

The complaint

Mr B complains that NewDay Ltd irresponsibly lent him a credit card account and increased the credit limit.

What happened

Mr B opened an Aqua branded credit card account with NewDay in August 2008, with a credit limit of £750. NewDay then increased the credit limit as follows:

- to £950 in January 2009
- to £1,750 in April 2016
- to £2,850 in September 2016.

In 2024 Mr B made a complaint to NewDay through a law firm. He said NewDay shouldn't have given him the credit card or increased the limit because he already had more debt than he could afford to repay.

NewDay said it had carried out proportionate affordability checks before it opened the account and increased the limit. But it said the information Mr B provided in his complaint indicated that his circumstances had changed in 2016. It offered to refund all interest and charges applied to balances over £950 and pay annual simple interest at 8% on any resulting credit balance, and amend Mr B's credit file. Following Mr B's referral to us, it consented to us looking into the complaint despite the time that has passed since the events Mr B complains about.

Our Investigator didn't think NewDay's offer went far enough. She said the available evidence indicated that the first credit limit increase in January 2009 wasn't affordable for Mr B. She recommended that NewDay refund all interest and charges applied to balances above £750 and either pay any resulting credit balance to Mr B plus interest, or arrange an affordable plan with him to repay any resulting outstanding balance, and amend his credit file.

Mr B accepted that conclusion, but NewDay did not. It said that the fees for late payment and going over the credit limit which were applied to the account in the months before the 2009 limit increase weren't applied every month. It also said that while Mr B had withdrawn a total of £420 in cash on the card before January 2009, it didn't consider this excessive, and he had paid the minimum payment or more each month.

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.

Having done so, I've come to the same conclusion as the Investigator.

Before lending to Mr B, NewDay had a responsibility to carry out checks to satisfy itself that he would be able to repay any credit it gave him in a sustainable way. These checks should

have been proportionate to the amount of the lending and the cost of repayment. There was no set list of checks NewDay had to do. They could take into account a number of different things, such as Mr B's income and expenditure and how he had managed borrowing - including his NewDay account - in the past. We've explained how we consider complaints about unaffordable and irresponsible lending on our website.

NewDay says that before lending to Mr B it considered his income and the other information he provided in his application. It also considered information from credit reference agencies, which included Mr B's existing credit commitments. It says it also did this before each credit limit increase, and it looked at how Mr B had managed his credit card account. It considers that it completed proportionate checks.

NewDay no longer has a record of the information it relied on before opening the account for Mr B in 2008 and before the first credit limit increase in 2009. I don't think that's unusual or unreasonable given that these are decisions it made more than 15 years ago.

We've asked Mr B about his circumstances in 2008 and 2009. He says he was in full-time employment in 2008 with an annual salary of around £13,000, and he had increasing amounts of unsecured debt and missed many payments. He hasn't been able to provide any bank statements or other documents about his finances at the time.

In the circumstances, I don't find I can fairly conclude that NewDay was irresponsible in opening an account for Mr B with a credit limit of £750 in 2008. I think it more likely than not that it carried out some checks before lending, and on the information available I can't reasonably say that those checks weren't proportionate or that it shouldn't have lent.

While NewDay no longer holds full records of the information it considered before increasing Mr B's credit limit in 2009, it does still have records of how Mr B had managed his credit card account since it was opened in 2008. I've looked carefully at those records. They show that, in the four months between the account being opened in August 2008 and the first limit increase in January 2009, Mr B had incurred a late payment fee and an overlimit fee. He had also withdrawn a total of £420 cash on the card.

This is the sort of information I'd expect NewDay to have considered before increasing Mr B's credit limit, and NewDay has confirmed that it would have taken it into account. I find that the way Mr B was managing his credit card in the months leading up to the first credit limit increase in January 2009 should reasonably have indicated to NewDay that an increased limit wasn't going to be sustainably affordable for him. He had incurred fees for late payment and for going over the credit limit in the space of just four months, very soon after the account was opened. I don't accept NewDay's argument that only additional fees incurred in consecutive months should have given cause for concern. I can also see from NewDay's later records that the card balance went on to exceed the new credit limit within a few months of the January 2009 increase, and remained over the limit for more than a year.

In all the circumstances, given what it knew about the way Mr B was managing his credit card, I'm not persuaded that NewDay acted responsibly in increasing the credit limit in 2009. It should therefore put things right as I've set out below.

I've also thought about whether considering this complaint more broadly as being about an unfair relationship under section 140A of the Consumer Credit Act 1974 would lead to a different outcome. But even if it could (and should) reasonably be interpreted in that way I'm satisfied this wouldn't affect the outcome.

Putting things right

I've concluded that NewDay shouldn't have increased the credit limit on Mr B's credit card account. I think it's fair that Mr B repays the capital he borrowed above the initial £750 credit limit as he had the use of that money, but he shouldn't have to pay any interest, fees or charges on any balance above £750. So, in settlement of this complaint, NewDay should:

- Rework the account removing all interest, charges and insurance premiums that have been applied on any account balance above £750 - to the extent that they have not already been removed.
- If the rework results in a credit balance, that credit balance 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. NewDay should also remove any adverse information recorded about the account after January 2009 from Mr B's credit file.
- Or, if after the rework, there remains an outstanding balance, NewDay should arrange an affordable repayment plan with Mr B for the remaining amount. Once Mr B has cleared the balance, any adverse information in relation to the account after January 2009 should be removed from his credit file.

* If NewDay deducts tax from this interest it must give Mr B a certificate showing how much tax it has taken off so that he can claim a refund from HMRC if appropriate.

My final decision

My final decision is that I uphold this complaint and NewDay Ltd must put things right 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 20 May 2025.

Janet Millington
Ombudsman