

The complaint

Ms B complains that NewDay Ltd lent to her irresponsibly.

What happened

In November 2016, Ms B applied to NewDay for a retailer branded credit card. NewDay approved Ms B's application and agreed a credit limit of £1,000. In or around August 2017, NewDay increased Ms B's credit limit to £1,400.

In November 2017, Ms B applied to NewDay for an Aqua branded credit card. NewDay approved Ms B's application and agreed a credit limit of £250.

NewDay increased the limit on Ms B's Aqua card on four occasions between February 2019 and May 2020 to a peak total of £4,100. NewDay also increased the limit on the retailer branded card on three occasions between May 2019 and March 2021 to a total of £3,150.

In May 2021, Ms B complained to NewDay about the credit card limits they'd given her. She said that when NewDay agreed the new card in 2017, she couldn't afford the repayments and was struggling financially. She said the credit limit increases had resulted in huge amount of interest and fees which made her financial position worse. Ms B said this resulted in her entering a debt management plan in 2020. She wanted NewDay to apologise for their mistakes and refund interest and fees.

NewDay responded to Ms B's complaint in July 2021. They didn't agree they'd done anything wrong when they approved her applications for both credit cards. They also didn't agree they'd acted inappropriately when they subsequently increased her credit limits. They said their decisions were in line with their policy and they'd completed proportionate checks.

NewDay upheld Ms B's complaint about a credit limit increase to £3,150 on her retailer branded card in March 2021. They refunded fees of £9 and interest of £11.86. But Ms B wasn't happy with NewDay's response. So, she referred her complaint to this service. She said she'd been exceeding her credit limits and completing gambling transactions. She was also only paying the minimum payments and regularly missing or applying late payments. Ms B also said she'd held many payday loans and believes NewDay should've noticed this from her credit file.

Having considered all the information, our investigator thought Ms B's complaint should be upheld in part. He thought NewDay's original decisions to approve both Ms B's credit card applications were reasonable. He also thought NewDay's decisions to increase limits on her account prior to April 2019 were also reasonable, based upon the information they had available.

But our investigator didn't think NewDay had acted responsibly when they decided to increase Ms B's credit limits from April 2019 onwards. He thought the information NewDay had available was sufficient to prompt them to complete further checks and tests. And had they, our investigator believed NewDay wouldn't have increased Ms B's limits further.

NewDay didn't agree with our investigator's findings. They said information about Ms B's other debts weren't available to them when they agreed to increase her limit in April 2019. They also said there was evidence that problems Ms B was experiencing in 2018 had been resolved and her accounts were managed well prior to them increasing her limit. NewDay said there was no evidence of recent payday loans when they offered to increase her limit.

NewDay said that all subsequent limit increases were provided having considered all internal and external financial information available in line with their internal lending policy.

As an agreement couldn't be reached, Ms B's complaint has been passed to me to consider. In doing so, I reached a different outcome to that of our investigator. Because of that, I issues a provisional decision on 10 August 2022 – giving both Ms B and NewDay the opportunity to respond to my findings below before I reach a final decision.

In my provisional decision, I said:

We've set out our approach to unaffordable or irresponsible lending complaints on our website and I've considered this when deciding Ms B's complaint.

The rules and regulations in place throughout NewDay's lending relationship with Ms B required them to carry out an assessment of whether she could afford to repay what she owed in a sustainable manner. Any such assessment needed to be "borrower focused", meaning they should focus on the affordability of repayments and the potential for adverse financial impact on Ms B, rather than on the likelihood the credit would be repaid. Any assessment needed to be proportionate to the circumstances.

For clarity, I'll refer to each card and account as follows:

- The retailer branded credit card – Card 1
- The Aqua credit card – Card 2

As both cards were provided by NewDay, I would expect them to have had access to information on the operation of both accounts in addition to external information available when considering any credit decision.

Card 1 - initial credit limit

Ms B's original application in November 2016 showed she had an income of £19,500 and unsecured debts of £1,200. There were no reported arrears or defaults or any other adverse information on her credit file. So, I think NewDay's decision and the credit limit agreed of £1,000 was reasonable here.

Card 1 – limit increase to £1,400

This was offered eight months after the original application. Ms B had made some cash withdrawals from the account. The Lending Standards Board (LSB) Lending code suggests that making frequent cash withdrawals on a credit card at a non-promotional rate of interest may be a sign of financial difficulties. That said, I don't think there were any other warning signs. Ms B hadn't exceeded her limit, hadn't missed or been late with payments and there was nothing adverse reported on her credit file. So, I think NewDay's decision to increase Ms B's credit limit was reasonable here.

Card 2 – initial credit limit

Ms B's application in November 2017 showed she had an income of £20,000 and unsecured debts of £3,800. There were no reported arrears, defaults or other adverse information on her credit file. But, having looked at the account for Card 1, Ms B had made 24 cash withdrawals up to, and including, November 2017. Further, her repayment direct debit was returned unpaid in October 2017 and she'd exceeded her limit as a result. I've also reviewed the statements for Card 1. I can see there were at least 15 transactions of a gambling and gaming nature since NewDay had increased the limit on that account.

While the initial limit of £250 may have been low, I think there were sufficient warning signs to give NewDay cause to undertake further checks and tests to verify Ms B's

financial situation. But I can't see they did that here. So, I need to consider whether such checks would, more likely than not, have revealed that agreeing to provide a second credit card account could suggest Ms B may have been unable to sustainably repay her borrowings. Having considered the evidence together with Ms B's testimony, I'm persuaded that further checks would've revealed that her financial situation, at the time, was potentially unstable giving cause to the types of transaction seen. So, I don't believe NewDay's decision to provide another credit card was appropriate here.

Card 2 - limit increase to £1,250

This increase was offered by NewDay in or around February 2019. The information available to them showed that since December 2017, Ms B had regularly been taking out payday loans. By the time NewDay agreed to increase her Card 2 limit in February 2019, 21 active payday loan accounts were reported. In addition, the reported debt balances had peaked at more than £12,000, albeit reduced to around £5,800 by February 2019.

I think it's also relevant that Card 1 showed a sustained period of limit excesses between October 2017 and August 2018 together with late payments. I accept that these appear to stop from August 2018. But again, I believe there were sufficient warning signs to give NewDay cause to undertake further checks, tests and verifications. And I can't see that happened here. I remain persuaded that such checks would've likely revealed information that might lead NewDay to conclude that any additional borrowing might be unsustainable.

Subsequent limit increases

Moving forward, I can't see that NewDay considered further checks and verification for any of the subsequent limit increases. Even when Ms B's overall borrowings increased to more than £25,000 and despite further late payments and limit excesses.

In summary, I believe NewDay's decisions up to, and including, the Card 1 limit increase in August 2017 were reasonable. But in circumstances where the information suggests a consumer's finances are likely to be less stable, it's far more likely that an affordability assessment will need to be more detailed and contain a greater degree of verification, in order for it to be fair, reasonable and proportionate. And as I've stated, given the warning signs I've found, I think that was the case here. I'm also persuaded that proportionate checks would likely have shown the credit wasn't sustainably affordable. So, I intend to reflect this in my decision.

Ms B has received benefit from the money she borrowed, so it's fair that she remains liable for any remaining amount outstanding. But I intend to instruct NewDay to refund interest and charges to Ms B's Card 1 account for any amount borrowed over and above the limit of £1,400. In the event that the refunded interest and charges result in a surplus balance falling due to Ms B, then NewDay should also add interest of 8% simple to this figure.

Given that I also believe NewDay's decision to provide Card 2 was inappropriate, I intend to ask them to refund all charges and interest on this account too. Again, in the event that the refunded interest and charges result in a surplus balance falling due to Ms B, then NewDay should also add interest of 8% simple to this figure.

Finally, I don't believe that it's fair or reasonable for Ms B's credit file to be adversely impacted by NewDay's decisions. So, once the outstanding balances have been repaid, I intend to instruct NewDay to remove any related adverse information reported from Ms B's credit file.

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.

In my provisional decision, I asked both parties to respond with any new information or comments they wanted me to consider.

NewDay confirmed they had nothing further to add. Ms B also confirmed that she is happy to accept my findings. So, as I've not been provided with any new information or comments, I have no reason to vary from my provisional decision.

Ms B has told this service that NewDay have cancelled her accounts with them and confirmed that the retailer branded card account has been referred to a debt recovery service. Ms B also said that she no longer has access to her Aqua card account but hasn't received any notification of whether this has also been referred. Ms B is concerned how the proposed redress would be affected by this development.

At this stage it's unclear whether NewDay have simply passed over responsibility for recovery of the outstanding debt(s) or whether the debt(s) have been sold. So, I will address this within my final decision below.

My final decision

For the reasons set out above, I uphold Ms B's complaint.

I require NewDay Ltd to settle as follows:

- Refund all charges and interest relating to any balance owed above the limit of £1,400 on Card 1.
- Refund all charges and interest on Card 2.
- If an outstanding balance remains owed once the refunds have been made, NewDay should contact Ms B to discuss a suitable repayment plan.
- If the effect of refunding all interest, fees and charges leaves a credit balance on either account, the balance should be treated as overpayments and returned to Ms B along with 8% interest† from the date they were made until the date of settlement.
- Amend Ms B's credit file to reflect the new monthly balances after refund of interest and charges.
- Remove any related adverse information from Ms B's credit file once the outstanding balances have been repaid.

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

In the event that NewDay has sold the debt to a third party, they 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 6 October 2022.

Dave Morgan
Ombudsman