DRN-3571623

The complaint

Mr P says NewDay Ltd ("NewDay") irresponsibly lent to him. He has requested that the interest and late payment charges he paid on the account be refunded.

What happened

This complaint is about a credit card account provided by NewDay to Mr P. The account was opened in September 2017 with Mr P being given an initial credit limit of £450. This limit was increased three times; in June 2018 it rose to £1,450, in May 2018 it rose to £2,650 and it reached £3,400 in September 2021.

Mr P says he's unhappy that NewDay gave him credit as it was unaffordable.

Our adjudicator partially upheld Mr P's complaint and thought that NewDay ought to have realised that Mr P wasn't in a position to sustainably repay any further credit on the account by the time it offered Mr P the increased credit limit in September 2021, when it increased Mr P's credit limit to £3,400. NewDay has not made any further submission on the case. So, the complaint has been passed to me for a 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.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website.

NewDay needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr P could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that NewDay should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);

- the *greater* the frequency of borrowing, and the longer the period of time during which a customer has been indebted (reflecting the risk that prolonged indebtedness may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Our adjudicator set out in some detail why he thought NewDay was reasonable in providing credit initially and through the credit increases except the last one in October 2018. Neither party has argued with our adjudicator's view of this, so I don't propose to say much more about that. Except to say that the initial credit limit was modest and the payments for it were also relatively modest. And the evidence of how the account was being used didn't suggest that Mr P was in financial difficulty through the early credit increases.

Our adjudicator explained why NewDay shouldn't have provided Mr P with any additional credit in October 2018, when the credit limit was increased to £3,400. I agree with the adjudicator's findings.

Mr P was asked to provide us with copies of his bank statements covering the period he had the account. Sadly, Mr P has not been able to do that, neither has he been able to provide a copy of his credit report. So, talking about affordability isn't as easy as it may have been with those documents.

However, as I mention above, there may come a point in the life of a credit account where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable. Given the particular circumstances of Mr P's case, based on the information Mr P and NewDay have given, I think that a point was reached by October 2018, when NewDay increased Mr P's total credit limit to £3,400, which ought to have prompted NewDay to realise further credit as likely to be unaffordable or otherwise harmful to Mr P as he would not have been able to afford to repay what he was being lent in a sustainable manner, most likely. I explain why I say that.

Each time that Mr P had a credit increase he swiftly moved to make full use of it. In May 2018 when NewDay increased Mr P's credit limit to £2,650, the balance had been bubbling just under the previous credit limit of £1,450 ever since that limit had been given in January 2018. So, in May 2018 as the credit limit increased from £1,450 to £2,650 the credit balance was £1,449.75. By the first month of the new credit limit of £2,650, the credit balance was £2,406.26. In the first year of the card account, Mr P's credit limit had increased nearly six times the original limit and Mr P was using it all. The pattern of lending seemed to show that the higher the credit limit, the higher Mr P made his balance. And Mr P's unsecured debt with other providers had also risen to £12,954, from £359 in the January of that same year.

This pattern of lending was evident throughout Mr P's credit account with NewDay. But by October 2018 there was evidence that Mr P was losing control of his financial situation. The high usage of his credit limits had led to three consecutive months in which he was charged overlimit fees on the account. NewDay could have chosen to intervene in a manner designed to help Mr P regain control of his account. Instead they chose to increase his credit limit again, this time to £3,400. Subsequently, the balance grew and Mr P was unable to make much progress in reducing the balance when it had grown, and he went into arrears. So, it is my view that NewDay should reasonably have seen that further lending was likely unsustainable, or otherwise harmful, and it shouldn't have further increased Mr P's credit limit in October 2018 to £3,400.

So, given the particular circumstances of Mr P's case, based on the information Mr P and NewDay have given, I nevertheless think that a point was reached by 10 October 2018, when NewDay increased Mr P's total credit limit to £3,400, which ought to have prompted NewDay to realise further credit would most likely be unaffordable or otherwise harmful to Mr P. I say this because the way Mr P had managed his account until that point would have shown NewDay that Mr P would not find it easy to repay a balance that rose anywhere near the new credit limit, whilst at the same time having to meet his daily living expenses. I also think there was a significant risk that further increases to his credit limits could have led to his indebtedness increasing unsustainably, such that he had no funds available to meet his regular outgoings.

It follows that I think that Mr P lost out because NewDay provided him with further credit from 10 Octrober 2018 onwards. In my view, NewDay's actions unfairly prolonged Mr P's indebtedness by allowing him to use credit he couldn't afford over an extended period of time and the interest being added would only have the effect of putting him into further debt.

It follows that NewDay should put things right.

Putting things right

As I don't think NewDay should have increased Mr P's credit limit to £3,400 on 10 October 2018, I don't think it's fair for it to charge any interest or charges on any balances which exceeded the previous limit of £2,650. However, Mr P has had the benefit of all the money he spent on the account, so I think he should pay this back. NewDay should:

- Rework Mr P's account to ensure that from 10 October 2018 onwards interest is only charged on balances up to the total credit limit of £2,650, including any buy now pay later interest, (being the credit limit in place before that date) to reflect the fact that no further credit limit increases should have been provided. All late payment and over limit fees should also be removed; and

- If an outstanding balance remains on the account once these adjustments have been made NewDay should contact Mr P to arrange an affordable repayment plan for these accounts. Once Mr P has repaid the outstanding balance, it should remove any adverse information recorded on Mr P's credit file from 10 October 2018 onwards for each account.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr P, along with 8% simple interest per year on the overpayments from the date they were made (if they were) until the date of settlement. NewDay should also remove any adverse information from Mr P's credit file from 10 October 2018 onwards.†

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

My final decision

For the reasons set out, I'm partially upholding Mr P's complaint. NewDay Ltd should put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 22 August 2022.

Douglas Sayers
Ombudsman