

The complaint

In summary, Mr C has complained that NewDay Ltd trading as Aquacard, provided him with credit limit increases on his credit card, when he wasn't able to afford them.

What happened

In March 2012, NewDay provided Mr C with a credit card. The initial credit limit was £250. In March 2016, the credit limit was increased to £550, in May 2017 it was increased to £1,150, in September 2017 it was increased to £2,050, in March 2018 to £3,300 and in October 2018 to £3,950.

In its response to Mr C's complaint, NewDay explained why it thought the credit card was affordable when it was first approved. And it said the subsequent limit increases were also appropriate with the exception of the limit increase in March 2018. It went on to say this limit increase shouldn't have been offered due to the way Mr C had managed his account. And as a result, it upheld his complaint in part.

Mr C's concerns were reviewed by one of our investigators. He explained that Mr C had agreed the original sale of the credit card couldn't be looked at. He went on to say why he thought the checks NewDay had carried out in respect of the March 2016 credit limit increase were reasonable and proportionate. And he also explained why he didn't think the limit increases from 2017 should have been provided to Mr C.

In response, NewDay explained why it disagreed with the investigator's recommendations. In summary it said cash withdrawals were within its lending criteria. It also said Mr C had no payday loans or lending arrangements or arrears. There were no late payments on the account until November 2017. The balance was paid off in August 2016. The account was used again in September/October 2016 and the limit wasn't exceeded until June 2018. Proportional interest and charges had been refunded on the account after March 2018. Its refunds reflected that the credit limits in April and October 2018 shouldn't have taken place. It believed the credit limit increases in May and November 2017 were applied after reasonable and proportionate checks were carried out.

The investigator said in response that his opinion remained the same. As NewDay didn't agree with the investigator's assessment of the complaint, it has been passed to me to review.

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.

Mr C has complained about two different products. And I don't think it's unreasonable as a result that the complaints have been split.

If the complaints about the two different products were considered together, then Mr C would be put in the position of potentially having to accept an outcome for both aspects of his complaint, where one might be upheld and the complaint about the other product not upheld. And in this case, I don't think that would be fair to Mr C. So, I'm satisfied it has been appropriate to set up two separate complaints for Mr C.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've considered this approach when deciding Mr C's complaint.

Having done so, I've decided to uphold Mr C's complaint in part. I'll explain why.

There are several questions that I've thought about when deciding if NewDay treated Mr C fairly and reasonably when it provided him with the credit card.

- 1) Did NewDay complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay his credit card in a sustainable way?
- 2) If not, what would reasonable and proportionate checks have shown at the time?
- 3) Ultimately, did NewDay make a fair lending decision?
- 4) Did NewDay act unfairly or unreasonably in some other way?

Did NewDay complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay the credit provided to him in a sustainable way?

The rules that NewDay had to follow, required it to carry out checks that would enable it to reasonably assess, whether Mr C could afford to repay the credit card he was wanting to take out. This is often referred to as an “*affordability assessment*”.

The rules don't set out what specific checks it needed to carry out, but they did set out that those checks needed to be proportionate to the circumstances of the application. I think what this meant in practice, was that the scope and extent of NewDay's checks needed to take into account things such as the amount of credit being provided, the interest rate, Mr C's financial circumstances and any indications of customer vulnerability.

The checks NewDay needed to carry as part of its affordability assessment, had to be “*borrower focussed*”. What I mean by this, is that the checks needed to consider whether paying back the credit would cause Mr C any difficulties or have any adverse consequences for him. They would also need to take account of factors such as the amount of credit being provided, the interest applied on the credit card account, the monthly repayments and the total charge for the credit. This isn't an exhaustive list.

And because of the above, I think reasonable and proportionate checks needed to be more thorough if Mr C had a low income. This would reflect that it could be more difficult for him to make the repayments with a low income.

With these principles in mind I've thought about whether NewDay completed reasonable and proportionate checks to satisfy itself that Mr C would be able to make repayments on his credit card account in a sustainable way. I'll look at each credit limit increase individually.

March 2016 credit limit increase

NewDay increased the card limit by £300 to £550. Mr C had been using the credit card for approximately four years. NewDay has said it used data from a credit reference agency

when assessing whether to increase Mr C's credit limit. From the information I have it looks like the information NewDay obtained about Mr C, showed he had no active pay day loans and no accounts that were in arrears. The account information in the preceding six months shows Mr C was utilising about 65% of his credit limit. He was making regular payments to the account, and there were no late payments or account charges. The initial credit provided was relatively modest taking into account the information NewDay had about Mr C. And I think in the context of the amount of increased credit being offered, Mr C's financial circumstances and the information NewDay had from the information and checks it carried out, I believe its checks in respect of this credit limit increase were reasonable and proportionate. And it wasn't therefore unreasonable for it to conclude that Mr C would be able to sustainably afford to repay the increased amount of credit he was being offered.

May 2017 credit limit increase

In May 2017, the credit limit was increased from £550 to £1,150. This was a significant increase on the credit limit Mr C already had. It looks like NewDay reviewed similar information to that which it had in March 2016. It concluded the cash transactions in the preceding six months were not a cause for concern and that Mr C had no evidence of pay day loans, no payment arrangements with other lenders no arrears with other lenders or financial difficulty and affordability issues. It was of the view he was managing his credit well.

I don't agree with NewDay's assessment. I say this because Mr C had been using approximately 80% of his credit limit in the three months prior to the increase in May 2017. And he had been making monthly payments for the previous 3 months on average of £40 a month which indicates to me that he wasn't making any significant inroads into the outstanding balance on the account. His total credit balances were approximately £8,000, which was a sizeable increase from when the limit had been increased the previous year. He was making cash withdrawals using the card, which was a change in the way the card had been used in the previous six months. And I think therefore, this was a possible flag that he was having financial difficulties, as he was in effect borrowing cash at a significant rate of interest.

NewDay's focus seems to have been on whether the information it had indicated any variance in its lending criteria parameters. But, in my opinion the information it had about Mr C based on the checks it carried out, should have caused NewDay to question his ability to sustainably afford to make repayments on the account – particularly in respect of the outstanding balance. So, I'm not satisfied in the circumstances of this case, that the checks NewDay carried out were reasonable or proportionate in respect of this credit limit increase. And I think information from the checks it did carry out, should have prompted it to carry out further checks in respect of Mr C's financial circumstances

What would reasonable and proportionate checks have shown?

It's difficult to know what further borrower focussed checks NewDay would have carried out if it had carried out the reasonable and proportionate checks that it should have done. But Mr C has provided copies of his bank statements from around the time the credit limit increase was provided. And this I think gives a good insight into his financial position at around the time the credit limit was increased.

I can see from these that in the two months leading up to the credit limit increase, his bank account was constantly overdrawn by several thousand pounds. This indicates to me that Mr C was struggling to keep on top of his finances.

Did NewDay make a fair lending decision when it increased the credit limit?

So, if NewDay had carried out reasonable and proportionate checks, I think these in conjunction with the information it already had about Mr C, all should have led it to question whether he would be able to sustainably afford to repay the further credit it was intending to provide to him. If it had, I think it should reasonably have concluded that Mr C would have had difficulties in repaying any increased level of credit on his credit card account. And it shouldn't therefore have provided him with the increased credit limit, because of the issues that I've highlighted above.

September 2017 credit limit increase

In September 2017, the credit limit was approved to increase from £1,150 to £2,050. This was a significant increase on the credit limit Mr C already had, which had only been increased a few months previously. NewDay has said this was applied to the account from November 2017. It looks like NewDay reviewed similar information to that which it had in May 2017. It concluded the cash transactions in the preceding six months were not a cause for concern. It was of the view he was managing his credit well.

I don't agree with its assessment. I say this because Mr C had been making monthly payments to the account for the previous 3 months, on average of approximately £30 a month which indicates to me that he wasn't making any significant inroads into the outstanding balance on the account. And that was less than the payments that he had been making prior to the previous credit limit increase in May 2017. His total credit balances were an average of £7,800 over the previous 3 months. He continued to make cash withdrawals using the card. And I think therefore, this was a possible flag that he was having financial difficulties, as he was in effect borrowing cash at a significant rate of interest.

What would reasonable and proportionate checks have shown at the time?

It's difficult to know what further borrower focussed checks NewDay would have carried out if it had carried out the reasonable and proportionate checks that it should have done. But Mr C has provided copies of his bank statements from around the time the credit limit increase was provided. And this I think, gives a good insight into his financial position at around the time the credit limit was increased.

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Did NewDay make a fair lending decision when it increased the credit limit?

So, if NewDay had carried out reasonable and proportionate checks, I think these in conjunction with the information it already had about Mr C, all should have led it to question whether he would be able to afford to repay the further credit it was intending to provide to him. And if it had, I think it should reasonably have concluded that it shouldn't have provided Mr C with the increased credit limit, because of the issues that I've highlighted above.

NewDay accepts that it shouldn't have increased the credit limit again in April and October 2018. So, I don't need to make any findings in respect of liability in respect of those credit limit increases.

Putting things right

NewDay should put Mr C in the financial position he'd be in now if he hadn't been given the credit card limit increases, albeit he's had the benefit of the money borrowed. So, he will need to repay the money he borrowed. This means NewDay will need to:

- A. Refund any interest charged on the account on any balances over £550 plus all late payment and over limit fees Mr C has been charged from May 2017. Any refund should be used to reduce the outstanding balance on the account. And it shouldn't apply any interest on any outstanding balance.
- B. If – when NewDay works out what Mr C would have owed each month without the interest, charges and fees – he paid more than enough to clear his balance, NewDay should also pay simple interest on the extra Mr C paid. And it should carry on paying interest until the point when Mr C would have owed NewDay something on his credit card. The interest rate should be 8% simple a year. †
- C. NewDay should tell Mr C what it's done to work out A and B. NewDay should also remove any adverse information it's recorded against Mr C on his credit file since May 2017, as a result of it providing him with the credit limit increases.
- D. NewDay has already calculated and paid compensation to Mr C in respect of the 2018 credit limit increases. It may take this into account and deduct the compensation it has already paid from any further compensation that may be owed to Mr C.

My final decision

For the reasons I've set out above, I uphold Mr C's complaint about NewDay Limited in part. It needs to calculate and pay Mr C compensation using the methodology I've set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 June 2022.

Simon Dibble
Ombudsman