

The complaint

Mr I says NewDay Ltd trading as Aqua ('NewDay'), irresponsibly lent to him. He says that it didn't take reasonable steps to ensure he could afford the repayments towards a credit card. He says that this has led to him having a card that he cannot afford. And the card repayments are responsible for his financial difficulties.

Mr I's complaint has been brought by a representative and I've referred to Mr I and the representatives' comments as being from Mr I for ease of reading.

What happened

This complaint is about a credit card agreement that Mr I took out in December 2014. The starting credit limit was £250. The credit limit was increased to £900 in May 2015.

Mr I complained to NewDay saying that the card, and the credit limit increase, were lent irresponsibly, as he was struggling financially at the time.

NewDay considered this complaint, and it didn't think it was within the jurisdiction of the Financial Ombudsman Service due to the length of time that had passed since the lending was approved.

One of our Ombudsman has considered whether this is a complaint that the Financial Ombudsman Service can consider. The ombudsman found that the complaint was brought in time. I won't revisit the Ombudsman's earlier decision.

An Investigator went on to partially uphold Mr I's complaint. They thought the decision to start the credit card was reasonable. Given what NewDay knew about Mr I's circumstances.

However, they didn't think that the decision to increase the credit limit on the card was reasonable. This was because Mr I had managed the card poorly since it had started, and so it was unlikely that he would be able to properly manage an increased credit limit.

Mr I agreed with the Investigator.

NewDay didn't agree with the Investigator, but it didn't provide substantive reasons why this was. I've noted that it has continued to disagree that the complaint was brought in time.

Because NewDay hasn't agreed, this matter has been passed to me to make a final 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 general approach to complaints about irresponsible lending – including all of the relevant rules, guidance and good industry practice – on our website. Broadly speaking, this all means that NewDay needed to take reasonable steps to ensure it didn't

lend irresponsibly. In practice, this means it should have carried out proportionate checks to make sure NewDay could repay the card in a sustainable manner. Additionally, there may come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I've also considered if NewDay acted unfairly or unreasonably in some other way.

Applying this to the circumstances of this complaint, I have reached the same outcome as our Investigator, for essentially the same reasons.

Mr I accepted our Investigator's opinion that the initial decision to start the credit card wasn't irresponsible. Because of this I don't think there is any ongoing disagreement about this first lending decision. And, for the avoidance of doubt, given the evidence I have, I don't disagree with what the Investigator said about this. But it was part of the borrowing relationship Mr I had with NewDay. So, it is something I will take into account when considering the credit limit increase.

Turning now to the decision to increase the credit limit in May 2015 to £900. As our Investigator said, NewDay had information that showed Mr I was possibly in financial difficulty and may have had problems repaying the amounts required to service the increased credit limit. This is related to how he had managed the card itself. This is because:

- In December 2014 (the first month) Mr I withdrew up to his credit limit in cash.
- In January 2015 he repaid what looks to be the minimum amount but again withdrew cash up to the card limit.
- In February 2015 he was able to repay some of the balance but exceeded his agreed credit limit due to withdrawing cash again.
- In March 2015 and in April 2015 he repeated making smaller payments but then withdrawing cash amounts to go above his credit limit

So, the information NewDay has provided shows that right from the start Mr I used the full amount available to borrow as cash. I think the fact that he withdrew his entire credit limit as cash straight away, and then repeated this as much as he could, is a sign of financial difficulty. But added to this, Mr I couldn't keep to the credit limit and he borrowed more than he should, and paid overlimit fees, each month for most of the time he had owned the card. This also is a sign he was in financial difficulty.

Looking at the way he managed the card when it had a £250 limit I don't think he'd been able to sustainably repay the balance, without borrowing further.

It's worth noting that Mr I did go on to have repayment problems shortly after the credit limit was increased.

So, I think NewDay already knew enough about Mr I to say that further lending wasn't likely to be affordable for him. And I think it was unlikely that he would be able to sustainably repay the much higher credit limit, as he couldn't do this with the smaller credit limit. So, I think the decision to increase the credit limit was irresponsible.

Did NewDay act unfairly or unreasonably in some other way?

Finally, I've 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 in this particular case.

Putting things right

As I don't think NewDay should have increased Mr I's credit limit above £250, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Mr I has had the benefit of the money they spent on the account so I think they should pay this back. Therefore, NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £250 after 8 May 2015.
- If the rework results in a credit balance, this should be refunded to Mr I 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 8 May 2015 regarding this account from Mr I's credit file.
- Or, if after the rework the outstanding balance still exceeds £250, NewDay should arrange an affordable repayment plan with Mr I for the remaining amount. Once Mr I has cleared the outstanding balance, any adverse information recorded after 8 May 2015 in relation to the account should be removed from their credit file.
- 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. It must give Mr I 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.

My final decision

For the reasons I've explained, I partly uphold Mr I's complaint.

NewDay Ltd should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 24 July 2025.

Andy Burlinson
Ombudsman