

The complaint

Mr B complains that NewDay Ltd trading as Aqua, irresponsibly increased his credit limit.

What happened

I issued my provisional decision on this case on 25 November 2021. I wanted to give both parties the chance to respond before I came to my final decision.

I have copied my provisional decision below, which also forms part of this final decision.

“Mr B initially applied for a credit card account with NewDay in 2014 – at the time he was accepted for the account, Mr B was given a £450 credit limit. NewDay then increased Mr B’s credit limit on the following occasions:

April 2015 – from £450 to £550

July 2018 – from £550 to £1250

December 2018 - from £1250 to £2150

September 2019 – from £2150 to £3150

February 2020 – from £3150 to £4900

Mr B complains about the credit limit increases NewDay applied to his account from 2018 onwards. He says that he entered into a repayment plan with NewDay in 2016, and this is when he also started gambling. Mr B says that his gambling addiction continued to a point where he was solely using the card for gambling and cash transactions. Mr B says that NewDay ought to have been aware of what he was using the card for – and it shouldn’t have increased his credit limit the numerous times it did, as this only made his gambling addiction worse and got him into more debt. On top of this, Mr B says that he had also defaulted on a number of different accounts during the time he had this card, and so NewDay ought to have known this and not increased his limit.

NewDay responded to Mr B’s complaint and upheld it. It agreed that it shouldn’t have increased Mr B’s credit limit when it did in 2018 and onwards. To put things right for Mr B, NewDay agreed to refund the following:

- *Interest charges - £347.92*
- *Over limit fees - £24*
- *Cash Advance fees – £237.90*

Mr B brought his complaint to our service as he didn’t feel that NewDay had done enough to put things right for him. Mr B says that he’d like NewDay to write off the balance of the account, freeze any further interest charges, and compensate him for the mental distress that this situation has caused him.

Our investigator looked into things for Mr B. He felt that the refund calculations NewDay had provided him with so far looked correct. But he also said that NewDay should freeze any further interest on the account, not send the account to a debt collector, pay Mr B £250 for the distress caused and remove any late payment markers from Mr B’s credit file from July

2018 onwards.

NewDay didn't agree with our investigator. It said that by it removing proportionate interest and charges, it feels that it has put Mr B back in the position he would have been had it not increased his limit. NewDay said that it didn't feel that Mr B had been held accountable in anyway and so it isn't fair to also ask it to remove adverse information from his credit file and pay him £250 in addition to the refund it had already offered.

Because NewDay didn't agree, the complaint has been passed to me to make a decision on the matter.

What I've provisionally 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.

Mr B has told this service that he is only complaining about the increases that happened on his account from 2018 onwards. And NewDay has agreed that it shouldn't have increased his limit from 2018. So there doesn't appear to be a dispute on this particular point anymore. So, its now left for me to decide if NewDay has done enough to put things right for Mr B and I don't think it has.

Where credit has been provided when it shouldn't have been, it would be fair and reasonable for the lender to refund any interest and charges paid by the borrower (if there were any). And in a lot of cases, the borrower would be expected to repay any remaining amount of the funds they were given. So, in this case, I'd expect Mr B to pay back the funds he was lent – when he used his card – but not the interest.

I appreciate that NewDay has already refunded some interest and charges to Mr B, but these are now outdated, and they don't include any refund of interest for anything that has happened since the final response letter. In any event, while NewDay has provided this service with information about how it calculated the refund, the information it has sent isn't clear, so I can't be certain it has done this correctly. So for clarity and completeness, below I'm telling NewDay how it needs to calculate the total redress I currently think is due to Mr B. NewDay should rework Mr B's account to remove the effect of any interest and charges accrued on the account as a result of the unfair credit limit increases which took place from July 2018 onwards. NewDay can only add any interest due on the first £550 of the balance – any late payment and over limit fees after July 2018 also need to be refunded irrespective of what any reconstructed final balance may show.

The payments Mr B made from July 2018 onwards - should then be applied to the reworked balance. I don't think in this case it is likely that Mr B would have repaid more than the reconstructed balance, but if he has, then any extra that was paid should be treated as overpayments and returned to Mr B. NewDay should also add interest, at 8% simple per year, from the date any overpayment was made to the date of settlement.

NewDay should also remove any adverse information recorded on Mr B's credit file as a result of this account from July 2018. And I currently think NewDay should pay Mr B £400 for the distress and inconvenience it caused Mr B, for reasons I will go on to explain below.

NewDay feels that by doing these things leaves Mr B with little accountability, but I don't currently agree. NewDay had a duty to lend to Mr B responsibly and so it is NewDay who ought to be accountable for the impact caused to Mr B when it didn't do this. Had NewDay lent responsibly to Mr B, then it's likely that Mr B wouldn't have found himself in the situation he is now. I think the impact of NewDay's actions resulted in increased harm to Mr B; giving

someone who was experiencing compulsive uncontrolled spending access to credit. And I think this was foreseeable – had New Day done the correct checks at the time it would've seen how Mr B was using his card and realised that providing him access to additional credit was likely to cause him harm. As a result of NewDay increasing Mr B's credit limit when it shouldn't have, and in turn increasing the amount of debt he has, has understandably led to very difficult times for Mr B – both financially and mentally.

The investigator recommended that NewDay shouldn't send Mr B's account to a debt collection agency. But I don't currently agree with this point. NewDay can send Mr B's account to a debt collection agency if that's what it decides to do, however it needs to ensure that this doesn't negatively impact Mr B, or the repayment terms that are agreed."

Mr B responded to my provisional decision to say he had nothing further to add, and that he agreed with the recommendations.

NewDay didn't respond, and so I've assumed it has nothing further for me to consider.

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 considered everything again, it is still my decision to uphold this complaint.

Neither party has given me any additional information for me to consider, and so I see no reason to depart from the findings in my provisional decision.

Putting things right

NewDay has already refunded some of the interest and charges to Mr B's account. NewDay needs to ensure that it has calculated the total refund as per my direction below, and it can deduct any amount it has already refunded from the reconstructed balance. To put things right for Mr B, I order NewDay to:

- rework the account to ensure that from July 2018 interest is only charged on the first £550 outstanding to reflect the fact that no further credit limit increases should have been provided. All late payment and over limit fees (that were applied after July 2018) should also be removed; and
- if an outstanding balance remains on Mr B's account once all adjustments have been made NewDay should contact Mr B to arrange a suitable repayment plan for this.
- No interest should be charged on any outstanding balance over £550, until it is repaid.
- if the effect of all adjustments results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr B along with 8% simple interest† on the overpayments from the date they were made until the date of settlement.
- Pay Mr B £400 in compensation to reflect the impact this situation has had on him.
- Remove any adverse information from Mr B's credit file that happened after July 2018.

†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.

My final decision

For the reasons set out above, I uphold Mr B's complaint. NewDay Ltd trading as Aqua should put things right for Mr B by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 January 2022.

Sophie Wilkinson
Ombudsman