

The complaint

Mr D complains that NewDay Ltd, trading as Aqua (NewDay) acted irresponsibly in lending to him by increasing his credit card limit several times.

What happened

Mr D opened a NewDay credit card account in October 2013 with an initial credit limit of £500. His credit card limit was increased six times over several years from £500 to £7,150. He said NewDay hadn't done proper checks to see if he was able to afford the increased credit. And that this had caused him financial difficulty. He complained to NewDay.

NewDay said Mr D's credit limit on this account was increased six times. Mr D had asked for the first increase. For the remaining five increases they'd sent Mr D a letter offering him the credit limit increase. They said their letters explained he had 40 days to 'opt out' if he didn't think he could manage the increased credit commitment.

NewDay said they'd used internal information, checked Mr D's credit file and used data from a credit reference agency to determine whether the increases were affordable. From the information they'd checked there hadn't been anything to raise any concerns and so they'd increased Mr D's credit card limit as he hadn't opted out of the offers. NewDay also said they offered a low credit card limit at application and on reviewing how the credit card was being managed they'd offer to increase the limit.

Mr D wasn't happy with NewDay's response. He said NewDay should have seen he'd a high level of unsecured debt. And that he was using credit to pay other credit. He referred his complaint to us.

Our investigator considered the individual increases and said that NewDay shouldn't have increased Mr D's credit card limit for increase one, two and six. But that NewDay had acted fairly and reasonably in increasing Mr D's credit card limit for increase three, four and five. He asked NewDay to refund all the interest and charges Mr D paid on increases one, two and six.

Mr D didn't agree that the increases for three, four and five were affordable. NewDay said they'd done reasonable and proportionate checks for all the additional lending. They asked for the complaint to be escalated to an ombudsman to decide.

I issued a provisional decision in May 2022 that said:

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 D's credit card application was made in March 2013, which is over six years ago. As Mr D isn't disputing the credit card application being approved. I'm only considering the credit card increases made to his credit card limit. Mr D had the following credit card limit increases:

<i>Date</i>	<i>Credit limit</i>	<i>Increase</i>	<i>New Credit limit</i>
<i>Mar 2014</i>	<i>£500</i>	<i>£100</i>	<i>£600</i>
<i>Apr 2016</i>	<i>£600</i>	<i>£800</i>	<i>£1,400</i>
<i>Oct 2016</i>	<i>£1,400</i>	<i>£1,000</i>	<i>£2,400</i>
<i>May2017</i>	<i>£2,400</i>	<i>£1.250</i>	<i>£3,650</i>
<i>Oct 2017</i>	<i>£3,650</i>	<i>£1,500</i>	<i>£5,150</i>
<i>Mar 2018</i>	<i>£5,150</i>	<i>£2,000</i>	<i>£7,150</i>

I've considered the relevant rules, guidance and good industry practice when someone complains about irresponsible and/or unaffordable lending.

The Office of Fair Trading (OFT) was the regulator when Mr D applied for the credit card. And when the first increase was asked for and agreed. From April 2016 the Financial Conduct Authority (FCA) was the regulator when the subsequent credit limits were increased on the account. The relevant rules and guidance set out by the OFT and the FCA were similar, with the FCA rules and guidance referencing what went before. The rules and guidance of both regulators said NewDay should lend responsibly and were contained in the OFT's Irresponsible Lending Guidance (ILG) and the FCA's Consumer Credit Sourcebook (CONC) retrospectively.

The UK Cards Association also expects high standards of responsible lending and encourage responsible borrowing not only when issuing credit cards, but also when granting credit limit increases to customers from their members.

The guidelines are built around what are known as 'low and grow' policies. This means customers may be granted a small initial credit limit and, if the card is used responsibly and other data indicates that the cardholder would be able to manage a higher limit, it may be increased incrementally. And this is the approach NewDay said they took.

UK Cards Association also say the credit card issuer should undertake appropriate checks to assess a customer's ability to repay and overall creditworthiness before increasing a credit limit.

There's no set list for what reasonable and proportionate checks are. Paragraph 4.2 of the ILG in part said:

"Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question....."

CONC 5.2A.20R provides guidance as to the extent and scope of a creditworthiness assessment and the steps needed to satisfy the requirement that the assessment is a reasonable one, based on sufficient information and proportionate to, the individual circumstances of each case.

For both the affordability checks should be "borrower-focused" – so NewDay needed to think about whether Mr D had the ability to sustain repayments and whether this would cause difficulties or adverse consequences for him. This means it wasn't enough for them to only think about the likelihood that they would get their money back without considering the impact of repayment on Mr D.

Section 4.6 of the ILG notes:

“ We consider that the credit limit should have been set by the creditor (presumably aware of the borrower's current disposable income and any reasonably foreseeable future changes in the level of his disposable income.....”

CONC 5.2A.24 says:

“The volume and content of the information that must be taken into account, and the steps that must be taken (if any) to evaluate that information and confirm its validity, will depend on the level of affordability risk arising out of the agreement.”

And

In relation to CONC 5.2A.24, potential indicators that the level of affordability risk may be high include circumstances where:

“(a) the total value of the customer's outstanding debts relative to the customer's income is high”

So, I've considered the following:

- *Did NewDay complete reasonable and proportionate checks when assessing Mr D's credit limits to satisfy itself that he'd be able to repay the credit in a sustainable way?*
- *If not, what would reasonable and proportionate checks have shown?*
- *Did NewDay make fair lending decisions?*

I'd expect NewDay to take into account, information they already had about Mr D at the time of each increase, his ability to make repayments as they fell due and information on Mr D's credit file, considering his income and financial commitments and how he was managing his finances.

I've looked at the risk and affordability data NewDay said they based their lending decision on.

Increase one (March 2014)

Prior to the first increase I can see that Mr D went over his credit card limit on a couple of occasions. NewDay said they consider over limit fees weren't necessarily an indicator of financial difficulties, but rather, poor account management. But looking at Mr D's account I can see in the first month he spent close to his limit, and this included a cash transaction which could have been a sign of financial difficulty. For the remainder of the time before the increase I can see he went over his credit card limit on a couple of occasions, and this incurred £24 in over the limit fees. He was close to his limit for the rest of the time.

I don't think this showed Mr D was managing his account in line with its terms before the credit limit increase. So, I don't think the credit limit should have been increased without NewDay carrying out more checks as I think they needed evidence of Mr D's ability to sustain any repayments, by checking his disposable income and financial commitments. To consider what proportionate checks would have shown NewDay our investigator asked Mr D for copies of his bank statements from the time so we could see what better checks might have shown NewDay. I'm not suggesting that this is the exact check that NewDay should have carried out. But I do think NewDay needed evidence to demonstrate in detail what was happening with Mr D's finances. And looking at his bank statements is one way of seeing what his financial situation was.

I've looked at Mr D's bank statement in the three months prior to the increase in his credit limit. The bank statements are for a joint account and clearly show a high dependency on credit cards with at least nine evident. I can see from information provided by NewDay they knew Mr D had two existing credit cards in his name at this time. And from information Mr D has given to us he'd at least a further two credit cards. And I can see a payday loan crediting the account. The salary details being paid into the account for both account holders show a fluctuating income, December 2013, £3,589.91 and £2,307.52, January 2014, £1,828.38 and £1,551.38. And in February 2014 the salary amounts were £2,082.44 and £2,220.70. For all three months for the most part Mr D was into the overdraft on the account. So, I don't think this showed Mr D was managing his financial situation, he'd a high level of credit commitments. And by increasing his credit card limit even by a small amount meant increasing this indebtedness even further. So, I don't think NewDay acted responsibly in increasing Mr D's credit card limit.

Increase two (April 2016)

In April 2016, NewDay offered to increase Mr D's credit card balance by £800. I can see as soon as Mr D had the previous increase in March 2014 he used the card and exceeded within a month the credit card's limit. And before the increase in April 2016, during the preceding months Mr D had exceeded the limit of his card on seven occasions. NewDay in their final response said Mr D had only been charged one over the limit charge of £12 prior to the increase being approved. But from their data I can see Mr D had seven £12 charges for being over the limit applied to his account. His balance was consistently at or over the limit, and there was little to no retail spend in this time. Again, I think NewDay needed to do more to look at Mr D's financial situation.

Mr D's bank statements prior to the increased limit being applied, again showed a high level of dependence on credit, and he was constantly in his overdraft. I can also see that the salaries being paid into the account still fluctuated so there wasn't a constant level of income each month. So, I don't think NewDay lent responsibly as they added to Mr D's indebtedness when he was already struggling with his finances.

Increase three (October 2016)

In October 2016 NewDay offered Mr D an increase of £1,000. I can see from NewDay's data that Mr D followed the same pattern and immediately used the previous additional increase. Although he didn't exceed his credit limit, I can see that his balance was again consistently close to his card credit limit before this credit limit increase was given.

NewDay has sent application data they held for another credit card application they'd for Mr D. This showed he had a net monthly income of £3269, his partner's income was given as £1,787. Accommodation costs £800, living costs £700 and unsecured loans amounting to £48,900. Calculating a 5% repayment on the unsecured loans would appear to show Mr D to have disposable income of around £1,000 per month. But the level of indebtedness would be around 25% of the combined income.

The £1,000 increase was significant, and I don't think NewDay's assessment of Mr D's eligibility was proportionate to this increase. There is insufficient evidence to show they took reasonable steps to determine whether Mr D was able to take on such a substantial increase of credit. I think given the evidence of Mr D's high level of indebtedness and pattern of using additional credit immediately. I again think NewDay should have checked further into Mr D's financial situation.

His three-month bank statements prior to the October 2016 increase show Mr D's salary to actually be £1985.26, £2,156.84 and £2,129.32 respectively. On average Mr D's salary was

around £2,091, which is over £1,000 less than the data held by NewDay. And I think given the level of unsecured debt he already had this would have meant he had little to no disposable income each month. And the percentage of debt to income would have exceeded 25%.

From Mr D's bank statements, I can see credit commitment payments from the account in excess of £2,000 each month. They also show Mr D remaining in the overdraft and I also saw a payday loan credit. NewDay's data doesn't show any payday loans for Mr D, and I can't say who applied for this loan. But if NewDay had checked Mr D's bank statements I think they'd have seen Mr D wasn't managing his finances well. And together with the high level of debt he already had I don't think NewDay acted responsibly in lending further to him.

Increase four (May 2017)

In May 2017 NewDay offered Mr D an increase of £1,250. The same pattern as before is evident as soon as Mr D got the previous increase, he used it and stayed close to the limit of his credit card. His statements also show he remained consistently using his overdraft. His average salary for the three months prior to the increase was around £2,151. So again, given the level of his indebtedness I don't think this lending was affordable or sustainable for Mr D.

Increase five (October 2017)

In October 2017 NewDay offered Mr D a further increase of £1,500. Although Mr D had used some of the previous increase, he hadn't followed his previous pattern of spending up to the available limit. His outgoing credit commitments to various credit cards was still evident, and I can see a direct debit showing another loan provider not seen on the previous statements. Mr D's bank statements continue to show he was using his overdraft despite several large payments being paid into the account at various times. And his salary remained around the same level. So again, given the level of his indebtedness I don't think NewDay acted responsibly in lending further to Mr D.

Increase six (March 2018)

In March 2018 Newday offered Mr D a further increase, the highest yet, of £2,000. Again, the same spending pattern occurred with Mr D using the previous increase to close to its limit with regular retail spend. I can see in excess of £2,000 was still being paid towards credit commitments from the account. And what appears to be money transfers in from another credit card. Mr D is still using his overdraft and on a couple of occasions payday loans are received. So again, given the level of his indebtedness I don't think NewDay acted responsibly in lending further to Mr D.

NewDay says that Mr D asked for the first increase in March 2014, and that he was free to reject the subsequent offers made by them if he wished. But I think that misses the fundamental point that it was NewDay, not Mr D, that are required to ensure the offered credit was affordable and sustainable. The regulations were in place to protect consumers – not to assist lenders in managing the risk of repayments not being made. And knowing the high level of unsecured debt Mr D already had I don't think increasing his indebtedness was sustainable for him.

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. And the borrower would be expected to repay any remaining amount of the funds they were given. So, I'd expect Mr D to pay back the funds he was lent – when he used his credit card – but not the interest or any other charges that have been applied. I'd also expect NewDay to remove

adverse information, if any, they have reported to the credit reference agencies about this account.

Responses to my provisional decision

No further comments or evidence has been provided by either party for consideration.

Putting things right

To put things right for Mr D NewDay Ltd trading as Aqua should :

- rework the account to ensure that no interest is charged on the balance of the account above the initial credit limit to reflect the fact that no further credit should have been provided. All over limit fees should also be removed; and
- if an outstanding balance remains on Mr D's account once all adjustments have been made NewDay should contact Mr D to arrange a suitable repayment plan for this;
- 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 D along with 8% simple interest† on the overpayments from the date they were made until the date of settlement;
- remove any adverse information from Mr D's credit file.

†HM Revenue & Customs requires NewDay Ltd trading as Aqua to take off tax from this interest. NewDay Ltd trading as Aqua must give Mr D a certificate showing how much tax it's taken off if he asks for one.

My final decision

I uphold this complaint. And ask NewDay Ltd trading as Aqua to put things right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 July 2022.

Anne Scarr
Ombudsman