

The complaint

Mr T complains, through his representative, that NewDay Limited lent to him by approving a card he could not afford to pay off. Mr T says it lent irresponsibly when it increased his credit limits. He wants all interest, fees, and charges plus 8% interest refunded to him.

Mr T also wants a distress and inconvenience payment for the way the business handled the complaint and the length of time it's taken.

What happened

Mr T was approved for a card in June 2016 with a credit limit of £300. In July 2019, the credit limit was increased to £1,100, and in February 2020 it was increased to £2,850. In August 2020 it increased again to £3,600. All were proactive increases meaning that NewDay assessed the card and made the increase offer which Mr T could have declined.

After Mr T had complained through his representative in 2023, NewDay issued its final response letter (FRL). It gave reasons why it did not consider that the complaint should be upheld and so the complaint was referred to the Financial Ombudsman Service.

Having approached NewDay for additional information, it consented to the original lending decision being investigated even though it was more than six years before the complaint date.

One of our investigators considered that the original decision to lend the card was satisfactory but the first credit limit increase should not have been approved and so upheld the complaint from July 2019.

In relation to the complaint about complaint handling, our investigator said we could not look at that. Mr T's representative accepted the complaint outcome in the investigator's view.

NewDay disagreed and said that just before the credit limit increase it looked like Mr T had regained control of his finances. The unresolved complaint was passed to me to decide.

On 5 December 2024 I issued a provisional decision giving reasons why on the evidence I had I planned not to uphold the complaint. The reply date deadline was 19 December 2024.

Mr T's representative replied on 9 December 2024 to say that it had been in touch with Mr T and would reply within a week which would have been before our 19 December 2024 deadline. Since then we have received nothing from Mr T or his representative.

I've reconsidered all the evidence, together with the multiple requests for information to Mr T's representative before I issued my provisional decision. Having done so I've decided to issue my final decision. It is the same as my provisional 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.

We've set out our approach to complaints about irresponsible lending on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding this complaint.

NewDay needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Miss Mr T irresponsibly. I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did NewDay carry out reasonable and proportionate checks to satisfy itself that Mr T was in a position to sustainably repay the credit?
 - If not, what would reasonable and proportionate checks have shown then?
- Did NewDay make fair lending decisions?
- Did NewDay act unfairly or unreasonably towards Mr T in some other way?

It's not about NewDay assessing the likelihood of the credit being repaid, but it had to consider the impact of the repayments on Mr T. There is no set list of checks that it had to do, but it could consider several different things such as the amount of credit, the monthly repayments, and the overall circumstances of the borrower.

The initial lending decision

When Mr T applied for the card in June 2016, he told NewDay he earned £14,000 each year from employment and its credit search showed Mr T had £100 of existing debt. He was a tenant and single. The credit search informed NewDay Mr T had no defaults or other adverse public records, he had no payday loans and no arrears showing. From that it would have deduced that Mr T had a satisfactory record. The card was approved with a £300 limit.

I think NewDay used the information it had received from Mr T, carried out proportionate checks and made a fair lending decision to open the account in the circumstances.

The first credit limit increase from £300 to £1,100 July 2019

Mr T did not start using the card until February 2018. Soon after he did start to use it, for over a year Mr T incurred over the limit or late payment fees or both each month. And NewDay had some evidence that he'd had trouble repaying at least one other account and had an external credit check marker '2' at points during the period leading up to the first credit limit increase in July/August 2019. That means that he was two months in arrears on that other account. Mr T had had three clear months of no overlimit or late payment charges before July 2019.

NewDay has told us that it carried out an assessment before each of the credit limit increases which would have included any instances of Mr T having exceeded the credit limit or having missed any payments, the payment history and overall management of the credit card account, his payday loan history if any, Mr T's external credit situation and whether those other accounts were being managed satisfactorily. It says that for each of the increases, including this one, it carried out an assessment and made the right decision to increase the limit.

Whereas Mr T says that he regularly missed his payments and had to take out additional credit to pay for the card. But I had received no evidence of this from him and since issuing my provisional decision still I have received nothing from Mr T to substantiate this point.

This credit limit increase was a significant increase – almost four times larger, and records indicate that Mr T had not been managing the credit account well for around 17 months before this date

Our investigator's view was that there was a significant risk that Mr T wouldn't have been able to repay what he already owed within a reasonable period and so NewDay shouldn't have increased his credit limit.

NewDay's response was:

'Although [Mr T] did have 2 consecutive months of arrears within six months prior to the CLI, there were no arrears within the four months prior to the CLI, so [Mr T] was back in control of his debt at the point of the increase.'

Regarding the eight late payment fees and eleven overlimit fees incurred within the 17 months prior of the increase, there were no fees incurred within five months before the increase, so again, [Mr T] had demonstrated he was managing the account well at the time of the CLI.'

I am not satisfied either way. I do not consider that there was enough evidence to conclude that there was a *significant* risk of non-payment by Mr T, and yet I do consider that NewDay had enough information on Mr T's card and external debt management to have a concern. A factor is that although the increase from £300 to £1,100 was a change of £800, still a credit card limit of £1,100 is not a high figure. So, considering whether Mr T would have been able to repay it within a reasonable period would have been another factor. I think that additional checks ought to have been carried out by NewDay before it decided to increase it.

But I'd need to review what information NewDay would have seen had it done additional checks. These could have included asking Mr T about his other debt, which had increased a lot since he'd first obtained the card, and why there was evidence of being in arrears on the external debt. Another convenient method is to ask to review some copy bank account statements.

I had requested these from Mr T's representative for the three month period leading up to each of the three credit limit increases and had received nothing before I issued my provisional decision.

Still, nothing further from Mr T or his representative has been received and so, in the absence of that information from Mr T, I am not satisfied that NewDay's decision to increase the credit limit in July 2019 (which Mr T could have declined if he'd wanted to) was an irresponsible one.

I do not uphold the complaint about this credit limit increase.

The second credit limit increase from £1,100 to £2,850 in early January 2020

Six months after increasing the limit the first time, NewDay offered to Mr T a further credit limit increase to £2,850. That effectively translates into being more than double from the £1,100 limit approved in late July 2019 to the one being offered in January 2020 and a significant increase from a £300 limit he had maintained in mid-July 2019 to £2,850 in early January 2020.

I can see that Mr T's overall external debt had stayed steady, that he'd repaid the card account regularly and his payments had been well over the minimum repayment expected most months. For two months in July 2019 and January 2020 he was late paying and over the limit. He had an arrears marker of '1' for his external debt for several months leading up to January 2020. And I see that the 'income confidence factor' had reduced from 9 to 7 which indicated a potential decrease of Mr T's income.

NewDay has explained how it assessed a customer before offering any increase. I set that out earlier in this decision. I see that it did a full current account turnover (CATO) on his account before offering it.

But I consider that before a £1,750 increase in his credit limit, which also was a huge increase from early July 2019 (£300 limit at that time) then additional checks ought to have been carried out.

But again, I've received nothing from Mr T's representatives to enable me to review what his financial position was in December 2019 and January 2020 if NewDay had done additional checks. And so, in the absence of further evidence then I give the benefit of the doubt to NewDay and I do not uphold the complaint in relation to this credit limit increase.

Third credit limit increase from £2,850 to £3,600 in late August 2020.

This was a modest increase of £750. Having reviewed the records I have for Mr T's management of the account, he had no overlimit or late fees, Mr T was paying the amounts due regularly, his outstanding balance was well within the £2,850 limit on the card and there was nothing in relation to his external credit records likely to have caused NewDay a concern when it offered the credit limit increase to £3,600 in August 2020.

So, I consider that NewDay made a fair lending decision for this increase. There was little here to suggest to NewDay that it ought to have been alerted to any financial issues with Mr T at this point. It utilised the information it had including that surrounding his external debt and so I am satisfied that proportionate checks were carried out and this credit limit increase was not irresponsible. I do not uphold this part of the complaint.

Mr T's representative has accepted the investigator's view and so the complaint point surrounding the complaint handling by NewDay seems to have been resolved. I need say no more on this point.

I've considered whether NewDay acted unfairly or unreasonably towards Mr T in some other way and that included whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974.

However, for the reasons I've already given, I don't think it lent irresponsibly to Mr T or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the current facts of this complaint, lead to a different outcome here.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 20 January 2025.

Rachael Williams
Ombudsman