

complaint

Mr A complains that NewDay Ltd acted irresponsibly when they gave him a credit card. And he says they shouldn't have let him exceed his credit limit. To put things right he wants them to refund the interest and charges that were applied, plus 8% statutory interest.

background

In May 2014 Mr A opened a credit card account with NewDay. He exceeded the £300 credit limit they gave him in June 2014. And he hasn't made any payments on the account since August 2014.

NewDay applied monthly charges and interest before closing the account in March 2015 when his balance was £441.18. And in October 2016 they sold his debt a third party. I understand Mr A is now being pursued for a total debt of £635.29 in relation to this account.

In April 2018 Mr A complained to NewDay. He said they'd acted irresponsibly when they gave him the credit card. He's explained that he was on a low income and using payday loans to meet his financial commitments. He also says he had defaulted on another account previously. So he thinks that NewDay should have realised he couldn't afford another credit card.

Mr A is also upset that NewDay allowed him to exceed his credit limit, and applied additional charges to his account as a result. He doesn't think that it's fair they allowed this to happen. And he's suggested that his NewDay credit card caused him further financial difficulty.

NewDay said that they had undertaken checks to make sure Mr A met their requirements when he applied for a credit card. They also explained that it was the cardholder's responsibility to make sure that they didn't exceed their credit limit. They said some retailers confirm that there are available funds in an account at the time the cardholder makes a transaction, but don't actually request the payment until a later time. They didn't think they could be held responsible if these payments then exceeded Mr A's credit limit because he had made other purchases in the meantime.

Our adjudicator upheld Mr A's complaint. They felt that his credit history showed he was unlikely to be able to afford the repayments on the account. And that it was apparent this had been the case given he had only made a few payments to it. They asked NewDay to refund Mr A all of the interest and charges they had applied since he took out the card, and amend his credit history to show the correct default balance. They also thought they should pay him £100 compensation for the trouble and upset caused.

NewDay didn't accept this decision. They said that Mr A met their lending criteria. So the case was passed to me to review.

my first provisional decision

I sent my first provisional decision to both parties on 30 April 2019. A summary of my findings in it is as follows:

- I noted that NewDay told us this credit card is typically aimed at people who might struggle to get credit elsewhere, and said they made affordability checks when Mr A applied for it. I explained they'd provided us with a copy of this data. And that it showed he had payday loans, but recorded that his credit file didn't show any arrears, defaults or County Court Judgements. NewDay also said that Mr A's level of debt was not a concern to them given what he'd told them his annual income was.
- I then explained Mr A had provided us with a copy of his credit report which shows two defaults were recorded on his credit file, the most recent on 28 May 2013.
- I said that NewDay had told us a history of defaulted accounts that have been settled for more than 12 months is in their lending appetite.
- I also said I appreciated NewDay were entitled to make policy decisions about who they lend money to. But I wasn't persuaded they had noticed Mr A's defaults as the document they'd provided detailed the number of defaults on his credit file as 0, and the time since his most recent default as 0. And I noted it had been less than 12 months since one of the defaults was applied. So I explained I thought it would be fair for them to refund him all of the interest and charges that had been applied to the credit card account since it was opened. I said I didn't think it was necessary for any statutory interest to be applied as I couldn't see any evidence Mr A had paid any of the interest and charges to date. But in order to put him back in the position he would have been in if NewDay hadn't given him the credit card, I thought NewDay should also refund any fees or charges that had been applied to the debt by a third party.
- I noted Mr A had exceeded his credit limit twice. But I said I could see both times Mr A had made a number of transactions over a short period. So I thought it was quite possible that earlier purchases he had made hadn't been processed by the retailers before he made subsequent ones. And I said it wouldn't be fair to hold NewDay responsible for this.
- I considered the fact Mr A had suggested his NewDay credit card put him in further financial difficulty. But I said I could see he hadn't paid any money to the account since August 2014, so I was satisfied he hadn't been trying to make payments towards his debt with NewDay at the expense of other commitments. And I said I thought the £100 compensation awarded by our adjudicator was appropriate to reflect the trouble and upset caused by NewDay's actions.

responses to my first provisional decision

Mr A responded to my provisional decision and said that he didn't have any further information he'd like me to consider.

NewDay responded and reiterated that a credit history of defaulted accounts that have been settled for more than 12 months is within their lending appetite. They said they had noticed the defaults on Mr A's account. And they explained the way their system calculates the time since a default was applied is based on month, not day. So the defaults wouldn't have been shown on their report as they were more than 12 calendar months old.

my second provisional decision

I sent my second provisional decision to both parties on 12 July 2019. A summary of my findings in it is as follows:

- I accepted NewDay's position that they did notice the defaults on Mr A's credit file. But I explained that I'd looked at his credit report and could see that neither of these defaults was settled when he made his application to them.
- I said I didn't think it was reasonable for NewDay to extend new credit to Mr A whilst he had these outstanding debts without asking for more details about his income and expenditure. And that looking at his payment history it was clear this credit wasn't affordable for him. So I felt the award I proposed in my first provisional decision was fair.

responses to my second provisional decision

Mr A responded to my second provisional decision and said that he agrees with it and doesn't have anything further to add.

NewDay haven't responded to my second provisional decision or an earlier email from our adjudicator.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Neither party has put forward any new information at this point. So I see no reason to depart from the findings I made in my second provisional decision.

my final decision

My final decision is that I uphold this complaint.

To put things right I require NewDay Ltd to refund Mr A the charges and interest that they've applied to his credit card account since it was opened. And to reimburse him for any fees and charges that have been applied to this debt by third parties. They should also pay him £100 compensation for the trouble and upset their actions caused here. And amend his credit file to show the revised default balance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 September 2019.

Jenette Lynch
ombudsman