

The complaint

Mrs C complains that NewDay Ltd trading as Aqua ('NewDay') acted irresponsibly when they provided her a credit card in February 2017. Mrs C also complains that NewDay didn't consider her gambling addiction when offering her the card.

What happened

Mrs C applied for a credit card with NewDay and it was approved in February 2017. The statements from April, June and July 2017 show the account had exceeded its limits, and the next statement that showed the closing balance was below the limit was December 2018. In July 2017 Mrs C told NewDay she was struggling to manage her account and a debt management company had suggested she tell NewDay. NewDay obtained an income and expenditure form from Mrs C and considered Mrs C had enough disposable income to meet the minimum monthly repayment. However, NewDay agreed to refund a late payment fee they had charged.

Mrs C continued to use the card up to its limit and incurred further late payment charges and interest.

Mrs C complained to NewDay in March 2020. She said she had multiple pay day loans, other debts and a very poor credit rating when she applied for the card. Mrs C also said she had a gambling addiction when she applied for the card. She asked for all the interest and fees NewDay had charged to the account to be refunded.

NewDay provided a final response in April 2020. They said they used information from Mrs C's application form and information held by credit reference agencies and decided Mrs C met their criteria for a card. NewDay said they couldn't reasonably have known about Mrs C's gambling addiction at the time and said she hadn't mentioned it to them until 2020. They also said that they hadn't been able to put in place a payment plan in July 2017, as the income and expenditure form Mrs C provided showed that she could afford the minimum payment.

As a gesture of goodwill, NewDay refunded two £12 fees they charged when the account went over its limit and one late payment charge of £12.

Mrs C didn't agree with what NewDay said and brought her complaint to this service. Our investigator considered the complaint and thought NewDay hadn't acted irresponsibly when they provided Mrs C with the card. The investigator said NewDay had carried out proportionate checks, and that they couldn't reasonably have been aware of Mrs C's gambling addiction as she hadn't told them of this until March 2020.

However, the investigator said that NewDay should've realised Mrs C was in financial difficulties in July 2017. Their records showed that Mrs C's borrowing had increased significantly around this time. The investigator thought it would've been reasonable for NewDay to have suspended the card at this time and stopped adding interest and charges. The investigator thought NewDay should refund all charges and interest from July 2017 and pay 8% interest on this amount.

Mrs C agreed this would be a fair and reasonable outcome. NewDay didn't agree with the investigator and asked for an ombudsman to decide the case.

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.

irresponsible and unaffordable lending

When Mrs C applied for the credit card, NewDay needed to check whether she would be able to repay it in a way which was sustainable. They needed to carry out checks which were proportionate. And to consider things like the amount of credit being applied for and the information Mrs C provided about her financial situation. There isn't a set list of checks, but the Financial Conduct Authority (FCA) Handbook explains what it considers to be reasonable credit worthiness checks (CONC 5.2A), and proportionate checks (CONC 5.2A.20R).

NewDay say their decision to offer credit was based on information supplied by Mrs C, data from the credit reference agencies and their own risk strategies. NewDay says they completed various checks including affordability and indebtedness checks before approving Mrs C's application. NewDay say that Mrs C met their eligibility criteria and her declared income was more than enough to service their minimum repayment, in addition to the credit cards and debts she had when she applied. NewDay is entitled to rely on the declaration by Mrs C.

It's for NewDay to decide who they give credit to and on what basis. What I'd expect is for NewDay to carry out enough checks before they do so. So, based on the information I have seen, it was reasonable for NewDay to form the impression Mrs C could afford the credit they provided.

financial difficulties

The crux of Mrs C's complaint here is whether NewDay should've reasonably have been aware that the card was being used for Mrs C's gambling addiction or that she was experiencing financial difficulties. And whether they should've supported her in July 2017 when she says her financial difficulties would have been apparent.

Mrs C may not have told NewDay she had a problem with gambling until March 2020, but by July 2017 NewDay had information about how she had managed her account. And they have provided information about accounts she held with other providers. So, although NewDay thought Mrs C could still afford the minimum repayments on her account, I would expect them to consider all the information it held, rather than rely solely on the income and expenditure form she provided at this time.

In the first month Mrs C had the card, NewDay's records show she made cash transactions of £365. In the period up until July 2017, Mrs C spent only about £140 on retail products, or services. In the same period, NewDay's records show Mrs C had taken on several more pay day loans and that her overall debt had doubled since the card was approved. In respect of the credit card with NewDay, Mrs C had exceeded the credit limit three times in the first five months.

Although NewDay is unable to provide a copy of the call it had with Mrs C on 5 July 2017, the notes record that Mrs C told them a debt management company had advised her to tell

NewDay she was experiencing financial difficulties. I understand that NewDay may not have been aware Mrs C had a gambling addiction in July 2017, but the spending on the account should've raised concerns that this may be a possibility. The overall data NewDay held about Mrs C's other accounts, and the telephone call on 5 July 2017, should've reasonably alerted them that Mrs C was in financial difficulties at the time. For example, the income and expenditure form showed Mrs C's total debt as £6,500, but NewDay's own data shows it was about £10,000. And this should have been picked up by NewDay at the time.

I have considered NewDay's view that in subsequent calls in September and December 2017, Mrs C didn't give any indication she needed any help. However, NewDay should've already been reasonably aware in July 2017 that Mrs C was experiencing financial difficulties.

NewDay has also said they weren't aware the account was being used for gambling and pointed out that the card was being used for retail purposes. I have already explained that NewDay's own data confirmed that only about one third of the expenditure on the card up until July 2017 was retail spending. And although I accept NewDay may not have been aware of a gambling addiction, this sort of spending should've prompted NewDay to investigate this further. I can't see NewDay considered this.

NewDay doesn't think they should've suspended the card in July 2017. They say if they had done this, this may have had a greater impact on Mrs C's financial situation. I don't agree with this point of view. The data NewDay have provided shows that from July 2017, the card was over the limit 11 times until December 2019. Mrs C incurred eight late payment charges in this time, and significant interest was added. And the balance of the card remained at or above the limit for over two years.

I don't think NewDay did enough to help Mrs C in July 2017. Considering the data NewDay held, it would've been reasonable for them to have suspended the card and stopped the interest they were charging. Instead, NewDay allowed interest and late payment charges to accrue as Mrs C's overall financial position became worse and her overall debt doubled over the next two years.

My final decision

My final decision is that I uphold this complaint and I will be asking NewDay Ltd trading as Aqua to:

- Refund all interest and charges on the account from 5 July 2017; and
- pay 8% annual interest on the refunds and charges for the period. *

*HM Revenue & Customs requires NewDay Ltd, trading as Aqua, to take off tax from this interest. It must give Mrs C a certificate showing how much tax it's taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 1 December 2020.

Paul Lawton
Ombudsman