card with NewDay. At the time, he had an income of £22,125 and unsecured debt of £200. His application was approved with an initial credit limit of £250. The card had an APR of 49.9%.

Mr B was then offered credit limit increases. Each letter notifying Mr B of the increase gave him the option to refuse it. Mr B didn't do this and increases were made as set out below. I'm not able to consider the sale or original lending, due to the time this complaint was made, so I've focused on the things I can consider - the credit limit increases in the table below.

Date	Amount of additional credit	New limit
10 March 2014	£350	£600
11 July 2014	£200	£800
9 September 2015	£800	£1,600
22 February 2016	£1,000	£2,600
29 June 2016	£900	£3,500
11 November 2016	£3,500	£4,600

The balance on Mr B's card increased to near to his new credit limit soon after each increase. Mr B went above his limit more, incurring fees, and generally only made minimal payments, which didn't cover the interest and further spending on the credit card.

As payments weren't made as they should've, NewDay sold the debt in September 2017.

Mr B complained to NewDay. He says at the time of his application his credit rating was poor, he had payday loans and a previous account with NewDay which had been defaulted. He also said the credit limit was being increased even though he was using a high level of his credit limit as well as incurring over the limit and late payment fees. He had a County Court Judgement (CCJ) from March 2015 recorded against him and late payment markers and defaults were on his credit file along with evidence of him taking out a lot of other credit. He doesn't think sufficient checks were made before NewDay accepted his credit card application or proactively offered him the credit limit increases.

NewDay didn't uphold Mr B's complaint. It said it offers credit cards to people who have poor credit, which can help customers improve their credit rating. To accept his application, it took into account that he was employed earning £22,125 with £200 of unsecured debt at the time. Also, the information from credit reference agencies (CRAs) showed Mr B didn't have any arrears or public records and the last default was 30 months before application.

NewDay said Mr B hadn't informed it of his financial difficulties. It said all credit increases had been correctly offered and Mr B didn't opt out of any of them.

Mr B brought his complaint to our service. Our investigator upheld Mr B’s complaint in relation to the credit limit increases starting from March 2014. This is because he thought further checks should’ve been carried out by NewDay and, if this had been done, it would’ve realised the lending wasn’t affordable. He felt a fair outcome would be for NewDay to refund all interest, fees and charges applied to the account since March 2014 and rework it, paying interest on any credit balance. He also asked NewDay to remove any adverse information from Mr B’s credit file recorded by it since March 2014.

Mr B accepted the investigators view. But NewDay didn’t. It said it relied on data submitted by Mr B and from CRAs. So, it didn’t find it acceptable to apply the information from Mr B’s bank statements retrospectively when this wasn’t required during the application or at the time of the increases. In summary, it made the following points:

1. At the time of the increases, there were no *internal* account arrears nor financial difficulty or affordability triggers with the financial bureaus. And there was a much higher spend on retail rather than cash withdrawals.
2. Although there were late payments and occasions where Mr B exceeded the credit limit previously, the increases still went ahead in line with NewDay’s policy.
3. In terms of the over-limit fees, NewDay’s policy is to exclude customers from limit increases where they’ve incurred an over limit fee in *all* three prior months. For example, when the first limit increase was made in March 2014, only one over limit fee had been charged in February 2014. So, the increases were within its policy.
4. Mr B could’ve declined the increases and didn’t have to spend up to the card’s limit.
5. It’s important how Mr B managed the account is shown accurately on his credit file.

As the complaint couldn’t be resolved informally, the matter was passed to me for a decision. I issued a provisional decision on 21 October 2021 and an extract of my findings from this is set out below.

‘*Taking into account the rules, regulations, guidance and good industry practice, there are three key questions for me to think about while looking at Mr B’s complaint. These are:*

1. *Did NewDay complete reasonable and proportionate checks to satisfy itself the increases to his credit limit would be repayable by Mr B in a sustainable way?*
    a. *If so, did it make fair lending decisions?*
    b. *If not, would those checks have shown that the lending was affordable?*
2. *Should NewDay have realised it was increasing Mr B’s indebtedness in a way that was unsustainable or otherwise harmful, so shouldn’t have provided the lending?*
3. *Did NewDay act unfairly or unreasonably in some other way?*

While I accept it’s for NewDay to decide its approach to credit risk when considering applications for credit, creditworthiness is also relevant to affordability and this isn’t simply a matter of commercial judgement for NewDay. I note NewDay explains the card applied for by Mr B was designed for and aimed at customers who have impaired credit records. I think it’s important that NewDay’s responsibilities as a lender should be considered in that context. And, it’s due to the nature of NewDay’s target customer base for this product, that the importance of reasonable and proportionate checks can’t be overstated.

There’s no prescribed list of checks a lender should make but lenders should consider a range of things such as the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well their personal circumstances.

Mr B was initially given a credit limit of £250. As explained above, the initial sale of the card and credit isn’t something I can consider due to when the complaint was brought to our service. Instead, I’ve focused on the increases we can consider from March 2014.

Increases in March and July 2014

I've considered the increases in March and July 2014 - when the limit went up to £600 and then £800 - together. This is because I don't consider these to have been unfair lending decisions by NewDay. I'll explain why.

NewDay looked at information from external agencies as well as how Mr B had managed his account with it. The noticeable change externally was a hire purchase agreement entered into in late 2013 but the credit file shows Mr B was maintaining his payments for this. Otherwise, there was also nothing of particular concern on his credit file from the first half of 2014. Internally, NewDay knew there was one small cash transaction on his Aqua account and one over limit fee in February 2014. However, from the time he'd had the credit card until July 2014, Mr B was using it for everyday spending and hadn't missed any repayments.

So, I don't consider Mr B had been managing his account in a way that would've alerted NewDay to the fact that further checks would need to be carried out nor have I seen any evidence there was concerning information from external agencies to suggest this either. Another important factor in deciding what reasonable and proportionate checks are is how much the increase was and the overall credit limit. Neither the limits nor the increases in March and July 2014 were particularly substantial so this didn't indicate further checks were required. It follows I'm not persuaded NewDay made unfair lending decisions in relation to the credit limit increases in March and July 2014.

Increases in September 2015 and February, June and November 2016

I've considered the increases made from September 2015 - when the limit went up to £1,600, £2,600, £3,500 finally £4,600 - together. This is because I consider these to have all been unfair lending decisions by NewDay. I'll explain why.

External information from soon after the July 2014 increase shows someone who is struggling to manage their finances. By late 2014, two accounts were in a debt management plan and another was in an arrangement to pay. Payday loans and other forms of short-term lending are also shown from 2014 including one with overdue payments. This situation deteriorated further in 2015. By the time of the September 2015 offer, Mr B had a further CCJ against him from March 2015 and his unsecured debt had also increased significantly. In late 2015, a further account is defaulted while another enters an arrangement to pay.

By September 2015, internal information shows, over a sustained period of nearly two years, Mr B hadn't been handling his account responsibly. He quickly reached and remained at his credit limits very soon after the card was issued and the limits were increased. And he was only making minimal payments. The way he managed the account didn't improve either. By November 2015, cash withdrawals and over limit fees were a regular feature and, in May 2016, betting transactions appear. Mr B's spending on the card exceeds his repayments to it and the difference between what he spent and what he repaid was increasing.

As mentioned, an important factor in deciding what reasonable and proportionate checks are is how much the increase was and the overall limit. The increase offered in September 2015 was double the credit Mr B had and a substantial amount - more than Mr B's net monthly salary. By November 2016, the limit was more than 3 times his monthly salary and 18 times more than his original limit despite a deterioration in his financial situation in this time.

The amount of the increases and overall credit limits in addition to the internal and external data paints a picture of Mr B's increasing financial difficulties which should've caused NewDay to realise he'd struggle to sustainably repay the credit balance he already had, let *alone any increase to this, over a reasonable period. It follows NewDay didn't make a fair lending decision when it offered to increase Mr B's credit limit in September 2015 and February, June and November 2016.*'

I invited all parties to let me have any further submissions before I reached a final decision. NewDay responded to the provisional decision to confirm they agree with the provisional decision.

Mr B replied. He says that, although the provisional decision says the only notable difference on his credit report at the time of the first two increases in March and July 2014 was the hire purchase agreement, there was a number of additional lines of credit including payday loans and mail order accounts being opened from November 2013 through to July 2014.

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 reached the same conclusions as set out in my provisional decision and for the same reasons. I'll explain why.

I note Mr B says there were additional lines of credit including payday loans, short term lending and mail order accounts being opened by him from November 2013 through to July 2014. I looked at the specific examples Mr B mentioned – those taken out or reported after the increase was offered wouldn't have been on his credit file so I've only considered those which would've been visible before the March and July 2014 increases were offered.

As I explained in my provisional decision, NewDay looked at information from external agencies as well as how Mr B had managed his account with it. Having done so, whilst I agree it would've seen some payday loans and other forms of short-term credit, this wouldn't automatically prevent Mr B from reasonably being offered an increase by NewDay. Further, Mr B was using the payday loans and short-term credit as would be expected. The payday loans were taken out and settled the same month and the other forms of credit don't show any issues on the credit file until much later. So, I don't think this would've raised particular concerns on his credit file from the time before he was offered the first two increases.

In addition, NewDay knew from internal information that until July 2014, Mr B was using his credit card for everyday spending and hadn't missed any repayments. So, I don't consider Mr B had been managing his account in a way that would've alerted NewDay to the fact that further checks would need to be carried out nor have I seen any evidence there was concerning information from external agencies to suggest this either.

As mentioned in my provisional decision, another important factor in deciding what reasonable and proportionate checks are is how much the increase was and the overall credit limit. Neither the limits nor the increases in March and July 2014 were particularly substantial so this didn't indicate further checks were required.

It follows that my decision remains that I'm not persuaded NewDay made unfair lending decisions in relation to the credit limit increases in March and July 2014. However, NewDay didn't make a fair lending decision when it offered to increase Mr B's credit limit in September 2015 and February, June and November 2016 and so it needs to put this right.

I accept Mr B will be disappointed my decision on the first two credit limit increases hasn't changed, but I hope the reasons for my decision are clear. My decision now ends what we – in trying to resolve his dispute with Halifax – can do for him.

Putting things right

It's fair NewDay put Mr B in the same position he was in before the increase to the credit limit on 9 September 2015. In order to put things right, NewDay should:

1. Remove all interest, fees, and charges (including late payment and over limit fees) applied to the account from 9 September 2015 and then rework it.
2. For any period the account was in credit, 8% simple interest† should be added to the amount of credit until it went out of credit or the date of settlement.
3. If an outstanding balance remains on Mr B's account once all adjustments have been made, NewDay should – if it bought the account back from the third party - contact Mr B to arrange a suitable repayment plan.
4. NewDay should remove adverse information from Mr B's credit file which it reported since 9 September 2015 in relation to Mr B's Aqua account.

†HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Mr B a certificate showing how much tax it's taken off if he asks for one.

NewDay sold the outstanding balance on Mr B's account to a third-party debt purchaser. So, it either needs to buy the account back from the third party and make the necessary adjustments or pay an amount to the third party in order for it to do this.

My final decision

For the reasons set out above, I uphold Mr B's complaint. NewDay Ltd must take the steps set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 December 2021.

Rebecca Ellis
Ombudsman