

The complaint

Mr J complains that NewDay Ltd acted irresponsibly when it provided him with a credit card account in 2015 and then increased the credit limit on that card on a number of occasions.

What happened

Mr J had a credit card account with NewDay. He says he applied for the card in 2015. He says he was receiving disability benefits and he thinks now he shouldn't have been given the card. He says NewDay increased the credit limit on a number of occasions since 2015 without carrying out proper checks. He says at the time when he was given increased credit limits he was also getting additional loans from other lenders.

Mr J says that because of NewDay's irresponsible lending he's been left with a debt he can't repay and he's now got adverse information recorded on his credit file including a default. He thinks NewDay should repay him all of the interest and charges he's had to pay together with 8% interest and he wants the adverse information removed from his credit file. Mr J complained to NewDay.

NewDay investigated his complaint. It said it had looked again at the information he'd provided on his application form. At that time, he'd told NewDay he was employed and had access to other household income. It said it had carried out its usual checks. There was no record of any arrears on any of his active accounts and there was no negative information on his credit file. It said there'd been a default recorded on his credit file 34 months previously. In view of the length of time since that happened it had agreed to an initial credit limit of £300.

NewDay said it had reviewed the credit limit at regular intervals and had carried out risk-based assessments before offering any increased limit. It had increased the limit as follows:

*March 2016 to £1300; and
July 2016 to £2500.*

It said Mr J had been given the opportunity to opt out of these increases but he hadn't done that. In June 2017 Mr J had contacted NewDay and asked for a further increase to £3500. NewDay had completed its usual checks before agreeing to that increase.

NewDay said that after Mr J told it about his financial difficulties it had agreed to set up a reduced payment plan. The account had defaulted in August 2018 and had been sold to a third party at that time, in line with the terms and conditions for the account.

Mr J didn't agree. He referred his complaint to our service. Our investigator looked into his complaint. He considered that the checks NewDay had completed when the account was opened in 2015 and subsequently in March 2016 and July 2016 had been reasonable and proportionate. So, he didn't think NewDay had acted irresponsibly during this period.

Our investigator thought there was evidence in June 2017 that Mr J's overall indebtedness had been increasing significantly. He said this should've caused concern. NewDay hadn't asked Mr J for further information at that stage about his circumstances. So, our investigator thought the increased credit limit in June 2017 was unaffordable.

Our investigator thought NewDay should:

- rework the credit card balance so that all interest and fees that had arisen as a result of the credit limit increase in June 2017 were removed. Any interest after that date could only be charged on the initial balance before the credit limit increase;
 - arrange a suitable repayment plan with Mr J. If NewDay considered it appropriate to record any negative information on Mr J's credit file it should backdate this to June 2017;
- or
- if there was no outstanding balance after the refund referred to above, NewDay should pay the balance in the account to Mr J together with 8% interest on that balance. In these circumstances any adverse information recorded with credit reference agencies should also be removed.

Mr J accepted what our investigator had said. NewDay didn't respond. Because NewDay didn't respond the complaint was referred to me to decide. I issued a provisional decision in which I said:

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.

As mentioned above, I'm issuing a provisional decision in this case because although I've reached the same outcome as our investigator, I'm intending to require NewDay to take different actions, to those suggested by our investigator, to resolve this complaint. I'll explain why.

In this provisional decision I'm only looking at Mr J's complaint about the Aqua credit card issued to him by NewDay. He had other credit agreements with NewDay but they are not the subject of his complaint. So, I'm not considering those credit agreements.

Before a lender provides credit to a consumer there are certain checks that its required to make. Details about those checks can be found in the Financial Conduct Authority (FCA) Handbook in the section entitled CONC (Consumer Credit) (the Rules). Those checks should be reasonable and proportionate. The thoroughness of the checks required will depend on a number of factors - such as the size of the credit relative to the consumer's income and the amount of the repayments.

When considering this complaint, I've looked at the checks which NewDay carried out when it issued the credit card and then on each occasion that it increased the credit limit.

The history of the credit limits on the account is as follows:

November 2015 – credit limit £300

March 2016 – credit limit £1300;

July 2016 – credit limit £2500;

June 2017 – credit limit £3500

The checks carried out by NewDay

NewDay says it carried out all necessary checks in line with its own policies and procedures. It uses data from external agencies to estimate the income and expenditure of the consumer. NewDay says it also makes checks with external credit reference agencies to determine what the consumer's overall level of debt is. It uses that data together with its own internal scoring cards to determine whether the proposed credit limit is affordable. If there is evidence of any overlimit fees on the account, for a certain period of time, then it will not offer a credit limit increase.

The Rules state that when determining whether the consumer can afford the amount of credit offered the lender can take into account other household income. And it can use statistical data. So, it isn't always necessary for the lender to verify the information provided by the consumer – such as asking the consumer to send payslips or other evidence of income.

The initial application

I can see that when Mr J first applied for the credit card, he told NewDay he was in employment. He's told us he was in receipt of disability benefits. I've looked at his joint current account and I can see evidence of benefits being paid into it. But, there's also evidence of other credits being made to that account which is consistent with the information he provided to NewDay in his application form. Some of that income was household income – earned by his partner.

As stated above the Rules permitted NewDay to rely on statistical data to estimate Mr J's income and expenditure – it wasn't necessary for it to verify that data by asking him to provide proof of income. NewDay carried out all of its checks - in line with its policies.

There was evidence of a default that'd been registered on Mr J's credit file 34 months previously. NewDay did take that into account. It set the initial credit limit at £300. So, having considered everything, I'm satisfied NewDay carried out proportionate and reasonable checks when it set the initial credit limit at £300.

NewDay says it reviews each of its accounts and makes risk-based assessments on an ongoing basis to decide whether to offer to increase the credit limit. So, I've looked at whether the checks it carried out each time it increased the limit were reasonable and proportionate.

The increased limit in March 2016

The first credit limit increase was in March 2016 – less than 6 months after the credit card had been issued. The increased limit was significant – an increase of £1000. So, I'd have expected NewDay to check that this was affordable and sustainable.

I can see that, in line with its policy, NewDay again collected statistical data. The data showed there was no adverse information

recorded about Mr J with credit reference agencies (apart from the default referred to above). It also showed Mr J had no active payday loans. The data was assessed using NewDay's internal scoring processes and this confirmed the increased limit was affordable.

When considering whether NewDay's checks were reasonable and proportionate, I've also looked at how the account had been managed in the period since it was opened. Mr J had made all payments on time and he'd been making payments which were more than the minimum payments required. There was nothing in the data to suggest he was experiencing difficulty making the payments.

I'm satisfied on balance that the checks carried out for this increase were reasonable and proportionate. NewDay also told Mr J he didn't have to accept the increased limit. He didn't opt out.

The increased limit in July 2016

NewDay again increased the limit only four months later. This increase was for a further £1200 – bringing the limit to £2500

By this stage Mr J had been operating the account for over six months. He'd made all payments on time and had continued to make payments which were greater than the minimum required. There was also no evidence of any adverse information with credit reference agencies or evidence of any active payday loans. The data did indicate that his overall indebtedness had increased in the period since the credit card was first granted. But, there was no evidence of any adverse information held at credit reference agencies and there were no active payday loans at the time of the increase.

NewDay carried out the same checks as previously – in line with its policies and procedures. I've looked at the data it held and, although there was evidence of increased indebtedness, the internal assessment indicated that the lending was still affordable and sustainable, I'm satisfied the checks were reasonable and proportionate.

The increased limit in June 2017

Mr J requested this credit limit increase. The request was for an increase of £1000 – raising the limit to £3500. So, this was a further significant increase.

NewDay didn't ask Mr J to update his personal information at this time. It was the case that his circumstances had changed. I can see from the joint current account that there was still evidence of benefits being paid and there was also evidence of employment income. But it looks like Mr J's employment had changed and it's not clear whether the status of his employment was permanent or temporary. There was still evidence of other household income.

I've thought about whether it was reasonable for NewDay to continue to rely on statistical data to estimate Mr J's household income and expenditure – given the passage of time since the initial application and the overall increase in his indebtedness to both NewDay and other lenders at this time. The statistical data indicated that Mr J's overall indebtedness to other lenders now exceeded £11,000. It had been around £1800 in March 2016.

It is the case that Mr J had continued to make all payments to the card account on time throughout the whole period since November 2015. But his account had been at or close to the limit for the period since the increase in July 2016 and he'd only been making the minimum payments – although on occasions he paid marginally more than the minimum payment.

The fact that the increased limit in June 2017 was unaffordable and that the payments were unsustainable was also evidenced when Mr J's account exceeded the limit shortly afterwards in January 2018. He stopped making payments after that date.

Having considered everything here, I agree with our investigator when he said that there was information available to NewDay in June 2017 which should've caused it to make further enquiries. If it had done that it would've found out about the change in Mr J's employment status and it would've been able to ask him for further information about his overall indebtedness. If it had made those enquiries – which I consider would've been reasonable and proportionate given the statistical information it did have - I don't think it would've agreed to increase the limit at this time.

What I've provisionally decided needs to be done to put things right

Having considered everything here, I agree with our investigator when he said that NewDay should take action to put things right.

I've provisionally decided it needs to re-work the account for the period after the increase in the credit limit granted in June 2017 so that all interest and fees which arose after that date as a result of the increased credit limit are removed. Interest after June 2017 should only relate to any outstanding balance which existed prior to the credit limit increase.

After the account has been re-worked if there is a credit balance then NewDay should refund that to Mr J together with 8% simple interest from the date the credit balance arose. In these circumstances, any adverse information recorded at credit reference agencies about the account should be removed.

If there is a negative balance after the account has been re-worked ('the Corrected Balance'), as seems more likely to be the case, Mr J will have to make arrangements with NewDay to repay that balance. I'd expect NewDay to treat him positively and sympathetically. I see it has shown a willingness to agree a repayment plan with Mr J.

I've also thought about any adverse information that's been recorded on Mr J's credit file as a result of the increased limit applied in June 2017. If after the account has been re-worked there is a debit balance, I think NewDay should amend the information its recorded at credit reference agencies to reflect the Corrected Balance.

Mr J has already told NewDay about his current financial difficulties. He's confirmed to our service that his position hasn't changed and he says he couldn't afford to repay the Corrected Balance in full or make any payments to NewDay (other than the nominal monthly amount he's already agreed with NewDay). So, I don't intend to ask NewDay to remove any default it may have registered with credit reference agencies. I say this because if

there is already a default recorded it will remain on Mr J's credit file for six years from the date it was first registered. Any new default would then be registered after that date. So, I think it would act to Mr J's detriment if I was to require NewDay to remove any default it had already registered.

My provisional decision

For the reasons given above, my provisional decision is that I intend to uphold this complaint, in part, about NewDay Ltd.

I intend to require NewDay Ltd to take the following action:

- rework the credit card account so that all interest and fees that arose as a result of the credit limit increase in June 2017 are removed. Any interest after that date can only be charged on the balance outstanding before the credit limit increase was applied. For avoidance of doubt, the credit limit increase applied in June 2017 should be removed from the account;*
- in the event that there is an outstanding debit balance after the account has been reworked (the Corrected Balance), NewDay Ltd should seek to agree a suitable repayment plan with Mr J. In these circumstances, NewDay Ltd should also amend the balance outstanding recorded with credit reference agencies for the period after June 2017;*

Or

in the event that there is no outstanding balance after the account has been re- worked, NewDay Ltd should pay any credit balance in the account to Mr J together with 8% interest on that balance. In these circumstances any adverse information recorded with credit reference agencies after June 2017 should also be removed.

NewDay didn't agree with my provisional decision. It made the following points:

- It said that because its final response letter had dealt with other accounts Mr J held with it, I should consider those other accounts when deciding how to resolve with this complaint.
- It said it followed the rules set out in the Financial Conduct Authority's (FCA's) Consumer Credit Sourcebook (CONC) to ensure reasonable and proportionate checks were carried out. It said it didn't ask for bank statements as part of its assessment and wasn't required to.
- It said that within six months of the increase in June 2017 the statements showed that the credit limit was not exceeded, the cash transaction facility was not used and there were no late payments. It also said that the external data showed that within six months of the increase in June 2017, Mr J had no payment arrangements with other lenders, no arrears with other lenders, no evidence of financial difficulty with other lenders and no evidence of affordability issues with other lenders. Although he had three payday loans, it said these were well managed – and none had been opened within the six months prior to the credit limit increases.

Mr J didn't make any comments in response to my provisional decision.

So, I now have to make 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.

NewDay has indicated that it thinks I need to consider other accounts Mr J held with it. It had looked at the operation of those other accounts when considering his complaint about the Aqua account. Mr J hasn't complained about those other accounts.

I have taken those other accounts into consideration when thinking about Mr J's overall credit position in relation to the lending on the card being complained about here. But, I haven't commented about those accounts specifically because Mr J hasn't complained about NewDay's management or operation of those accounts. So, as I said in my provisional decision, I have only considered the complaint about the Aqua credit card account when reaching this decision. And, even taking into account the conduct of those other accounts, it remains that I think NewDay should have done more in relation to this particular card in the circumstances.

It is the case that when providing credit, NewDay is required to carry out reasonable and proportionate checks. And, it is correct when it says that that doesn't always mean it has to ask for copy bank statements. But what is reasonable and proportionate depends on the circumstances of each case.

As I said in my provisional decision, by June 2017, the statistical data which NewDay relied upon when making its decision here, indicated that Mr J's overall indebtedness had increased significantly since the date when it initially provided credit to him. It was also the case that Mr J's account had been at or close to the limit since July 2016 and he'd only been making the minimum payments since that time. In these circumstances, I think it would've been reasonable and proportionate for NewDay to have carried out further checks. I remain of that view.

NewDay has suggested that the subsequent history of Mr J's credit file supports its view that the lending in June 2017 was affordable. I agree that the subsequent history of an account is relevant when reviewing a decision where credit has been made available. But, the subsequent history of Mr J's account shows that by January 2018 he was no longer able to make payments to the account – that was only seven months after his credit limit had been increased by £1000 (from £2500 to £3500). And, there's also evidence of payday loans having been taken out by Mr J in the intervening period and of his overall indebtedness continuing to increase. So, I don't think that the subsequent history of this account or Mr J's financial position generally does support NewDay's assertion that the lending was affordable.

I remain of the view that had NewDay carried out further checks in June 2017, it wouldn't have agreed to increase the limit.

Having considered everything here, for the reasons set out above and in my provisional decision, I haven't changed my view about how this complaint should be resolved.

When reviewing the actions that NewDay should now be required to take to put things right, it will be necessary for NewDay to firstly bring this account back under its own management. It will then be in a position to take the actions I'd set out in my provisional decision. NewDay has confirmed that it can repurchase the account if there is an outstanding balance or it can ask the party which purchased the account to reduce the balance by the refund amount.

My final decision

For the reasons given above I uphold this complaint about NewDay Ltd, in part. I now require it to:

- bring the Aqua credit card account back under its own management;
- rework the Aqua credit card account so that all interest and fees that arose as a result of the credit limit increase in June 2017 are removed. Any interest after that date can only be charged on the balance outstanding before the credit limit increase was applied. For avoidance of doubt, the credit limit increase applied in June 2017 should be removed from the account; and
- in the event that there is an outstanding debit balance after the account has been reworked (the Corrected Balance), NewDay Ltd should seek to agree a suitable repayment plan with Mr J. In these circumstances, NewDay Ltd should also amend the balance outstanding recorded with credit reference agencies for the period after June 2017;

Or

in the event that there is no outstanding balance after the account has been re-worked, NewDay Ltd should pay any credit balance in the account to Mr J together with 8%* simple interest on that balance. In these circumstances any adverse information recorded with credit reference agencies after June 2017 should be removed.

* * If NewDay Ltd considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr J, it should tell him how much it's taken off. It should also give Mr J a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

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

Irene Martin
Ombudsman