

## The complaint

Mr R complains NewDay Ltd irresponsibly provided him with a credit card.

## What happened

NewDay approved Mr R for a credit card in October 2020. The initial limit was £250. This was later increased to £1,250. On both occasions (the initial application and the subsequent limit increase) Mr R withdraw cash immediately. Mr R says this money was then used to complete gambling transactions. Mr R says he was suffering from a gambling compulsion at the time. Mr R says the two decisions by NewDay to lend were unfair as it did not complete reasonable and proportionate checks. He says had NewDay done this it would've seen he could not have afforded the repayments, and NewDay ought've known he had a gambling compulsion.

Mr R highlighted he had complained to NewDay previously about a separate lending decision on a credit card prior to this complaint. Mr R explained NewDay had offered some redress on this complaint and he had made NewDay aware of his problems with gambling. This was around April 2020. Mr R says NewDay ought reasonably to have known he would use any new access to credit to do the same thing.

I wrote to both parties setting out my provisional decision. I asked for both parties to respond with further comments. I set out my provisional findings below:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*All parties agree NewDay should not have given Mr R the increase after the initial application. So I won't make further comment on that, other than to say I agree with it.*

*Our investigator set out a detailed opinion to both parties in relation to NewDay's original lending decision; and as such I won't repeat the main facts. Having reviewed the information I'm satisfied that NewDay's decision to lend was unfair in this instance.*

*NewDay says the initial decision to lend was fair. It says that proportionate checks were completed (in line with the initial limit of £250) and these did not show any indication that Mr R was in financial hardship; or that he could not have made the necessary repayments for the card.*

*I've considered NewDay's argument but I'm not persuaded that it acted fairly when providing Mr R with the initial limit. I say this because it was aware, or ought reasonably should've been aware, that Mr R had confirmed to NewDay that he suffered with compulsive spending on gambling transactions. And therefore it was likely that further access to credit (regardless of the limit) would foreseeably be used for the same purpose.*

*I say this because Mr R had previously complained to NewDay on a separate card at the beginning of 2020, and NewDay had paid redress on this card and settled the account in April 2020. This was only a short period of time before the card which is the subject of this complaint was provided.*

*During this upheld complaint in April 2020, NewDay was made aware by Mr R that he suffered from health problems and had a compulsive spending for gambling. I find it important that NewDay made reference to this information in its final response letter to Mr R in April 2020; which included signposting Mr R to debt charities and the National Gambling Helpline. This persuades me that NewDay was sufficiently aware that Mr R had health issues and was experiencing financial hardship in part because of his gambling compulsion at least six months prior to the application for Mr R's new credit card in October 2020.*

*Taking this into consideration I'm satisfied that NewDay ought've reasonably been aware that Mr R was not a suitable applicant to be provided further credit in October 2020. By NewDay's own checks it noted Mr R had a low credit score which likely indicated Mr R's circumstances had remained similar to those discussed in April 2020. And as NewDay was already aware Mr R could not meet the repayments of the previous card; I think it is likely he would've been unable to afford the repayments for this one too. As such; it's decision to lend to Mr R was unfair.*

*So based on this information I'm currently minded to say this complaint should be upheld in full.*

*I'm aware Mr R has asked our service to look into wider systemic issues relating to not only this firm but the wider practice of lending by high cost credit providers. I appreciate the depth of conviction Mr R has in this aspect of his complaint; but that is not the role or remit of our service. Our service's role is to resolve individual disputes informally. As such I hope Mr R understands why my provisional and final decision has followed these lines.*

#### *Putting things right*

*Our service's usual approach for redress in unaffordable and irresponsible lending complaints is that consumers only repay the capital balance of the amount of credit that's been borrowed. This means all interest and charges are refunded from the account.*

*However, considering the wider circumstances of this complaint I'm not satisfied this is sufficient to put things right for Mr R in this instance. I say this because I'm not satisfied Mr R has had the benefit of the capital he has had access to. I say this because after both the initial lending decision and subsequent increase Mr R made immediate cash withdrawals on the credit card. Mr R initial withdraw over £200 (against a limit of £250) and then two separate transactions for £200 and £800 (against the limit of £1,250). Mr R says these cash withdrawals were spent immediately on gambling transactions.*

*I've considered Mr R's information and I'm persuaded by it. That is to say I think it is more likely than not Mr R used the credit available to continue his compulsive spending. And as such I'm not persuaded he had the full use of this capital. Further; considering what I've outlined above, I'm satisfied that NewDay ought reasonably been aware this was a likely outcome if Mr R was provided access to further credit. And so by providing the access to credit NewDay has made Mr R's financial situation worse to the point that asking to repay the capital amount now would be unfair.*

*Our service has made similar findings in cases where it is reasonably likely that credit would be used to fund compulsive spending that some if not all of the capital balance should be written off. In this instance I'm currently minded to say NewDay should write off 50% of the capital balance which was afforded to Mr R. This is to reflect the fact he used the credit to continue his compulsive spending. I can't be satisfied that Mr R didn't receive any benefit from the spending (e.g. he may have won some of the bets); and as such I'm not minded to say a complete write off of the capital balance should be completed here.*

*Our investigator recommended that NewDay also provide Mr R with £100 compensation to reflect the distress and inconvenience that has been caused. Having considered the file and our guidelines I'm currently minded to say this amount should be increased too. I'm satisfied that NewDay's actions have exasperated Mr R's financial situation significantly leading to considerable distress and inconvenience being caused. Considering what NewDay knew about Mr R's circumstances and the likely impact on him, I'm satisfied an award to reflect the considerable distress and inconvenience is warranted here – which I'm satisfied is a total award of £500. This is in line with our service's published guidelines.”*

Mr R responded raising some of his continuing wider concerns; but ultimately agreed to accept the findings and recommendations in my provisional decisions. NewDay responded accepting the provisional decision and making no further comments.

### **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.

As all parties have agreed with the findings set out in my provisional decision; I see no reason to make any further comment.

I therefore uphold this complaint for the reasons set out above; namely that I'm satisfied that NewDay ought've reasonably been aware that Mr R was not a suitable applicant to be provided further credit in October 2020. And by continuing to lend to him it acted irresponsibly; causing Mr R to suffer financial and non-financial loss.

### **Putting things right**

So in order to put things right I require NewDay Ltd to:

1. Refund all interest, charges and fees Mr R has paid to date from the initial lending decision to now;
2. Refund 50% of the total capital credit advanced on this card. Again from the initial lending limit to now;
3. If borrowing is still in place NewDay Ltd should reduce the outstanding capital balance by the amounts listed above in steps 1 and 2; as well as any repayments Mr R has made to date;
4. If after these steps there remains an outstanding balance, NewDay Ltd should ensure that it isn't subject to any historic or future interest and/or charges; and should work with Mr R to arrange a suitable payment plan;

5. If after steps 1,2 and 3 are complete there is a positive balance this amount should be refunded to Mr R along with 8% simple interest on this amount\*;

6. If after all the steps are completed, and once there is no balance outstanding, NewDay should remove any negative information in relation to this account from Mr R's credit file;

7. Pay Mr R a total award of £500 to reflect the distress and inconvenience which has been caused.

\*HM Revenue & Customs requires the business to take off tax from this interest. The business must give Mr R a certificate showing how much tax is taken off if he asks for one.

### **My final decision**

My final decision is that I uphold this complaint against NewDay Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 26 August 2022.

Tom Whittington  
**Ombudsman**