

The complaint

Mr B complains that NewDay Ltd (“NewDay”) irresponsibly granted him an Aqua credit card that he couldn’t afford to repay.

What happened

Mr B entered into an agreement with NewDay to have access to credit with an Aqua credit card account. The account was opened in July 2020 with a credit limit of £450. There then followed three credit limit increases, in December 2020 (to £1,450), May 2021 (to £2,450) and then in September 2021 when the credit limit was increased to £3,450.

Mr B says that NewDay didn’t complete adequate affordability checks when it granted him increased credit limits. He says if it had carried out proper checks, it would have seen that it wasn’t affordable for him due to his overall financial situation and use of gambling sites.

Our adjudicator at first said that NewDay shouldn’t have increased Mr B’s credit limit in December 2020. But after NewDay provided some further information, our adjudicator said the account became unaffordable when the credit limit was from increased £2,450 to £3,450 in September 2021.

NewDay didn’t agree. It said that it carried out a reasonable and proportionate assessment to check Mr B’s financial circumstances before granting him the account and the credit limit increases.

The complaint has now been passed to me for a final 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.

NewDay will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don’t consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

Account opening

NewDay completed a credit check to look into Mr B’s financial circumstances. New Day also relied on information Mr B gave in his application. Mr B said he had an annual income of around £19,000. Whilst there was evidence of Mr B having a default on another account, this was around 15 months before he opened the account. I’ve also seen that NewDay’s checks showed he had around £100 in outstanding unsecured debt. However, just because I think it carried out proportionate checks, it doesn’t automatically mean it made a fair lending decision. So, I’ve thought about what the evidence and information showed.

I've reviewed the information and evidence NewDay gathered. Having done so I'm satisfied that the opening checks showed that the agreement was likely to be affordable to Mr B. I say this because, given the available information about his income and debt, it was likely that the relatively modest opening credit limit of £450 would be affordable for him. I therefore don't think New Day acted unfairly when approving the finance application. I've kept in mind that Mr B had taken out four payday loans at around this time, but I've seen that this isn't information that would necessarily have been available to NewDay at the time. But even if it was, I think on balance that given the low opening credit limit, the account was likely to have been affordable.

First and second credit limit increases

The initial £450 opening credit limit was increased to £1,450 in December 2020 and then to £2,450 in May 2021.

The checks carried out by NewDay showed Mr B had around £300 in unsecured debt and that his overall financial position was improving. But the information Mr B gave us shows he was continuing to rely on short term borrowing. Mr B was however able to go on meeting his regular payments to the account and on occasion was making payments that were above the minimum required.

I think it would have been proportionate for NewDay to have taken steps to find out more about any changes to Mr B's income as well as the level of committed expenditure he had at the point of each of these increases. I can't be sure exactly what NewDay would have found out if it had asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information contained in Mr B's bank statements as to what would most likely have been disclosed.

I've reviewed three months of bank statements leading up to each of these lending decisions. I've seen that Mr B had also taken out at least one payday loan in the three months prior to each credit limit increase. But as I've said, this isn't information that would necessarily have been available to NewDay at the time. I've also seen that Mr B was making extensive use of online gambling sites. I've thought about this carefully but the position remains that Mr B was still able to manage his day to day living expenses and appeared able to fund his gambling out of his disposable income. I've seen that Mr B acknowledges that his gambling had become a problem and took steps to restrict his use of these sites. Overall, this suggests that Mr B had enough disposable income each month to make regular, sustainable repayments towards his card. Had NewDay completed proportionate checks for each credit limit increase, I think it's likely it would have discovered this too. It therefore didn't act unfairly by granting Mr B these two credit limit increases.

Third credit limit increase

In September 2021 Mr B's credit limit increased by another £1,000, to £3,450. Again, I think it would have been proportionate for NewDay to have found out more about Mr B's committed expenditure for this increase. But by this point Mr B's level of unsecured debt had increased to around £3,700 and he was continuing to make use of gambling sites. In the previous three months he had also incurred at least one overlimit fee and had continued to make use of pay day loans. I therefore think there was a real risk that Mr B could be pushed into financial difficulty and that the additional credit limit was therefore unlikely to be affordable for him.

It follows that I agree with our adjudicator that NewDay ought not to have increased Mr B's credit limit in September 2021.

I've seen that Mr B contacted NewDay in November 2021 about his situation and was given a payment holiday that has now expired. I would however expect NewDay to continue to act with appropriate forbearance in seeking to assist Mr B in his efforts to find a fair and manageable way to pay back the balance that is still owing on his account.

Putting things right – what NewDay needs to do

NewDay shouldn't have increased Mr B's credit limit to £3,450 in September 2021. NewDay therefore needs to do the following.

- Rework Mr B's account to ensure that all interest and charges should be removed from the account for balances over £2,450, being the previous credit limit increase. 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 B to arrange an affordable repayment plan for the account. Once Mr B has repaid the outstanding balance, it should remove any adverse information recorded on Mr B's credit file from 14 September 2021 onwards.

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 B, 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 B's credit file from 14 September 2021 onwards.

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

My final decision

I therefore partially uphold this complaint and require NewDay Ltd to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 October 2022.

Michael Goldberg
Ombudsman