

The complaint

Mrs R has complained that NewDay Ltd, trading as Aquacard ("NewDay"), irresponsibly granted her a credit card account, and subsequently increased the credit limit, which she couldn't afford to repay.

What happened

Mrs R took out a credit card with NewDay on 30 January 2013, with a credit limit of £250. Over time, there were a number of credit limit increases as follows:

- April 2013 - £600
- September 2013 - £1,400
- December 2013 - £2,150
- May 2014 - £3,150
- October 2014 - £3,900
- February 2015 - £4,900
- July 2015 - £5,650
- December 2015 - £6,400

As far as I can tell from the evidence I have, most of the increases were offered by NewDay rather than being requested by Mrs R.

In June 2017, NewDay sold the debt to a third party because of arrears on the account. This occurred a few months after an accident which left the business that Mrs R ran with her partner unable to trade.

Mrs R said she thought NewDay hadn't carried out appropriate checks before granting the credit card. She said that she would like NewDay to pay off the remaining balance.

Mrs R complained to NewDay. Initially it said that Mrs R had complained outside the time limits that this service has to apply. However, another ombudsman at this service looked at this, and decided that the complaint was within the relevant time limits and therefore we had the power to consider it. A separate point about time limits was raised later on, relating to the time between NewDay issuing its final response and Mrs R contacting this service. But NewDay has accepted that its final response was incorrectly addressed and has given its consent to this service considering the complaint. Therefore no further questions remain about the time limits or our power to consider this complaint, so I do not need to comment on those points in this decision.

NewDay said it no longer held records about the opening of the account, and told Mrs R that it did not uphold her complaint.

When Mrs R brought her complaint to this service, and it had been determined that we had the power to consider it, our investigator looked into the merits of the complaint, but didn't

think it should be upheld. Mrs R didn't agree and asked for it to be reviewed by an ombudsman.

I issued a provisional decision in October 2024, in which I explained why I proposed to uphold Mrs R's complaint in part – that is, I had concluded that NewDay had acted unfairly in increasing Mrs R's credit limit above £3,150. NewDay responded to say that it had nothing further to add. Mrs R sent in further information about one of her other credit card accounts, which I've discussed below.

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.

Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website, and I've taken this into account here.

I've decided to uphold Mrs R's complaint in part. I'll explain why.

In summary, before providing credit, lenders need to complete reasonable and proportionate affordability checks. There isn't a set list of checks required of a lender, but it needs to ensure the checks are proportionate when considering things such as the type and amount of credit being provided, the size of the regular repayments, the total cost of the credit and the consumer's circumstances. So I've considered whether NewDay completed reasonable and proportionate checks to satisfy itself that Mrs R would be able to make the repayments on the credit card account in a sustainable way.

NewDay sent in copies of the computer records it still held about Mrs R's account and information about the types of checks it said it would've carried out. Mrs R sent in copies of a number of her bank statements covering the period leading up to the credit card application and credit limit increases. She also provided copies of her P60s for 2012 to 2014, and copies of some statements for her joint current account with her partner, as well as some for the business. Additionally, she sent in information about state benefits that she and her partner were receiving, and some information about her other credit commitments.

I set out my reasoning in my provisional decision as follows:

"Having looked in detail at all the information provided by both parties, it is quite difficult to build up a full picture of Mrs R's income and outgoings. This is because I don't have all of the information for the whole period of January 2013 to December 2015 - many of Mrs R's other commitments and living expenses were paid through the joint account, for which I only have limited information, and some expenses on that account will, of course be attributable to her partner. From May 2014, Mrs R said that she and her partner were living above their business, so some costs, such as the mortgage and utilities, were paid through the business account and were partly attributable to the business.

I also don't have a great deal of information from NewDay, although the information it did provide included some credit reference information from the time of the later credit limit increases. However, I'm satisfied that I have enough information to be able to reach a conclusion about the lending in this case.

NewDay told us that when assessing applications, it bases its lending decisions on data from credit reference agencies, and information from the Office of National Statistics (ONS) in relation to estimated expenditure. In the case of credit limit increases, it will take account of historic performance of the credit card account.

Looking first at the initial granting of the credit card in January 2013, the P60 provided by Mrs R showed an income of £3,290. I take it that this was the income drawn from the business that she ran with her partner. Mrs R was receiving some state benefits in relation to her disabled child, along with tax credits, but I don't know the overall amount at this point – the information I have is from a later date. Mrs R's personal account was in overdraft at this time, although the limit was quite low. but there were relatively few transactions on it – as I noted above, most of her other commitments and living expenses seem to have been paid from the joint account, but I don't have details of the amounts involved.

NewDay could not provide any information about Mrs R's credit card application, but the initial limit of £250 was very low, and therefore I would expect it to have relied on the credit reference and ONS information it obtained. Whilst I accept that Mrs R had a low income, albeit supplemented with some state benefits, I don't have enough evidence to say that the monthly payments that would've been required – in the region of £5 to £10 each month – would've been unsustainable for her. So I can't fairly say that NewDay acted unfairly in granting the card.

There were three credit limit increases in 2013, taking the limit to £2,150 in December of that year. Mrs R's P60 for the year ending April 2014 showed an income of £3,500 from the business, so her income remained broadly the same in 2013. Again, it looks as though this was supplemented by state benefits, but I don't have the amount. Mrs R's bank statements for her personal account showed similar information as before, but I don't have any of the joint account statements for this period to get a full picture of her outgoings or other commitments.

The information NewDay sent in did include the balances on the card and the payments due, and I can see that Mrs R hadn't exceeded the limit or missed any payments since the card started, and she had taken no cash advances.

Overall, whilst I accept that the credit card limit rose quite substantially across 2013, again I don't have enough evidence to say that the monthly payments required on that amount – which, from what NewDay sent in, seem to be around £60 each month – were unsustainable for Mrs R. So again I can't fairly say that NewDay was wrong to increase the credit limit to £2,150 over the course of 2013.

The first credit reference information I have is from the information that NewDay provided, and this showed that, as at February 2014, Mrs R had nine active credit accounts, and a total credit card balance of £2,832 – much of which was on the card I'm looking at here. At the time of the next credit limit increase, to £3,150 in May 2014, the number of accounts listed on NewDay's credit reference information remained at nine, but the total credit card balance was £3,336. None of the accounts was shown as being in arrears. Mrs R hadn't exceeded the limit on her NewDay card, or missed any payments, and she had taken no cash advances.

I have a joint account statement, for June and July 2014, which indicates how much Mrs R and her partner were receiving in state benefits. For the sake of simplicity, if I attribute half of this amount to Mrs R, it appears to bring her annual income to around £10,500.

Mrs R's personal account statements show a similar position to before. However there was an unpaid direct debit on 6 May, in relation to a credit card payment with another provider. But this did not show on the credit reference information that NewDay had – and as there is usually a time lag before information appears on a credit record, I don't find this surprising.

On balance, and taking all of this into account, I don't think NewDay had reason to think that the monthly payments based on the new limit were likely to be unsustainable for Mrs R, so I don't think it acted unfairly at this point.

The next increase in the credit limit – to £3,900 - was in October 2014. NewDay's credit reference information showed that, at this point, Mrs R had 13 active credit accounts, with a total debt of £6,369, and an account one month in arrears. I think the near doubling of Mrs R's overall debt, along with the increase in the number of credit accounts, over the short period since the last credit limit increase should reasonably have prompted NewDay to make more detailed enquiries.

Mrs R told us that another credit provider had reduced her credit limit – the information she sent in suggests this was in June 2014. I can also see another unpaid direct debit on Mrs R's personal account statement in October 2014, and the account was generally in overdraft. I also note that the joint account statement for June and July 2014 showed that that account was in overdraft also.

I accept that I don't have a complete picture of Mrs R's income and outgoings. But taking all the information together, it seems to me that Mrs R was showing signs of financial difficulty and an over-reliance on credit in October 2014. Therefore I think it likely that, had NewDay made more detailed enquiries, it would've found that the payments on the increased credit limit would not be sustainable for Mrs R. So I don't think it acted fairly in increasing the credit limit from £3,150 to £3,900.

I also don't think NewDay acted fairly in granting the later credit limit increases – in February, July, and December 2015. I say this for the following reasons.

At each of these three dates, NewDay's information showed that Mrs R's overall debt was increasing. In February 2015 it was £7,563, in July it was £9,354 and December £9,931. The number of active credit accounts had increased to 17 by February 2015, and remained at that level. She had arrears on her accounts - the credit reference information showed arrears of one month in February 2015, and two months in July and December 2015. Information provided by Mrs R showed unpaid direct debits on another credit card account in February and May 2015. I can also see that Mrs R had taken some cash advances.

I think all of this information should reasonably have prompted further enquiries about Mrs R's circumstances by NewDay. And had it made such enquiries, I think it would've found that the payments on the increased credit limits would've been unsustainable. I say this because I consider the evidence provided by both parties to indicate that Mrs R was in financial difficulty. The level of debt relative to her income (insofar as I have been able to estimate it), taken with the increase in that debt over time, the increase in the number of credit accounts, and the incidence of arrears, suggest to me that Mrs R was over-reliant on credit, and was struggling with the repayments.

Because of this, I don't think NewDay acted fairly in increasing Mrs R's credit limit above £3,150, and therefore I'm proposing to uphold this complaint to that extent."

As I noted above, NewDay said it had nothing further to add. Mrs R responded to my provisional decision to say that her credit card balances were much higher than the figures I had taken from the credit reference information that NewDay sent in. She sent in details of transactions on a credit card with another lender from January to March 2014. These showed monthly balances of over £5,000, and included two late payment fees. Mrs R said that the card had been stopped prior to this, and she was making payments to reduce the balance. However, from the limited information on the transaction list, it doesn't look as though Mrs R's balance was near the credit limit.

Clearly this isn't consistent with what's on the credit reference information that NewDay provided. However, not all lenders report information to all of the credit reference agencies, and the information from NewDay looks as though it was drawn from one agency – which isn't unusual. So I can't discount the possibility that Mrs R's other credit card debt wasn't reported to the credit reference agency that NewDay used at the time.

I've thought about whether this new information changes my conclusions about the increases in Mrs R's credit limit, and in particular the increase in May 2014. On balance, it doesn't. I say this because, although Mrs R clearly had more debt than was shown on the credit reference information that NewDay sent in, I don't think it was unreasonable for NewDay to rely on the information it had at the time. As I explained above, Mrs R hadn't taken out new credit, and neither had she exceeded the limit on her NewDay card, or missed any payments, and she had taken no cash advances. So I remain of the view that I don't think NewDay acted unfairly at that point.

However, I also remain of the view that NewDay did *not* act fairly in increasing the credit limit above £3,150 – neither party has provided any new evidence or information to change my conclusions in that respect. Therefore I have decided to uphold Mrs R's complaint to that extent, as I set out in my provisional decision.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I am proposing below results in fair compensation for Mrs R in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

NewDay should compensate Mrs R as follows:

- Rework the account, removing all interest, fees, charges, and insurances (not already refunded) that were applied to balances above £3,150 after 10 October 2014;
- If the rework results in a credit balance, this should be refunded to Mrs R, along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information recorded after 10 October 2014 regarding this account from Mrs R's credit file, if any remains;
- Or, if after the rework there remains an outstanding balance, NewDay should arrange an affordable repayment plan with Mrs R for the remaining amount. Once Mrs R has cleared the outstanding balance, any adverse information recorded after 10 October 2014 in relation to the account should be removed from her credit file, if any remains;
- As NewDay has sold the debt to a third party, it 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.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. NewDay must give Mrs R a certificate showing how much tax has been taken off if she asks for one. If NewDay intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

For the reasons I've explained, I've decided to uphold Mrs R's complaint in part and to require NewDay Ltd to compensate her as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or

reject my decision before 12 December 2024.

Jan Ferrari
Ombudsman