

## The complaint

Miss O complained that NewDay Ltd (trading as Aqua) acted irresponsibly when agreeing to provide her with a credit card. She says that they increased the account limit on five occasions, causing her financial problems.

## What happened

Miss O applied to NewDay for a credit card in June 2014. NewDay assessed her application and agreed to issue a card with a credit limit of £450. After the account was opened, there were five increases to the limit up until December 2016. NewDay offered each one of these increases to Miss O in writing. On each occasion, they gave Miss O the opportunity to decline the increase offered before it was applied.

The credit limit increases that NewDay offered Miss O were:

- September 2014 from £450 to £600, applied 23 September 2014
- February 2015 from £600 to £800, applied 4 March 2015
- December 2015 from £800 to £1,600, applied 23 December 2015
- April 2016 from £1,600 to £2,200, applied 3 May 2016
- November 2016 from £2,200 to £3,450, applied 9 December 2016

In April 2017, Miss O agreed a reduced payment arrangement of £1 per month with NewDay in respect of her outstanding debt. She told them she was experiencing financial difficulties. NewDay sent relevant regulatory letters to Miss O about the status of her account. They said that would register a default on her credit file.

In June 2017, NewDay sold Miss O's debt to a debt management company and a default was registered on her credit file.

Miss O complained to NewDay in December 2019. She said that NewDay shouldn't have increased her credit limit between 2014 and 2017. She said she'd only made minimum payments for a long while and was using a high level of her credit limit. She believes that this demonstrated that she couldn't repay the balance over a reasonable time period. Miss O said that her credit history, before taking the card, showed late payments and defaults which should've warned NewDay that she was struggling financially.

NewDay responded to Miss O's complaint in writing on 26 March 2020. They didn't agree that they'd lent to her irresponsibly. They said that they considered the information provided by Miss O in her application together with the information held at credit reference agencies. They say that Miss O met their acceptance criteria and, as a result, she was provided with a card and credit limit appropriate to her circumstances.

NewDay also said that they regularly reviewed how Miss O was using the card along with how she was managing other credit commitments. They say that they made risk-based assessments to ensure they were lending responsibly.

NewDay say that on each occasion that Miss O was offered an increase in her credit limit, her account had been reviewed and found to be eligible for the higher limit offered.

Miss O didn't agree with NewDay's response. So, she referred her complaint to this service. One of our investigators has looked into Miss O's complaint. He thought that NewDay had taken reasonable steps to establish that the limit increases between September 2014 and May 2016 were affordable to Miss O. But he also thought that NewDay had failed to complete proportionate checks before offering the limit increase in November 2016.

The investigator said that NewDay should refund all interest and charges from the point that the limit was increased to £3,450 in December 2016. He also said that NewDay should add 8% interest to this figure and arrange to remove any adverse information from Mrs O's credit file.

NewDay didn't agree with what our investigator said and asked for the complaint to be referred to an ombudsman for a final decision.

Having reviewed Miss O's complaint, I reached a different outcome to that of our investigator. Because of that, I issued a provisional decision on 31 March 2021 giving both Miss O and NewDay Ltd the opportunity to respond to my findings below, before I reached a final decision.

In that decision, I said:

In reviewing Miss O's complaint, I need to consider whether the checks and assessments that NewDay completed here were reasonable and proportionate. Also, whether they were enough to satisfy them that Miss O would be able to repay any credit in a sustainable way. If they were, I need to consider if their decision to lend was a fair one, given the information they had.

Section 5.2A.20 of the Consumer Credit Sourcebook (CONC) provides examples of the factors that need to be considered and the circumstances, under which, they should be applied.

I've looked at a copy of the information included within Miss O's original application to NewDay. It says that Miss O was self-employed with a gross annual income of £35,000 and had existing unsecured debts totalling £3,700. This information wasn't verified. Her credit reference file shows that she had five active accounts/cards. There were defaults registered for amounts totalling £22,800 although there'd been a period of 54 months following the last default. It also confirms that there were no account arrears, no payment arrangements and there'd been a settled debt management plan.

NewDay say that their Aqua card is aimed at customers who are trying to rebuild and improve their credit rating. They say that it isn't unusual to see customers with a poor or absent credit history. This is their choice, but it is important that in each case, NewDay follow the rules and guidance laid down in CONC 5.2A.

NewDay agreed to issue Miss O a card with an initial limit of £450. I believe that the checks and assessments that NewDay undertook were fair and proportionate here. Miss O had experienced problems in the past. But there was no recent evidence of financial difficulty. Also, the limit agreed was small in relation to the income that Miss O told them she received and looked proportionately affordable given her other financial commitments.

I then considered each of the credit limit increases in turn. The first of these was in September 2014. Up to that point, Miss O had fully utilised her credit limit. She'd made payments on time and for amounts greater than the minimum required. She'd exceeded the limit for a period of 18 days in August. But she'd made a payment to bring the balance back to the limit and a further payment before the due date. Although the limit was exceeded, Miss O's actions showed that she understood the situation and was able to take steps to adjust it without needing any help from NewDay.

NewDay's records show that there was no information on her credit file to suggest Miss O had any financial problems. So, they offered to increase her limit to £600. In the absence of any other adverse information, I think that this was a reasonable decision and that the checks were proportionate given the amount relative to her income and other commitments.

NewDay offered a further limit increase to £800 in February 2015. During the previous five months, Miss O had regularly been using at least 90% of her limit but hadn't exceeded it. She had always made monthly payments on time. Nothing adverse was recorded on her credit file. So, I can see why NewDay would be happy to offer this level of increase to Miss O.

Following this increase, Miss O immediately took her account balance up to and in excess of the new limit. During the six months that followed, she exceeded her limit in four months and was late with payments on four occasions. This meant that Miss O also incurred late payment and over limit charges totalling £132. Some of these were reversed by NewDay. It's also relevant that between March 2015 and December 2015, the balance owed by Miss O at each month end never fell below 93% of the limit, evidencing hardcore debt. In six of the ten months, Miss O's payments were the minimum required and the others were only slightly higher. Her monthly card spend was for nominal amounts within the available limit.

NewDay say that when they consider a limit increase, they exclude customers "*that are late enough with payments to enter arrears within three months of a potential limit increase*".

In December 2015, NewDay offered to increase Miss O's limit to £1,600. Miss O's statements show that the last time she exceeded her limit was in August 2015. Her last late payment was in October 2015. So, this appears to meet NewDay's own policy for limit increases. There was also nothing in Miss O's credit file to suggest any problems.

However, the conduct of Miss O's account since the previous increase does, I believe, raise questions over her ability, at the time, to repay the debt in a sustainable way. If not, should NewDay reasonably have realised that it was increasing Miss O's indebtedness in a way that was unsustainable or otherwise harmful? There were no clear reductions being made to the amount owed and £1,600 was a 100% increase in Miss O's limit.

So, on balance, I believe that the proportionate response would've been for NewDay to undertake additional detailed tests and checks to better understand Miss O's financial situation at the time. I can't see that NewDay did this. Had they, I believe that they would've established a better understanding of her financial situation at the time. I also believe that it is more likely, than not, that NewDay wouldn't have offered to increase Miss O's limit.

Miss O has explained that throughout this period, she was self-employed. The original application to NewDay asked for her gross income. She said that the figure she entered of £35,000 was her gross annual business turnover but this was before business expenses. In reality, the figure should've been her annual net profit, as this is what was available to her. I don't think this would've had an impact on her original application and the earlier limit increases. But, had NewDay completed further checks with Miss O, I believe it would've had a bearing on the proposed increase to £1,600.

From March 2016 onwards, Miss O's credit file shows other rising borrowings of between £4,395 and £6,011. From May 2016 onwards, the status of her debt repayments also deteriorated. It isn't unreasonable to conclude that Miss O was likely to have been struggling financially. So, as regards the further limit increases offered

in April and November 2016, I believe it was also appropriate for NewDay to undertake additional detailed and proportionate assessments. NewDay have not explained their assessments in detail or provided anything to suggest additional checks were completed.

NewDay have said that Miss O had the opportunity to refuse each limit increase offered. They said that the new limit is normally applied 40 days after it is offered. Each of the limit increases were applied inside of this period. NewDay say that this suggests that Miss O contacted them to accept the limit increases. No evidence has been provided to confirm this. Even so, this doesn't mean that the increases were automatically appropriate, and that the checks made were proportionate.

Having considered all of this, I don't believe that NewDay have demonstrated that they adequately assessed Miss O's ability to repay her borrowing in a sustainable way here. I believe that there were warning signs in the way that she operated her account which were subsequently supported by information on her credit file. If NewDay had made proportionate checks, I think it would have become clear that Miss O had more financial commitments and less disposable income than NewDay believed she had.

I think it's unlikely that a responsible lender, acting reasonably, would've approved the limit increases I've mentioned here. So, I think that NewDay should put things right by calculating the interest and charges specifically applied to the increases in the limit on and after 23 December 2015 and refunding this amount.

Unlike our investigator, I don't think that Miss O should receive 8% interest on this amount where Miss O hasn't actually been without this money. I say this as the refunds here would always be due to the credit card balance. But, if after recalculating the account in line with the above, this results in a credit balance that is due to Miss O – then 8% would be payable on that amount. I also think that NewDay should also recognise the distress caused to Miss O.

Miss O has received benefit from the money borrowed so, she will remain liable for any remaining amount outstanding. And I think it's fair to say that the position with this account on her credit file is accurate, in that it represents that Miss O couldn't make payments and eventually defaulted on the account. I can't see that she would have been likely to have avoided this, even if the limits here hadn't been approved, given the information we've been provided. So, for this reason, I shall only be asking NewDay to amend any records on Miss O's credit file to reflect the interest and charges refunded and that any outstanding amounts are correctly reported.

NewDay responded to my provisional decision. They said that they *"follow the rules set out in the Financial Conduct's Authority Consumer Credit Sourcebook to ensure reasonable and proportionate checks are carried out"*. They go on to detail the data sources that they rely upon. They also said that they use their *"own affordability model ..."* based upon various data and models provided by *"the bureaux"* and *"ONS data"* which *"is considered sufficient and reasonable by the FCA/CONC to use as an estimate of customers non-discretionary expenses"*.

NewDay said that the retail spend on Miss O's card was not that of someone who may have been suffering difficulty and believe that interest should not be refunded for such transactions. They also believe that because Miss O chose to accept the increased limits offered, it is inappropriate to make an award for *"stress and anxiety"*.

Miss O has also responded to my provisional decision. She said that whilst she is happy to accept my recommendation, she believes that any interest refund should be paid directly to her rather than used to reduce the outstanding debt.

## **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.

I've considered NewDay's response to my provisional decision. They have clearly explained their own procedures and how they believe that these comply with the FCA's guidance. The key guidance here is that assessments should be proportionate and appropriate. These may, depending on the circumstances, include some or all of the following:

- a) Its record of previous dealings,
- b) Evidence of income,
- c) Evidence of expenditure,
- d) A credit score,
- e) A credit reference agency report, and
- f) Information provided by the customer.

It's worth me saying that I accept that NewDay likely followed its own processes and procedures in making their assessment of the affordability here. But, as with any system or process that doesn't involve direct interaction with a customer – there will be occasions where this results in an unfair outcome in individual circumstances. That's what I think happened here. I think that some of the factors that CONC outlines could only be reliably and proportionately assessed as a result of some more direct interaction with Miss O. But I can't see that this happened here. I believe that such interaction was likely to have revealed more than the data and statistical information used in this case and would've been a proportionate step to take.

NewDay suggest that the nature of Miss O's spending habits didn't indicate that she was experiencing financial pressures. They also believe that interest shouldn't be refunded for certain types of non-discretionary transactions. But again, I can't see that NewDay ever knew this for sure or spoke to Miss O about her spending. Seeing how a customer spends their money on a card can suggest whether or not they are in financial difficulties. For example, if a customer is withdrawing cash from a credit card or paying off other high cost credit. But while that may not have been the case here, Miss O's card with NewDay was one of several accounts she held. Given all the other factors I've referenced here and in my provisional decision, I think it would've been proportionate to have explored Miss O's situation further, rather than just relying on what the account conduct showed on face value.

In terms of the proposed compensation, NewDay believe that the award isn't appropriate. They say that Miss O had the option to refuse the limit increases but now believes that they have caused her distress. In my provisional decision I concluded that I don't believe that NewDay completed reasonable and proportionate checks before increasing Miss O's limit. So, I think it's reasonable to conclude that their actions contributed to Miss O's subsequent concerns about her financial difficulties and should be reflected in my decision.

Having considered all of NewDay's responses, I'm not persuaded to change my original view.

I'm aware that Miss O believes that any interest refunded should be paid to her. Particularly as she no longer has borrowing with NewDay following its sale to a debt management company.

When interest is charged on a credit card debt, it's applied to the credit card account – it isn't billed or paid separately. So that means it's only fair for me to say that these amounts should

be returned back to the card, as that puts Miss O in the situation she'd have been in, if the interest in question was not paid in the first place. In this case, any refund should be credited back to the debt with that is now the debt management company. If this results in the full repayment of the debt, any surplus would then be payable to Miss O, plus 8% for the time she's been without money she should've had.

The compensation for distress is distinct and separate and should be payable to Miss O.

Taking all of this into account, I've not been persuaded to change my mind here. So, my decision will remain as detailed in my provisional decision of 31 March 2021 referenced above.

### **My final decision**

For the reasons set out above, I uphold Miss O's complaint.

In order to put things right, I require NewDay Ltd to:

- calculate and refund all interest and charges, other than those that would have been incurred, had the limit not been increased on and after 23 December 2015,
- pay 8% interest on any credit balance that may end up being due to Miss O as a result of this,
- amend any credit file records reported by NewDay to reflect the debt balance reduction from the interest and charges refunded,
- pay Miss O £100 to recognise the distress this has caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 9 June 2021.

Dave Morgan  
**Ombudsman**