

The complaint

Mr B complains that NewDay Ltd, trading as Aqua, irresponsibly provided him with a credit card and a limit increase.

What happened

Mr B took out an Aqua branded credit card in August 2017. The limit was £600 and was increased to £1,600 in July 2020. In summary, Mr B says that NewDay lent to him irresponsibly because he already had lots of existing debt. He also says NewDay increased his credit limit at a time when he had multiple payday loans and his overall credit card borrowing had increased.

NewDay reviewed Mr B's complaint. In summary, based on the information it had gathered, it said Mr B had met its acceptance criteria. So, it didn't think it had lent irresponsibly.

Mr B remained unhappy with NewDay's response and brought his complaint to this service. One of our investigators reviewed matters and thought that the credit limit increase in July 2020 to £1,600 shouldn't have been provided. Around the same time, and seemingly independent of our investigator's view, NewDay got in touch with our service to make an offer. As I understand it, NewDay also thought that the credit limit increase which took place in July 2020 shouldn't have been provided. So, NewDay calculated what it referred to as proportionate interest and refunded this onto Mr B's card.

Shortly after this, Mr B said the refund he received from NewDay was less than he had expected, and not what our investigator recommended in her view. Following some further conversation, our investigator explained that the redress award she had recommended in her view was unfortunately incorrect. The view had recommended that all the interest charged from the date of the limit increase should be refunded. However, the redress NewDay had paid following its offer – a proportionate refund of interest from the point of the limit increase on the amount that had been irresponsibly lent – was what she had intended to recommend and was in line with this service's approach. She also clarified that she thought that the initial credit limit of £600 wasn't irresponsibly provided.

Mr B remained unhappy and said the amount he'd received wasn't what he'd agreed to when he accepted the investigator's view. Mr B also then said that if NewDay had decided not to increase his limit in July 2020, it should have realised he was struggling financially around this time, and should have stopped charging him interest from that point. So, Mr B thought that the redress our investigator initially recommended was correct.

I wrote to Mr B to informally explain why I thought NewDay's method of calculating the interest refund was in line with our approach. Mr B disagreed with this, partly because he received different redress on another case. So, he asked me to issue a formal decision. He also later said that NewDay issued a default notice and he thought it would soon report a default on his credit file, which he would like to be backdated to the point of the limit increase. He asked me to consider this in my decision.

I issued a provisional decision where I said, in summary, and amongst other points, that I was minded to agree with our investigator that the initial credit limit of £600 wasn't irresponsibly lent. I explained that both parties agreed the credit limit increase that took place in July 2020 shouldn't have happened, which NewDay decided to make an offer for. So, the issue which remained was appropriate redress. In reviewing this, whilst NewDay had correctly approached the interest calculations, I thought it had missed some fees and charges from its proposed redress figure. I also addressed Mr B's concern around financial difficulties, but I didn't think there was enough to suggest NewDay would have necessarily been aware of the difficulties Mr B says he was facing around the time.

Mr B responded to the provisional decision and said he didn't have any further evidence or arguments that he wanted to be considered for this complaint. NewDay responded to the provisional decision to say it had nothing further to add.

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.

As both parties didn't have any further comments or evidence to provide in response to my provisional decision, I see no reason to depart from the opinion I expressed in that decision. I've explained my reasoning below.

Our investigator didn't think the initial credit limit of £600 was irresponsibly lent. For the avoidance of doubt, I think this finding is reasonable, given that the information NewDay had suggested that it was likely Mr B could sustainably repay the borrowing within a reasonable period of time. And, as I understand it, neither of the parties have disagreed with this finding. Both parties are also in agreement that the credit limit increase which took place in July 2020 shouldn't have happened, and NewDay decided to make an offer for this. Therefore, the crux of the issue which remains for me to decide is appropriate redress in the circumstances.

Mr B has also raised a new concern since the complaint was referred to our service. He has told us that he's received a default notice and is concerned that NewDay will record a default on his credit file. He has asked for this to be backdated to July 2020. Whilst I appreciate Mr B's concern here, I'm mindful that the default hasn't yet been recorded. I can't make any findings on something that hasn't yet happened or been complained about. But I would expect NewDay to keep this service's approach to recording adverse information in mind when moving forward.

NewDay's approach to redress

When the case was originally reviewed by our investigator, the redress they initially recommended included an error. Whilst the findings outlined that the credit limit increase shouldn't have been provided in July 2020, they incorrectly recommended that all interest and charges applied since July 2020 should be refunded. However, this would not have been reflective of the correct redress offered if we found that the credit limit increase shouldn't have happened.

To explain further, where a firm increases the credit limit on a facility when it should have realised additional credit was unaffordable, as far as is possible we'd expect it to put the consumer in the position they'd be in now, if they hadn't paid any interest and charges on that additional credit. So, we'd ask a lender to refund any interest and charges it added as a result of the credit limit increase which shouldn't have been provided.

Therefore, the correct redress, in relation to interest, should have been to recommend that from July 2020 onwards, interest is only charged on the first £600 outstanding, to reflect the fact that no further credit limit increases should have been provided. The correct redress was later clarified in subsequent correspondence. And NewDay appears to have processed its calculations around interest in line with this.

I note Mr B disagrees with this, partly because he received different redress on another case. However, I can't comment on why one of our investigators has recommended different redress on a different case. My role is to review the redress in the circumstances of this individual case. And I am not bound by what an investigator or ombudsman may have decided on another case. Having reviewed matters, I'm satisfied NewDay's approach to the interest calculation is the correct one when we find that a credit limit increase shouldn't have been offered for the reasons I've explained above. And, as I understand it, NewDay appears to have followed this approach when calculating and paying Mr B the relevant interest.

Since the case has been with this service, it has become clear that whilst NewDay's approach to calculating the interest refund was in line with this service's approach, there appear to have been some fees that hadn't been refunded. Following some further conversations with NewDay, it accepts that some fees were missing from its original refund. NewDay has since provided this service with a revised redress figure of £173.39. However, I've reviewed the figures and I'm not persuaded this includes all the fees and charges that had been applied to balances above £600, and I'm persuaded that there is £3 missing from NewDay's calculations.

In my provisional decision, I explained that I was minded to direct NewDay to pay the full amount it has identified, as well as £3, less the amount it has already refunded. I also said that if NewDay thought my interpretation of the calculations wasn't correct here, it should respond to the provisional decision explaining why. NewDay said it had nothing further to add upon receipt of the provisional decision. Therefore, I direct NewDay to process redress in line with the outlined recommendation – I'll expand on this further in the decision.

Financial difficulties

Following our investigator's clarification of the correct redress of interest charged, Mr B then raised another argument about why he thought the original redress offer should apply. He said that NewDay should have been aware that he was struggling financially at the point it provided the credit limit increase in July 2020. So, he thinks it should have stopped charging him interest from that point onwards and therefore a refund of all interest and charges from July 2020 is the correct redress here.

I note that Mr B hasn't provided any evidence of this, other than his testimony. And, as I understand it, he's not saying he made NewDay aware of these difficulties around the time. So, I've reviewed the information NewDay provided about the account, and I'm not persuaded taking into account the information I have, that there's enough to suggest NewDay would have necessarily been aware of the difficulties Mr B says he was facing around the time. It follows that I don't think it treated him unfairly by not freezing the interest on the account at the point of the limit increase.

Fair compensation – what NewDay should do to put things right

As all parties are in agreement that NewDay shouldn't have increased Mr B's credit limit above £600, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Mr B has had the benefit of all the money he spent on the account so I think he should pay this back.

As it stands, I'm not persuaded that NewDay has covered all aspects of our usual redress recommendation. For instance, it hasn't yet paid the extra fees and charges that have been identified, along with the £3 I think it has missed from the calculations. So, for completeness, I direct NewDay to pay Mr B this additional amount, alongside the other aspects of redress outlined below, if it hasn't already done so.

Therefore, to put matters right, NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £600.
- If the rework results in a credit balance on the account, this should be refunded to Mr B along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. And, NewDay should remove any adverse information reported to Mr B's credit file about this account after July 2020.
- Or, if after the rework an outstanding balance remains, NewDay should arrange an affordable repayment plan with Mr B for the remaining amount. Once Mr B has cleared the outstanding balance, any adverse information recorded after July 2020 in relation to the account should be removed from his credit file.

*HM Revenue & Customs may require NewDay to take off tax from this interest. If it does, NewDay must give Mr B a certificate showing how much tax it's taken off if he should ask for one.

My final decision

I partially uphold this complaint and I direct NewDay Ltd, trading as Aqua, to put matters right as I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 March 2023.

Hana Yousef
Ombudsman