

Complaint

Mr A complains that a business NewDay Ltd is responsible for giving him a credit card that was unaffordable. He also feels the business acted irresponsibly by increasing his credit limit.

Background

Mr A took out a credit card with a business I'll call 'L' in 2007 with a credit limit of £500. In April 2014 this limit was increased to £1,250 and in October 2014 it was increased again to £2,000. NewDay took over the account in 2015, so it's now responsible for what happened. Mr A complains that L didn't carry out an appropriate level of checks when the account was opened, and increased his credit limit to an unaffordable level. So he'd like his interest and charges refunded and any negative credit markers removed from his credit file. He said that as he'd previously had payday loans, and defaulted on his existing borrowing - so L should've been aware that he'd struggled to manage his finances and was in financial difficulty. He said that if they'd done the correct checks, they might not have lent to him and wouldn't have increased his limit.

NewDay said the necessary checks were carried out when Mr A applied for his credit card. An affordability check was carried out on the income Mr A had told them he earned on his application form. They also said that when Mr A's credit limit was increased, L had reviewed how the account had previously been run. And before it was increased, a letter was sent to Mr A explaining the credit limit increase would take effect within 40 days and to contact L if he didn't want this to happen. But Mr A didn't do this.

Mr A didn't agree. He felt that by not undertaking an income check, L had breached the lending code as they hadn't checked he could afford the repayments in a sustainable way. So he asked this service to look into his complaint.

Our investigator didn't think we could look into Mr A's credit card application or the fees applied before December 2011. That's because Mr A had complained to NewDay more than six years after he'd opened the credit card account, and more than three years after he ought to have known he had reason to complain. The rules that govern our service say that we can only consider complaints brought to our service within six years of the event complained about, or if later, within three years of the time when a customer ought to have realised they had cause for complaint.

However, our investigator did think we could look at the charges Mr A had incurred since December 2011, and the credit limit increases.

Our investigator was satisfied that all relevant charges had been set out on Mr A's statements - so she didn't recommend this part of the complaint be upheld. However, she felt Mr A was showing signs of financial difficulty before the credit limits were increased in April and October 2014. So she thought NewDay should refund all the interest and charges Mr A had paid since his limit had been increased from £500, plus 8% standard interest. She also thought NewDay should remove any adverse credit information linked to these increased limits.

NewDay didn't agree. They felt if they changed the information on Mr A's credit file it wouldn't be an accurate reflection of the conduct of his account. They also said Mr A was still using the credit card he has complained about, and was still utilising the higher limit, so

they wanted an update on Mr A's financial position. They also didn't feel they should have to pay the 8% interest. So they asked for an ombudsman to look into the case.

My findings

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'm upholding this complaint in part for broadly the same reasons as the investigator.

Credit card application and charges pre-December 2011

As both parties have accepted the investigators position, and I agree with the investigators reasoning, I see no reason to reach a different conclusion.

Increased credit limits

When deciding whether to lend to a customer, a finance company has certain obligations that it needs to meet, including carrying out reasonable and proportionate checks to see if a customer can afford to repay any new borrowing. It's clear that L made a number of checks to assess the affordability of the new credit card limits they gave Mr A, so I've thought carefully about whether what they did was reasonable, or if they should have done more. Based on the information they had, I think L should have done more to check the affordability of the increased limits given Mr A's financial position.

NewDay said that L's decision to increase a credit limit was based on utilisation of the account, account maintenance, account balance, credit reference agency information and their risk strategy. They also said Mr A's credit limit wouldn't have been increased if his account balance had been over its limit at the times in question. And that they didn't have any record of Mr A's financial difficulties until after he contacted them to say they'd lent him money irresponsibly in December 2017.

It isn't for me to tell a business what lending criteria they should use before agreeing to lend to someone, but they do need to make sure their checks are reasonable and proportionate to the lending. In addition, the business should've checked to see whether Mr A could repay his borrowing in a sustainable manner.

I've looked at Mr A's account statements before the increased limits were agreed and I've seen there were late fees and over-limit fees applied for several months before the increases took place. I've also seen that the credit limit was regularly exceeded towards the end of 2013 - before the credit limit was increased for the first time. So this suggests Mr A couldn't afford the credit limit increases. And based on the account management I've seen from Mr A's statements, it's difficult for me to conclude that sufficient checks were made before the credit limit increases were applied to Mr A's account.

As Mr A was already incurring late fees and over-limit fees for several months before the increased limits were agreed, I don't think the increased limits he was given were affordable, or sustainable. Based on the evidence I've seen, there were opportunities for L to identify that Mr A might struggle to sustainably pay back what he borrowed. I also think that if L had asked more questions about Mr A's income and expenditure, it's likely that they wouldn't have given him the credit card limits they eventually did.

Mr A complains that L didn't tell him his credit limit was being increased. However I've seen system records which show letters were sent to Mr A at the address held on file on 14 February 2014 and 16 September 2014. So this makes me think L did send Mr A notification of the increases in line with their terms and conditions.

Mr A hasn't disputed he's had the benefit of the credit he was given, so I think it's fair for NewDay to be able to ask Mr A to pay that back at a rate that takes his financial position into account, and doesn't cause him financial difficulties. But I think they should refund the interest and charges added to the account since the limit was increased from the original £500. Those are charges Mr A wouldn't have had to pay if the credit limit on his account hadn't been increased. NewDay should also remove any record of the adverse credit information and increased limits since April 2014 from Mr A's credit file so he isn't negatively impacted because of what's happened. I appreciate that NewDay says that Mr A's credit file needs to show an accurate record of the conduct of the account. But as I've already said, Mr A wouldn't have got into the difficulties he did on the account if the credit limit hadn't been increased.

I understand that Mr A is looking to enter into a repayment plan with NewDay to repay the outstanding balance until it decreases below the £500 limit. I would encourage Mr A to contact NewDay about this.

Bearing in mind the circumstances of this complaint, I don't think it would be fair and reasonable for NewDay to charge Mr A any interest on the outstanding balance until it is below the £500. That's because he shouldn't have had the increased limits in the first place. However, I should point out that going forward, NewDay is entitled to record information about the conduct of the account on Mr A's credit file. Mr A should be aware that this means the future information about repayment plans or defaults on the account may be recorded on his credit file.

My final decision

I instruct NewDay Ltd to:

- remove all interest and charges applied to Mr A's credit card account since the credit limit on his account was first increased in April 2014;
- freeze interest and charges on the account until the outstanding balance is back within the original £500 credit limit;
- discuss an affordable way for Mr A to bring his account back within the original £500 credit limit;
- remove any adverse information about the account from Mr A's credit file from April 2014;

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 8 November 2019.

Jenny Lomax
ombudsman