

## The complaint

In summary, Mr M complains that NewDay Ltd, irresponsibly provided him with two credit cards he says he couldn't afford. He also says it shouldn't have allowed him to make payments to certain merchants, because they were gambling transactions. He asks for compensation including compensation for the distress and inconvenience, he says he's been caused as a result of the mistakes he believes NewDay made.

## What happened

In July 2021 NewDay provided Mr M with the first credit card (card one) with a credit limit of £1,200. The limit was increased to £1,950 in December 2021 and finally to £2,700 in April 2022. The second credit card (card two) was opened in November 2022 with a credit limit of £1,200. In response to the complaint, NewDay said that it hadn't made any errors, but it refunded interest and charges applied to the last two statements as a gesture of goodwill.

Mr M's complaint was considered by one of our investigators. They explained why in relation to card one, they thought the checks that NewDay carried out were reasonable and proportionate, and that it made a fair lending decision in providing the initial level of credit. They went on to explain why they thought the first credit limit increase had been appropriate. They also explained why the second limit increase shouldn't have been provided and why as a result, the second credit card shouldn't have been provided as well. And they explained why they didn't agree that the transactions Mr M had flagged, should have been considered by NewDay to be gambling transactions.

NewDay agreed with the investigator's assessment and agreed to pay compensation. Mr M didn't agree and there were several exchanges of correspondence between him and the investigator. In summary Mr M said:

He didn't agree he had the benefit of the funds. He was addicted to gambling with the investments that he had purchased using the credit cards.

- He accepted they didn't fall under gambling, but he thought the Financial Conduct Authority recognised they presented a significant risk of addiction. He had lost everything and more to trading the investments he had purchased.
- He thought NewDay's irresponsible lending allowed him to use the credit cards to fund his gambling/compulsive spending addiction.
- He referred to a case study from this service's website which he thought was relevant to his case. And he asked why NewDay hadn't been asked to repay the capital amount he had borrowed rather than just the interest.
- He also explained that the borrowing had a significant emotional impact on him and he thought he should be compensated for the distress and inconvenience he had been caused. And he referred to the section on our website with regard to the appropriate level of compensation which he thought should be in the region of £1,500.

- He supplied a spreadsheet for his bank account and provided an analysis of the transactions. He said that between January and March 2022, he made 254 transactions towards his gambling addiction which amounted to an average of 85 a month which represented 56.5% of his income for that period.

- He also summarised the gambling payments he had made on his various credit cards. He asked for correspondence received from NewDay since the assessment had been issued to be shared with him.

In response to New Day's offer of settlement, Mr M referred to his previous objections which he said hadn't been addressed. As a result, he said he didn't feel able to accept the offer.

The investigator responded to Mr M's concerns.

- He apologised for using the term "benefit of funds."
- He said he didn't agree that Mr M shouldn't have to repay the capital amount he had borrowed. As he had use of the borrowing he felt it was fair that he repay it. The firms he invested with weren't categorised as betting companies, which was why the transactions weren't blocked.
- He believed the redress he had recommended was in line with this service's usual approach and saw no reason to depart from it.
- He subsequently provided the information Mr M had asked for.

Mr M then provided some final comments for the deciding ombudsman to consider. In summary:

- He didn't agree with the outcome.
- He felt strongly that further redress was due.
- He believed it was irresponsible of NewDay to have allowed him to use the credit cards for online gambling and leveraged trading. If NewDay had blocked the transactions he wouldn't have had the debt he had.
- He felt an award for distress and inconvenience was appropriate due to the significant impact on him of being provided with the credit.

The case was passed to me for review. I issued a provisional decision explaining why I intended to uphold Mr M's complaint. Mr M responded to say that he accepted the decision. No response was received from NewDay.

### **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, and having received no further submissions from either party, I remain of the opinion that Mr M's complaint should be upheld. I've set out my reasoning again below.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've considered this approach when deciding Mr M's complaint.

There are several questions that I've thought about when deciding if NewDay treated Mr M fairly and reasonably when it provided him with the credit cards, and the limit increases.

- 1) Did NewDay complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay his credit cards in a sustainable way?
- 2) If NewDay didn't complete reasonable and proportionate checks, what would reasonable and proportionate checks have shown at the time?
- 3) Ultimately, did NewDay make fair lending decisions?
- 4) Did NewDay treat Mr M unfairly in some other way?

*Did NewDay complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay his credit cards in a sustainable way?*

The rules that NewDay had to follow, required it to carry out checks that would enable it to reasonably assess, whether Mr M could afford to repay the credit cards he wanted to take out. This is often referred to as an "affordability assessment".

The rules don't set out what specific checks NewDay needed to carry out, but it did set out that those checks needed to be proportionate to the circumstances of the application. I think what this meant in practice, was that the scope and extent of NewDay's checks needed to reflect the nature of the lending, bearing in mind things such as the amount of credit, the interest rate, and any indications of customer vulnerability. This isn't an exhaustive list.

The checks NewDay needed to carry out as part of its affordability assessment, had to be "borrower focussed". What I mean by this, is that the checks needed to consider whether the credit provided, and the monthly repayments, would cause Mr M any difficulties or have any adverse consequences for him.

And as a result of the above, I think reasonable and proportionate checks needed to be more thorough if Mr M had a low income. This would reflect that it could be more difficult for him to make the card repayments with a low income. It would also need to be more thorough the higher the amounts he had to repay, as it would be more difficult to make higher monthly repayments on a given income.

With these principles in mind, I've thought about whether NewDay completed reasonable and proportionate checks to satisfy itself that Mr M would be able to repay his credit cards in a sustainable way.

### **Card one Fluid - The account opening July 2021**

When Mr M opened the account, his recorded annual income was £26,000. The initial credit limit of £1,200 that NewDay provided when the account was first opened, was in the context of Mr M's financial circumstances, in my opinion, a relatively moderate credit limit. So, I wouldn't necessarily have expected NewDay to have carried out extensive checks given the information it had about Mr M's financial circumstances. And from the evidence I've been provided with, I can see that it did carry out checks to verify information about Mr M's financial circumstances. The credit file information it obtained shows no adverse information, such as late/missed payments or county court judgements (CCJs). Mr M's total unsecured borrowing across his other active accounts was around £700.

I think considering Mr M's financial circumstances and the amount of credit it was offering him, the checks that NewDay carried out when the account was opened, were reasonable and proportionate in the context of the credit it was proposing to provide to Mr M.

### **First credit limit increase December 2021**

NewDay increased Mr M's credit limit by £750 to £1,950 in December 2021. I think given the relatively short period of time that had elapsed since the card was taken out, it's not unreasonable to assume that Mr M's income was unlikely to have changed. NewDay has provided credit file information from the time the increase was provided. This doesn't appear to show any evidence of missed payments, defaults or other adverse information. I have reviewed the account statements that have been provided for this period. Mr M was managing his account and making regular payments and the balance on the account was never more than a few hundred pounds. His credit card utilisation across his other unsecured debt was low. So, I'm satisfied Mr M was using the credit card well within the credit limit he had been provided with.

Considering Mr M's financial circumstances, the relatively small limit increase of £750, and the checks that NewDay carried out when it increased his credit limit, I think these checks were reasonable and proportionate in the context of the increased lending it was providing to Mr M.

### **Second credit limit increase April 2022**

In April 2022 NewDay increased Mr M's credit limit again by £750 to £2,700. NewDay has said it reviewed credit file information and how the account was being managed when the limit increase was provided. This doesn't appear to show any evidence of missed payments or other adverse information. And Mr M's external debt was recorded at £5,187. £1,187 of that was in relation to revolving credit, and in the context of the limit on those cards of £7,950, the credit utilisation for those cards was still relatively low.

But this information wasn't the only data that NewDay had access to or used when assessing whether to increase the credit limit. It's explained that it would have reviewed the way Mr M had been managing his account. And having reviewed Mr M's account statements, I can see that the way he used the account had changed. I say this because I can see that in March 2022, Mr M had paid around £1,700 to one particular merchant by way of a series of small payments. In themselves I think these payments demonstrate an unusual pattern of spending, and in the context of Mr M's account usage to date, they showed a significant deviation from how the account had been used. As a result, I think this information ought to have prompted NewDay to have asked more questions and investigate further how Mr M was using the account.

### **What would reasonable and proportionate checks have shown in April 2022?**

As I've explained above, I don't think the checks carried out by NewDay in respect of the second limit increase were reasonable or proportionate. Mr M provided copies of his bank statements for several months prior to this limit increase. And I think these are indicative of what reasonable and proportionate checks might have shown at that time.

These statements show that from January 2022, Mr M began to increasingly make significant numbers of payments to merchants that were investment trading platforms. And the number and value of those payments were indicative of compulsive spending by Mr M. There is also evidence that he was becoming increasingly reliant on borrowing from family and taking on other credit including a loan for £4,000. So, I'm persuaded this all suggests Mr M's financial position had deteriorated since the previous limit increase.

### **Card two Aqua opened in November 2022**

*Did NewDay complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay his credit card in a sustainable way?*

I've considered the information available to NewDay at the time this card was provided to Mr M. For the reasons I've explained in respect of the second limit increase above, I don't think the checks NewDay carried out were reasonable and proportionate taking into account the information it had about Mr M. And having reviewed Mr M's account statements for the first credit card in the months preceding this application, I can see his financial situation unsurprisingly, wasn't fundamentally different from when the limit was increased for the first credit card in April 2022. For example, his October 2022 statement for card one was solely comprised of transactions with one particular investment platform.

If NewDay had also considered Mr M's bank statements, the November bank account statement showed for example, significant numbers of transactions with online trading platforms.

*Did NewDay make fair lending decisions?*

**Card one Fluid**

As I have summarised above, the checks that NewDay carried out at the time of the application recorded no adverse information. The initial lending was for a relatively moderate credit limit. And I think the limit provided to Mr M was affordable taking into account the financial information NewDay had about his circumstances. The first limit increase was relatively small. And the credit information NewDay obtained doesn't suggest that the increased credit provided to Mr M was unaffordable for him.

In respect of the second limit increase, as I have said, I don't think the checks were reasonable or proportionate. And as I've explained above, I think the evidence of compulsive spending and increased borrowing that a review of Mr M's account and further checks would have shown, were all indicative that his financial position had deteriorated. So, I don't think NewDay should have provided him with that limit increase.

**Card two Aqua**

As I've explained above, Mr M's financial position wasn't fundamentally different from when the limit on his first card was increased in April 2022.

And as I've also explained there was evidence of continued compulsive spending prior to the Aqua card being provided. So, I think given the evidence NewDay would have seen if it had carried out reasonable and proportionate checks, I don't think it should have provided him with the credit card.

*Did NewDay treat Mr M unfairly in some other way?*

I have considered the points Mr M has made in respect of why he thinks NewDay should have treated his payments to investment platforms as gambling. I don't agree with this argument. Although Mr M considers his spending to have been gambling, NewDay has provided evidence that the transactions to the investment platforms he made, weren't categorised as gambling. And as a result, I don't think NewDay was wrong not to have treated them as such.

As I've explained above, I do think the transactions were evidence of compulsive spending, which should have led NewDay not to have provided the second limit increase for card one, and not to have provided him with card two.

I understand that from Mr M's perspective he thinks he shouldn't have to pay the borrowing he took out on the cards. I can see from what NewDay has told us that he has cleared the outstanding balances on the accounts. I agree with Mr M that taking into account the compulsive spending he made using the credit cards, he didn't have the benefit of that money. As I have explained, I don't think it was wrong of NewDay to have provided him with card one, or the first limit increase. And I don't think it's unreasonable for Mr M to repay the money he was lent. But I don't think he should have to repay the interest and any charges that were applied, as a result of having credit that he shouldn't have been provided with

I've also thought carefully about Mr M's argument that he should be compensated for the distress and inconvenience he's experienced. He's explained the impact on him of being provided with credit that he shouldn't have been. I don't doubt from what he's said that being provided with the credit has had quite some impact on him. And I think that is something the investigator should have considered.

It's clear to me from the evidence I've seen, that NewDay wasn't the only source of funds and credit available to Mr M to make the investments that he did. It's clear that he used significant funds from his bank account and other borrowing. So, I think it's unfair to blame NewDay for being solely responsible for facilitating the compulsive spending that he made. But I do think its actions were partly responsible for the situation Mr M found himself in.

Making an award of compensation for distress and inconvenience isn't an exact science. And I can't make a punitive award against NewDay. It's not my role to do so, and I don't have the authority to make such an award. But I do think in the particular circumstances of this case, that Mr M has been impacted by being provided with credit that he shouldn't have been. And, taking into account everything I've said above, I think an award of £250 is appropriate to compensate Mr M for the distress and inconvenience he has suffered.

### **Putting things right**

As I don't think NewDay should have increased Mr M's credit limit in respect of card one above £1,950, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Mr M has been lent the money he spent on the account, so I think he should pay this back. Therefore, NewDay should:

### **Card 1 Fluid**

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £1,950 after 21 April 2022.
- If the rework results in a credit balance, this should be refunded to Mr M 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 21 April 2022 regarding this account from Mr M's credit file.
- Or, if after the rework the outstanding balance still exceeds £1,950, NewDay should arrange an affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the outstanding balance, any adverse information recorded after 22 April 2022 in relation to the account should be removed from Mr M's credit file.

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

## **Card 2 Aqua**

As I don't think NewDay ought to have opened the account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I think Mr M should pay back the amounts he has borrowed. Therefore, NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied.
- If the rework results in a credit balance, this should be refunded to Mr M 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 regarding this account from Mr M's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

Pay Mr M £250 for the distress and inconvenience caused to Mr M as a result of him being provided with the credit.

I've also considered whether the relationship between Mr M and NewDay has been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mr M in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

## **My final decision**

For the reasons I've set out above, I uphold Mr M's complaint about NewDay Ltd. If Mr M accepts this decision, NewDay Ltd needs to pay him compensation using the methodology I've set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 June 2025.

Simon Dibble  
**Ombudsman**