

complaint

Mr P complains about the credit limit increases that were applied to his account by NewDay Ltd, trading as Aqua.

background

The background to this complaint, and my provisional findings, can be found in my provisional decision which I've attached below and which forms part of this final decision.

In summary, I didn't think NewDay should have increased Mr P's credit limit when it did. I said this because, based on the information NewDay held about Mr P, it was clear he wasn't managing his account well. For example, he was often over his credit limit in the months leading up to the limit increases.

I didn't think that NewDay had done sufficient checks on Mr P to ensure that he'd be able to afford the new credit limit increases. I thought that had it done this, it would likely show that Mr P was struggling financially. And wouldn't have been able to sustainably repay the additional borrowing.

So, I thought that Mr P's complaint about the credit limit increases should be upheld. I also invited both parties to come back to me with any additional information they wanted me to consider before I came to my final decision.

my findings

I've again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done so, I'm upholding Mr P's complaint.

NewDay replied to my provisional decision to say it didn't have anything further to add.

Mr P responded to say that he agreed with my provisional findings.

Because of this, I see no reason to change my provisional decision. I've attached this to the bottom of this final decision.

fair compensation – what I'm telling NewDay to do to put things right for Mr P.

As Mr P had to pay a significant amount of interest and charges as a result of his credit limit unfairly being increased from December 2014 onwards, I think that he lost out because of what NewDay did wrong. So NewDay should put things right.

Where credit has been provided when it shouldn't have been, it would be fair and reasonable for the lender to refund any interest and charges paid by the borrower (if there were any) plus interest. And the borrower would be expected to repay any remaining amount of the funds they were given. So I'd expect Mr P to pay back the funds he was lent – when he used his card – but not the interest. From what I've seen, it looks as though Mr P has repaid the amount owing to NewDay.

NewDay should rework Mr P's account to remove the effect of any interest and charges accrued on the account as a result of the unfair credit limit increases which took place in

December 2014, August 2016 and April 2017. In other words, for the period from the December 2014 statement up until the account was closed, NewDay can only add any interest due on the first £1000 of the balance – any late payment and over limit fees after December 2014 also need to be refunded irrespective of what any reconstructed final balance may show.

The payments Mr P made from December 2014 onwards - should then be applied to the reworked balance. Any extra that was paid should be treated as overpayments and returned to Mr P. NewDay should also add interest, at 8% simple per year, from the date any overpayment was made to the date of settlement.

NewDay should also remove any adverse information recorded on Mr P's credit file as a result of this account.

All of this means that in order to put things right for Mr P, I'm intending to tell NewDay to:

- rework the account to ensure that from December 2014 interest is only charged on the first £1000.00 outstanding to reflect the fact that no further credit limit increases should have been provided. All late payment and over limit fees (that were applied after December 2014) should also be removed; and
- the payments Mr P made from December 2014 onwards should then be deducted from the reworked account balance. Any extra that was paid should be treated as overpayments and refunded to Mr P; and
- add interest at 8% per year simple on any overpayments, if they were any, from the date they were made to the date of settlement †

†HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Mr P a certificate showing how much tax it's taken off if he asks for one.

my final decision

For the reasons set out above and in my provisional decision, I'm upholding Mr P's complaint. NewDay Ltd should put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr P to accept or reject my decision before 23 July 2020.

Sophie Wilkinson
ombudsman

copy of provisional decision

complaint

Mr P complains about the credit limit increases that were applied to his account by NewDay Ltd, trading as Aqua.

background

Mr P took out a credit card account with NewDay in 2008. He was initially given a credit limit of £1000. The account was closed in 2018, when the credit limit was £3400.

NewDay increased Mr P's credit limit to £1500 in December 2014, £2300 in August 2016 and to £3400 in April 2017.

Mr P complains that NewDay shouldn't have given him the card in the first instance and that he couldn't afford the subsequent credit limit increases. He says the increases left him in a worse position financially. Mr P says he doesn't feel that NewDay carried out the appropriate checks before increasing his credit limit – and had it done this, it would have been clear that he wasn't in a good financial position.

Our investigator looked into this complaint. He didn't think we could consider Mr P's complaint about the initial sale of the credit card account – this is because the complaint had been made outside of the time limits that this service has to take into account when considering complaints. Mr P agreed that our investigator would look at the credit limit increases that took place later in his relationship with NewDay.

After considering all the information we had on file about how Mr P operated his account, and what Mr P had told us about his financial position at the time, our investigator didn't think that NewDay had done anything wrong by increasing the limit on Mr P's credit card.

Mr P disagreed with our investigators opinion. He provided further information to let us know about his financial position at the time, and why he feels it was irresponsible of NewDay to increase the limit on his credit card.

Because Mr P didn't agree, the complaint has been passed to me to make a final decision on the matter.

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. And having done so, I'm currently minded to uphold Mr P's complaint.

The rules and regulations throughout NewDay's lending relationship with Mr P required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

These checks needed to be 'borrower focussed' and so NewDay needed to consider not only the likelihood of it getting its money back, but also whether repaying the credit would cause undue difficulties for Mr P.

The checks needed to be "proportionate" to the specific circumstances of the lending. Generally, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current

situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit involved.

As I've said, Mr P has provided me with a more detailed account of his circumstances – and his financial position when NewDay offered him the increases. It's clear from what Mr P has told us that he was struggling financially – so I now need to decide if NewDay carried out the appropriate checks and increased his credit limit responsibly by taking into account what I've said above. And if there were any indicators that Mr P might not have been able to afford the increases.

With this in mind, I have gone on to consider each credit limit increase NewDay has allowed Mr P.

the first credit limit increase in December 2014

Mr P took out the credit card in 2008 and was initially given a credit limit of £1000. And in December 2014 it increased his limit to £1500.

I've seen a copy of the letter NewDay sent to Mr P on 26 November 2014 about the credit limit increase. This suggests that it had offered Mr P the increase based on how he'd managed his account to date.

I've looked at how Mr P had managed his account up until this point. In the six months leading up to the increase, Mr P had been charged an over limit fee five months out of the six. In my view, this doesn't show good account management. And doesn't suggest to me that Mr P was coping with the limit he already had.

In addition to this, NewDay has sent me its internal credit scoring data. This shows that in 2014, on three occasions, one of the credit reference agencies had placed a financial difficulty indicator on Mr P's credit file. Again, suggesting that he was having some financial problems. The last financial difficulty indicator in 2014 was added in October 2014, one month before NewDay sent Mr P a letter offering to increase his limit.

NewDay have said that this flag will be used to exclude its customers from a credit limit increase – it isn't clear to me why it didn't exclude Mr P from the increase on this occasion. If its argument here is that the flag wasn't there when it went ahead and increased the limit, then I don't think this is enough to determine whether or not Mr P could in fact afford the increase. And it should have carried out more thorough checks before offering the increase.

With the above in mind, it concerns me that NewDay felt that the management on Mr P's account had been good enough to increase his limit. And it still went ahead and did this after it had known that in the previous month one of the credit reference agencies thought that Mr P could be having financial problems.

It then follows that I can't agree that it was responsible of NewDay to increase Mr P's limit to £1500 in December 2014.

the second credit limit increase in August 2016

In August 2016, NewDay increased Mr P's limit to £2300. On 4 August 2016, NewDay sent Mr P a letter stating that after looking at how he had been managing his account, it would like to offer him a credit limit increase.

Looking at the information NewDay has sent me. In the six months leading up to the increase, Mr P had been charged an over limit fee three months out of the six. Again, I can't agree that this represents good account management. And within the six months leading up to the increase, a financial difficulty indicator had been placed on Mr P's credit file with one of the credit reference agencies. This ought to have alerted NewDay to a potential cause for concern for Mr P's overall financial position.

Again, I would have expected NewDay to carry out more thorough checks on Mr P's financial position before offering this increase – especially given the information NewDay were aware of.

It is for the reasons I've explained here, that I don't think Mr P should have been offered a credit limit increase at this time.

the third credit limit increase in April 2017

In March 2017 NewDay wrote to Mr P to let him know that due to the management of his account, it would like to offer him a credit limit increase – with the new limit being increased to £3400.

Based on what NewDay has sent me, on the face of things, its internal report on Mr P doesn't show that he'd missed any payments, or that he'd been over the limit. But Mr P tells us a different story as to what was happening at this time. It was NewDay's responsibility to check that Mr P was able to afford this increase – and I don't think he could.

Increasing a credit limit by almost a third of what it was, and to more than three times the amount of the original limit, is in my opinion a significant increase. The checks NewDay needed to carry out ought to have been proportionate to this increase. NewDay hasn't shown me any information that satisfies me that it checked Mr P could afford this new credit limit increase. For example, I haven't seen that NewDay considered Mr P's income, expenditure or other financial commitments when making its decision. I don't think that NewDay's internal data, that it seems to be relying on, is enough to determine a person's ongoing financial position. And it certainly doesn't take into consideration how much disposable income Mr P had at the time the increase was made.

The information I have leads me to think that it's more likely than not that reasonable and proportionate checks would have shown that Mr P wouldn't have been able to sustainably repay the additional £1100 within a reasonable period of time. So I think that it was unreasonable for NewDay to have offered and then provided this credit limit increase to Mr P.

It's worth noting that NewDay has told me that it wouldn't increase a customer's credit limit if they were showing as having been over the limit for three consecutive months prior to the increase – and it wouldn't increase the limit if the customer was over the limit at the point in which the increase was due to take place. I'm pleased to have read this – and I agree that increasing the limit in these instances would be irresponsible. But I also think it irresponsible to increase a limit when NewDays' own data shows some concerning account management and external financial difficulty indicators – especially without carrying out further affordability checks.

NewDay has also said that where a customer brings the account back under the limit in the same statement month, then it wouldn't take this into account when deciding whether to increase the limit. But in my opinion, I think that it should. Being over the limit on numerous occasions demonstrates poor account management and can be an indicator of financial difficulties. It also shows that Mr P was continually very close to his credit limit. Not taking this into account, is not in my view taking into consideration the high utilisation of the account – which NewDay tells me it considers when making a lending decision.

NewDay may respond to this provisional decision to say that it wasn't its policy to carry out more checks – or that it wasn't required to check a customer's income and expenditure before making a decision to lend more money. But it was its responsibility to check its customer could afford to repay a significant increase in borrowing – and without checking a customer's income and expenditure, I don't see how it could satisfy itself that the lending was affordable.

I've seen what NewDay has said about it sending Mr P letters offering him the opportunity to opt out of the proposed limit increases. This is all well and good, but I don't see how this makes a difference as to whether it was fair and reasonable to offer these limit increases in the first place.

fair compensation – what I’m intending to tell NewDay to do to put things right for Mr P.

As Mr P had to pay a significant amount of interest and charges as a result of his credit limit unfairly being increased from December 2014 onwards, I think that he lost out because of what NewDay did wrong. So NewDay should put things right.

Where credit has been provided when it shouldn’t have been, it would be fair and reasonable for the lender to refund any interest and charges paid by the borrower (if there were any) plus interest. And the borrower would be expected to repay any remaining amount of the funds they were given. So I’d expect Mr P to pay back the funds he was lent – when he used his card – but not the interest. From what I’ve seen, it looks as though Mr P has repaid the amount owing to NewDay.

NewDay should rework Mr P’s account to remove the effect of any interest and charges accrued on the account as a result of the unfair credit limit increases which took place in December 2014, August 2016 and April 2017. In other words, for the period from the December 2014 statement up until the account was closed, NewDay can only add any interest due on the first £1000 of the balance – any late payment and over limit fees after December 2014 also need to be refunded irrespective of what any reconstructed final balance may show.

The payments Mr P made from December 2014 onwards - should then be applied to the reworked balance. Any extra that was paid should be treated as overpayments and returned to Mr P. NewDay should also add interest, at 8% simple per year, from the date any overpayment was made to the date of settlement.

NewDay should also remove any adverse information recorded on Mr P’s credit file as a result of this account.

All of this means that in order to put things right for Mr P, I’m intending to tell NewDay to:

- rework the account to ensure that from December 2014 interest is only charged on the first £1000.00 outstanding to reflect the fact that no further credit limit increases should have been provided. All late payment and over limit fees (that were applied after December 2014) should also be removed; and
- the payments Mr P made from December 2014 onwards should then be deducted from the reworked account balance. Any extra that was paid should be treated as overpayments and refunded to Mr P; and
- add interest at 8% per year simple on any overpayments, if they were any, from the date they were made to the date of settlement †

†HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Mr P a certificate showing how much tax it’s taken off if he asks for one.

my provisional decision

For the reasons explained, I’m intending to partially uphold Mr P’s complaint and say that NewDay Ltd should put things right in the way I’ve set out above.

So unless the comments and evidence I get by 1 July 2020 change my mind, that’s what I’ll tell NewDay to do in my final decision.