

## The complaint

Mr B complains that NewDay Ltd trading as Aqua lent to him irresponsibly when it provided him with credit limits.

## What happened

I issued my provisional decision about this complaint on 11 May 2022. I provisionally upheld the complaint. Here's what I said:

### *What happened*

*In October 2013, Mr B applied for a credit card with an initial limit of £250. After this, there were four credit limit increases applied to the credit card account\*:*

*March 2014 – increase to £600*

*June 2014 – increase to £1500*

*May 2016 – increase to £2400*

*February 2017 – increase to £3300*

*\*The dates of the increases have been taken from NewDay's data.*

*During this time, Mr B has explained he faced several difficulties – including a gambling addiction as well as issues repaying different debts he'd incurred.*

*Mr B contacted NewDay in March 2021 to complain that the original lending of the credit card and subsequent credit limit increases shouldn't have been provided to him. He felt particularly strongly on the credit limit increases as he explained by this point there were enough signs from how the account was being handled to indicate that he was struggling to maintain repayments on the card. This was in addition to the regular payments he was making for gambling purposes which he feels should've raised concerns with NewDay. NewDay acknowledged Mr B's complaint and provided its final response. It didn't agree it had lent to him irresponsibly. It explained that several checks were carried out when the credit card had been applied for.*

*It also said that it regularly reviewed its customer's accounts and each time the credit limit was increased, it carried out a series of further checks – including, but not limited to things such as instances of late or missed payments, how the credit limit was utilised and any payday loan history. Based on these factors, NewDay said it was satisfied the credit limits were provided correctly and adequate checks were carried out to ensure they would be affordable.*

*It also explained it couldn't see anything to suggest it had been made aware of the difficulties Mr B said he'd been facing before the credit limit increases. However, it did acknowledge it was contacted by Mr B in November 2017. And at this point, an income and expenditure assessment was completed by Mr B and a repayment plan was agreed. Unhappy with NewDay's response, Mr B brought his complaint to our service.*

*As part of its submission – NewDay explained it wouldn't consent to our service considering the original account opening and the first two credit limit increases. This was because these events took place more than six years before Mr B first raised his complaint. So, it considered these events to be outside of our services' jurisdiction.*

*Our investigator considered Mr B's complaint. He agreed with NewDay that our service couldn't consider the original account opening as well as the first two credit limit increases. This was due to these events taking place more than six years after Mr B raised his complaint with our service. He was also satisfied more than three years had passed since Mr B ought reasonably to have been aware, he had cause to complain about the credit card and limit increases being unaffordable.*

*However, our investigator thought our service could consider the remaining credit limit increases that were assigned to him in May 2016 and February 2017.*

*For the May 2016 increase, our investigator was satisfied NewDay had carried out proportionate checks and that these didn't raise any obvious concerns. He did acknowledge there'd been a single late payment and that the credit limit had been exceeded twice during the 12 months leading up to this increase. He also identified that there'd been some cash advance transactions on the account during the same timeframe. But he didn't think these were enough to raise concerns when considered against the rest of the information provided from the checks NewDay had carried out. So, our investigator didn't think NewDay was wrong to approve this increase.*

*However, when addressing the February 2017 increase, our investigator felt it should've been apparent to NewDay that Mr B's situation was worsening. He highlighted a series of over limit fees which had started to be added to the account as one example. As a result, he didn't think this credit limit was affordable or sustainable to Mr B.*

*This led our investigator recommending NewDay should refund any interest or charges applied to the account since February 2017. He also recommended NewDay should remove any adverse information it had recorded on Mr B's credit file since this date as well. NewDay accepted the investigator's view. But Mr B disagreed with the conclusions that weren't in his favour in relation to the May 2016 credit limit increase.*

*In his response, Mr B accepted that our service couldn't consider the original account opening and first two credit limit increases. However, he believed that NewDay should be responsible for the May 2016 increase. He highlighted several points in the year or so leading up to the increase which he felt showed that he was struggling to keep on top of the account and contradicted what our investigator had said. This included more fees applied for things such as late payments or going over the credit limit. He also commented that it should've been very clear that he was using the account for lots of gambling transactions.*

*He also thought the cash advance transactions were linked to gambling transactions and so this would've been another indicator to show that he was having problems with the account. He also pointed out that he was having to take out and repay a series of payday loans which would've been apparent if NewDay had asked to see copies of his bank statements.*

*Mr B was also concerned that the credit card account had been sold to a third party in 2018 who had since applied a default against him. He considered a fair outcome would be to remove any adverse information recorded by the third party and for NewDay to take back the account and put him in the position he would've been had the May 2016 increase not taken place. Our investigator asked NewDay to clarify the status of the account when it was*

*sold to the third party. It responded to confirm the account hadn't been defaulted at the time it was sold and that it had been defaulted by the third-party owner.*

*Mr B requested his complaint was reviewed by an ombudsman – so the complaint has now been passed to me for a decision.*

### ***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.*

*For the purposes of clarity, I won't be considering the approval of the credit card or the credit limit increases that took place in March and June 2014. I say this because I don't believe I have the power to look at those as the complaint about them was brought too late, under the time limits I must apply. I have written to Mr B separately about this and based on my communications with him, he appears to have accepted this position. So, this decision will only be addressing the last two credit limits.*

*On the last credit limit increase, NewDay has accepted it shouldn't have provided this and it's accepted the investigator's recommendations about this. So, I won't be commenting on this credit limit any further beyond referencing it in the redress I intend to award below. So, I'll now turn my attention to the credit limit increase that took place in May 2016. As this appears to be the outstanding issue to be decided.*

*There are industry rules and best practice guidelines which apply to credit limit increases for credit cards. In line with these, I'd expect NewDay to have assessed Mr B's creditworthiness and considered how his financial situation might be adversely affected before increasing his credit limit to the figure it had in mind. It needed to carry out checks which were proportionate to things like the amount of credit being offered, what it already knew about Mr B and the information he had provided about his financial situation. But there isn't a specific set of checks which NewDay had to do.*

*On this occasion, the credit limit increase to £2,400 was the third increase in roughly two years. The limit had increased by over £2,000 during this time (almost ten times the original amount lent).*

*Despite these increases, there doesn't appear to have been any updated checks on Mr B's personal circumstances. I understand NewDay has shown they'd considered how Mr B had handled the account up to the point of the £2,400 increase. But given how much the limit was increasing by, I think it needed to ensure Mr B was going to be able to sustainably handle the increase. And based on the data that NewDay relied on to approve the limit increase, I'm persuaded this also ought to have raised some concerns which meant it would've been reasonable for it to have carried out further checks.*

*In the lead up to the limit increase, the account balance remained consistently very close (and sometimes exceeded) the £1,500 limit in place at the time. Mr B incurred some over limit fees in the year leading up to the credit limit increase, suggesting he may be having difficulty managing the limit he had. The data also showed minimal contractual payments were typically being made, as well as the fact Mr B had accrued consumer credit related debts totalling over £12,000. These factors alone indicated that Mr B was most likely going to maximise any increased limit straight away (which is what ended up happening). So, I think a prudent lender NewDay ought to have taken further steps to ensure Mr B was capable of potentially taking on this further debt and being able to manage it and ultimately repay this sustainably.*

*As previously mentioned, there weren't any specific set of checks NewDay had to do. But for the reasons above, I think it would've been reasonable on this occasion for it to have investigated Mr B's financial situation. One of the things it could have done was to request and review his bank statements in the months leading up to the limit increase. This would've helped to provide a snapshot of how Mr B was managing his other finances, alongside being able to identify the level of income and outgoings for him – something it hadn't done since the credit card account was first provided in October 2013.*

*I've considered what these bank statements would've shown. Whilst it appears Mr B was receiving a consistent income, it's also clear that in each month, his balance rapidly dropped and eventually went into an overdrawn balance. In addition to this, there were also payments to a payday loan provider as well as consistent payments for gambling. Overall, I'm satisfied the statements show Mr B wasn't best placed to take on and maintain a higher level of borrowing with the credit card. I think if in possession of this information, NewDay would've realised there was a risk Mr B wouldn't be able to sustainably repay his credit card and this would cause him to suffer adverse financial consequences.*

*Therefore, I'm satisfied had NewDay taken this further proportionate step, I don't think it would've gone ahead with the increased limit and so ultimately this lending and the last credit limit increase (which it's already accepted responsibility for) weren't fair in the circumstances. So, it's only right, NewDay should take steps to put things right.*

### ***My provisional decision***

*My provisional decision is that I intend to uphold this complaint and require NewDay Ltd trading as Aqua to do the following:*

- *Rework the account so that all charges and interest applied to the account after May 2016 are refunded.*
- *If, after the refund there remains an outstanding capital balance, NewDay should work with Mr B to establish an affordable repayment plan. If there is a positive balance this should be paid to Mr B along with 8% simple interest\* applied from the date of the overpayment to the date of settlement.*
- *Remove any adverse information recorded about this account from May 2016.*
- *As NewDay has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.*

*\*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mr B a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.*

I had responses from both parties. These were the main points.

NewDay responded to seek clarification on the redress section relating to the refund of interest. It said, shouldn't this be on the increased balance over and above £1500. The request to remove all interest wasn't consistent with other views for complaints of this nature. Mr B also responded. In his response he said he accepted my provisional findings in relation to both credit limit increases. But said my provisional decision had said that NewDay should "rework the account so that all charges and interest applied to the account after May 2016 are refunded". But the credit limit of £2,400 was already in place during May. So, he didn't want to lose out on some of the redress. He also wanted clarification on what charges and fees included. He believed this should include transaction fees he was charged, as he wouldn't have incurred those if he hadn't been able to use more credit.

## **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.

The principal amount lent must be repaid as Mr B had the benefit of that money. But in accordance with our standard redress where I'm upholding a complaint about irresponsible lending the account must be reworked so that all charges and interest are refunded on balances over £1500 (the applicable amount here). As this recognises that the credit limit shouldn't have gone above £1500. It's the associated cost (interest, fees and charges) on the additional lending above £1500 which is relevant to the redress. My apologies that my original wording didn't reflect this. I asked the investigator to go back to NewDay and confirm that its point was correct on what the rework should apply to.

I also contacted Mr B about this situation so that he was aware of what NewDay had said. And I explained that there was a correction to my provisional decision on the redress. After seeking some further clarification from me, he understood this.

In the absence of anything else disagreeing with my provisional decision, I remain of the view that Mr B was treated unfairly when he was given credit limits of £2400 and £3300. And it's only right that NewDay should take steps to put things right. When it comes to working out the redress it should be noted that charges and fees should also include transaction fees on balances above £1500, as it's an associated cost of having the use of the additional lending.

This concludes matters and I hope Mr B is able to move forwards from this.

## **My final decision**

My final decision is that I uphold this complaint and require NewDay Ltd trading as Aqua to do the following:

- Rework the account removing all charges, fees, and interest that have been applied to balances above £1500. And provide a written breakdown to Mr B.
- If, after the refund there remains an outstanding capital balance, NewDay Ltd should work with Mr B to establish an affordable repayment plan. If there is a positive balance this should be paid to Mr B along with 8% simple interest\* applied from the date of the overpayment to the date of settlement.
- Remove any adverse information recorded about this account in relation to balances above £1500, including the default.
- As NewDay Ltd has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

\*HM Revenue & Customs requires NewDay Ltd to deduct tax from any award of interest. It must give Mr B a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 July 2022.

Sarita Taylor  
**Ombudsman**