

Complaint

Mr S's complaint is about NewDay Ltd – trading as Aqua (NewDay). He says it was irresponsible in allowing him to have the credit limit increases on his credit card.

Background

Mr S took out his NewDay card in May 2014. At that time he was given had a £100 credit limit. The following credit limit increases happened:

- September 2014 – limit increased to £200
- January 2015 – limit increased to £400
- April 2015 – limit increased to £1,000 at Mr S's request
- September 2015 – limit increased to £1,600 at Mr S's request
- October 2017 – limit increased to £2,350 at Mr S's request

Mr S has explained that in 2015 he was experiencing financial difficulties and was using his credit card to pay for everyday living costs - such as paying his bills. He says NewDay shouldn't have allowed the increases from April 2015 onwards to happen as it was clear he was struggling financially. Mr S made a complaint to NewDay and asked that it clear his balance, refund all the interest and charges he has incurred, and amend his credit report to remove all references to the credit card account.

NewDay has explained that when a customer asks for a credit limit increase, it makes a decision based on how they have managed their account, any over limit incidents and the information it holds from a credit reference agency. And when Mr S requested his limit to be increased, there was nothing negative to indicate a new limit shouldn't be offered. Also that Mr S seems to have been using his card for what appears to be gambling transactions, as well as cash withdrawals and transactions.

NewDay has said it wasn't aware of Mr S being in financial difficulties until he discussed this with it in April 2018. So NewDay says it is confident it lent responsibly to Mr S, both when it opened his account and when offering him credit limit increases.

I issued my provisional decision (a copy of which is attached to the end of this decision) in July 2019. I explained why I was thinking of partly upholding Mr S's complaint.

Both parties confirmed they had received the provisional decision. NewDay accepted my findings. Mr S had further comments he wanted me to consider, I have summarised them below:

- Mr S has explained that his credit file was amended in 2016 after complaints made against other lenders where upheld. This means that NewDay would have seen a different set of information when the credit limit increases were applied in 2015.
- Mr S had taken another loan in 2017 so his credit report gave a better reflection than he was actually in.
- Mr S still wants the adverse information removed from his credit file since April 2015 as they put a default on his file and sold the debt on.

my findings

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

Having done this, my decision remains the same as my provisional decision. I'm partly upholding Mr S's complaint. I'll explain why.

I've noted Mr S's comments about amendments to his credit file after the credit limit increases were applied in 2015. But I had considered this when I issued my provisional decision. As I explained in my provisional decision, while Mr S did have some short term loans in April 2015, this wouldn't be reason on its own to refuse a credit limit increase. And based on the way Mr S had managed his NewDay account, there wasn't anything to suggest he couldn't afford the increase in April 2015. So I still think the checks NewDay did at this time were proportionate.

I've thought about Mr S's comments about the loan he'd taken in 2017 and whether this would have meant that, had NewDay done more to check he could afford an increase in October 2017, it would have had concerns. But I don't think it would have. As I've said, based on the information on Mr S's credit file at this time, it appears his financial situation was stable. And I don't think that picture would have been much different, if NewDay had known about this loan. Just because Mr S had a loan already, it doesn't follow that he couldn't afford an increase in his credit limit. Mr S hasn't given us anything to suggest he wasn't able to afford his loan repayments as well as the increased credit limit.

This means overall, I still don't think NewDay did anything wrong by increasing Mr S's credit limit in April 2015 but I still don't think it should have increased it further in September 2015. So Mr S's credit limit would have stayed at £1,000 between September 2015 and October 2017. By October 2017 there doesn't seem to have been any reason why NewDay shouldn't have increased Mr S's credit limit but it's unlikely to have been increased to £2,350 – I think it's more likely to have been £1,600.

Putting things right

As I explained in my provisional decision, NewDay should put Mr S, as far as possible, in the position he would have been in if it hadn't agreed the credit limit increase in September 2015 and as if the limit had only been increased to £1,600 in October 2017. But I also have to take into account that Mr S spent the money and had the benefit of whatever he bought or paid for. So I don't think it would be fair to tell NewDay to write off that bit of Mr S's debt. But I don't think he should incur interest or charges on that extra borrowing. So NewDay should:

- Rework Mr S's credit card account to remove any interest he was charged on the balance over £1,000 between September 2015 and October 2017.
- Rework Mr S's credit card account to remove any interest he was charged on the balance over £1,600 between October 2017 and now.
- Remove any overlimit or late payment charges or fees that were applied to the account from September 2015 to date (it can take into account the charges that have been previously refunded).

If, as a result of reworking the account, it now shows a credit balance, this should be paid to Mr S. And if it shows a debit balance, I remind NewDay that it should treat Mr S positively and sympathetically in response to any ongoing financial difficulty. Mr S has suggested that

his account has been sold on to a third party. If this is the case, I would still expect NewDay to work out whether Mr S is worse off because it increased his credit limit when I don't think it should have done. And if necessary, make arrangements to reduce the amount Mr S owes the third party.

I've thought about whether NewDay should amend Mr S's credit file to reflect the credit limits I think he should have had. But if it were to do this it would adversely affect Mr S's credit rating as it would show he had been over his limit consistently since September 2015. I don't think it needs to do this.

I've also considered Mr S's point about the removal of the default against his NewDay account, as well as the default put on the account by the third party NewDay sold his account to. But looking at what happened after the credit limit was increased in October 2017 and how Mr S managed his account, I think it's likely he would have ended up in a similar position if his credit limit had only been increased to £1,600. It's likely he would still have failed to make his credit card repayments when they were due. So NewDay (and the third party) would still have put defaults on his credit file.

my final decision

I partly uphold this complaint. I direct NewDay Ltd to

- Rework Mr S's credit card account to remove any interest he was charged on the balance over £1,000 between September 2015 and October 2017.
- Rework Mr S's credit card account to remove any interest he was charged on the balance over £1,600 between October 2017 and now.
- Remove any overlimit or late payment charges or fees that were applied to the account from September 2015 to date (it can take into account the charges that have been previously refunded).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 October 2019.

Claire Marchant-Williams
ombudsman

COPY OF THE PROVISIONAL DECISION

Complaint

Mr S's complaint is about NewDay Ltd – trading as Aqua (NewDay). He says it was irresponsible in allowing him to have the credit limit increases on his credit card.

Background

Mr S took out his NewDay card in May 2014. At that time he was given had a £100 credit limit. The following credit limit increases happened:

- *September 2014 – limit increased to £200*
- *January 2015 – limit increased to £400*
- *April 2015 – limit increased to £1,000 at Mr S's request*
- *September 2015 – limit increased to £1,600 at Mr S's request*
- *October 2017 – limit increased to £2,350 at Mr S's request*

Mr S has explained that in 2015 he was experiencing financial difficulties and was using his credit card to pay for everyday living costs - such as paying his bills. He says NewDay shouldn't have allowed the increases from April 2015 onwards to happen as it was clear he was struggling financially. Mr S made a complaint to NewDay and asked that it clear his balance, refund all the interest and charges he has incurred, and amend his credit report to remove all references to the credit card account.

NewDay has explained that when a customer asks for a credit limit increase, it makes a decision based on how they have managed their account, any over limit incidents and the information it holds from a credit reference agency. And when Mr S requested his limit to be increased, there was nothing negative to indicate a new limit shouldn't be offered. Also that Mr S seems to have been using his card for what appears to be gambling transactions, as well as cash withdrawals and transactions.

NewDay has said it wasn't aware of Mr S being in financial difficulties until he discussed this with it in April 2018. So NewDay says it is confident it lent responsibly to Mr S, both when it opened his account and when offering him credit limit increases.

My provisional 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 thinking of upholding Mr S's complaint in part. I'll explain why.

The guidance and rules around lending say a lender has to take proportionate steps to ensure a consumer is able to repay what they borrow in a way that won't adversely impact their financial situation. Put simply, NewDay had to gather enough information so it could make an informed decision about whether Mr S could afford to repay the money it made available to him both when he opened his account and each time it increased his credit limit..

There isn't a list of specific checks a lender should do when deciding whether to give credit. Typical checks can include (but are not limited to) information obtained from credit reference agencies and other factors such as asking about the consumer's income and outgoings, any credit history with it and the lenders' own internal credit scoring.

I haven't looked at the credit limit increases in September 2014 and January 2015 as both Mr S and NewDay appear to agree there wasn't any problem with NewDay agreeing to lend those amounts of money. I've looked at the subsequent increases in turn.

Increase in April 2015

At Mr S's request, NewDay more than doubled his credit limit. This was a significant increase compared to the previous two but by this point Mr S had had his account with NewDay for a year. Looking at the way he'd managed his account, I don't think there was anything that should have caused NewDay any concerns that he couldn't afford this increase – he hadn't missed any monthly repayments and in most months the repayments he made were more than the minimum. On the

whole, Mr S's account had been maintained within his agreed limit. There's also no evidence that Mr S told New Day he was experiencing any financial difficulties at this time.

NewDay also says it had information from credit reference agencies, which gave it a high level picture about how Mr S was managing his existing credit. It says this didn't show any adverse information that would suggest it wouldn't be appropriate to increase his limit. And having looked at the credit file reports Mr S has provided, I can't see anything that would have caused concern. While Mr S had some short term loans, it seems these were repaid on time – just because someone has pay day loans, wouldn't be a reason on its own to refuse a credit limit increase. And Mr S didn't have a lot of other credit that might have suggested he was in financial difficulties.

So overall, I think the checks NewDay did when it increased Mr S's credit limit in April 2015 were proportionate and based on those checks the increased credit limit appears to have been affordable.

Increase in September 2015

Mr S requested a further, significant credit limit increase just five months after the previous one. Again, there's nothing to show he told NewDay about any financial problems he was having at this time. But there were some indicators in the way Mr S had been managing his account, that should have suggested to NewDay that there might be problems.

After his previous increase Mr S had quickly reached the new limit – and had exceeded it on more than one occasion – and had regularly been using his card for cash advances. When considered as a whole these things could have been an early indication that his circumstances had changed and he might be in a less secure financial position.

Again NewDay says it would have had information from credit reference agencies and these didn't highlight any concerns. But I think given Mr S's pattern of credit card use over the past year, when the credit limit had already been increased three times, there was enough to alert NewDay to the possibility Mr S might not be able to afford a further increase in credit limit. So I think it should have done more before it agreed to this.

With that in mind, Mr S's credit file shows that by September 2015 he had taken out two further credit cards with other providers. He had exceeded his credit limit on both cards in August 2015. By this point he'd also taken out further short term loans. Although this alone wouldn't be enough to mean he was in financial difficulty, when taken into account with everything else, I think it suggests Mr S was probably having some financial difficulties.

If NewDay had done further checks before agreeing the credit limit increase in September 2015, I think it's likely to have found that it wouldn't be responsible to lend further money to Mr S. So his credit limit would have stayed at £1,000.

Increase in October 2017

In the year or so after the September 2015 increase took place Mr S got into arrears and it's clear he'd found it difficult to keep up with his payments. It appears he engaged with NewDay at some point in mid-2016 to let it know about the difficulties he was having. And as a result, in August 2016, NewDay reversed some of the overlimit and late fees he'd been charged.

But by October 2017 Mr S appears to have sorted things out – he'd been making regular payments into his account again, was using the card less and staying within his credit limit. There hadn't been any real issues in the way he was managing his card since August 2016. The information from the credit reference agencies that was available to NewDay didn't indicate that he'd had any other issues with credit for some time. So arguably, by October 2017 there wasn't anything to suggest NewDay should have done more to check he could afford to repay a higher level of borrowing.

Even if NewDay should have done more to check Mr S could afford an increase in credit limit, I don't think it would have found any reason to suggest he couldn't – his credit file doesn't show any adverse information from around this time – he hadn't taken out any new short term lending and the balances on the credit cards he had with other providers were comfortably within the credit limits. His financial situation seems to have been stable.

I don't think NewDay did anything wrong by increasing Mr S's credit limit in October 2017. But given what I've said about the increase in September 2015 – that I don't think it should have happened – I think it's unlikely NewDay would have increased his limit from £1,000 to £2,350. There's no way of knowing how much of an increase it would have agreed, but given the level of increases we know it agreed (in the past), it seems reasonable to assume it would have agreed to increase it to £1,600.

Overall

I currently don't think NewDay did anything wrong by increasing Mr S's credit limit in April 2015 but I don't think it should have increased it further in September 2015. So Mr S's credit limit would have stayed at £1,000 between September 2015 and October 2017. By October 2017 there doesn't seem to have been any reason why NewDay shouldn't have increased Mr S's credit limit but it's unlikely to have been increased to £2,350 – I think it's more likely to have been £1,600.