DRN-2958097

The complaint

Mr M complains that NewDay Ltd, trading as Aqua, lent irresponsibly when providing him with a loan.

What happened

In June 2018 NewDay gave Mr M a loan of £7,500 over 60 months. Based on the information it's provided, the interest rate on the loan was an APR of 21.94%. The total charge for the credit was £4,477.20, which meant the total amount repayable by Mr M for the £7,500 he was borrowing was £11,977.20. The monthly repayments were £199.62. The information NewDay recorded at the time of his application showed he had a net monthly income of £1,600.

In 2020, Mr M complained to NewDay that it had lent irresponsibly to him and had made his existing debt problems worse.

NewDay responded to say that it wasn't upholding Mr M's complaint about the loan. NewDay said when it made its decision to provide the loan it had taken several factors into account, including that he'd been maintaining his Aqua credit card account well up to that point. It also considered his net monthly, and disposable, incomes. It said it had verified these figures with credit reference agencies and lent in line with its own lending criteria.

But NewDay did uphold Mr M's complaint about his credit card, accepting that it shouldn't have offered the credit limit increases that it did.

Unhappy with NewDay's response about the loan, Mr M complained to us. Our investigator looked into the complaint and recommended that it should be upheld. The investigator thought that NewDay shouldn't have offered the loan based on the information available to it at the time. They said that, to put things right for Mr M, NewDay should remove all interest and charges added to the loan account and, if there was still a balance remaining after doing that, implement a suitable repayment plan for Mr M. The investigator said alternatively if the balance was cleared, any remaining funds should be paid back to him plus interest at the simple rate of 8% a year. They said NewDay should also remove any negative information recorded about Mr M in relation to the loan from his credit file.

NewDay didn't accept the investigator's findings for the reasons it had previously explained, so the complaint was referred to me to review afresh.

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.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law. And I've considered this in deciding Mr M's complaint.

I’m not going to address the lending decisions regarding the credit card in any detail here – other than to confirm that NewDay’s already agreed to put things right for Mr M in relation to that. It should do that for him now, if it hasn’t already done so.

Instead, I’ve focussed on the aspect of the complaint that remains in dispute – that is, NewDay’s decision to offer the loan.

Having done so, I’ve decided to uphold that aspect of the complaint. I’ll explain why.

There are several questions that I’ve thought about when deciding if NewDay treated Mr M fairly and reasonably when it provided him with the loan. These include:

1) Did NewDay complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the loan in a sustainable way?
2) If not, what would reasonable and proportionate checks have shown at the time?
3) Ultimately, did NewDay make a fair lending decision?
4) Did NewDay act unfairly or unreasonably in some other way?

Did NewDay complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the loan in a sustainable way?

The rules that NewDay had to follow required it to carry out checks that would enable it to reasonably assess whether Mr M could afford to repay the loan being offered. This is often referred to as an ‘*affordability assessment*’.

The rules don’t set out what specific checks NewDay needed to carry out, but they did set out that those checks needed to be proportionate to the circumstances of the application. I think what this meant in practice was that the scope and extent of NewDay’s checks needed to reflect the nature of the lending, bearing in mind things such as the amount of credit, the interest rate, the duration of the loan, the monthly and total amounts repayable, and any indications of customer vulnerability.

The checks NewDay needed to carry out as part of its affordability assessment had to be ‘*borrower focussed*’. What I mean by this is that the checks needed to consider whether paying the loan back would cause Mr M any difficulties or have any adverse consequences for him. They would also need to take account of factors such as the amount of money being lent, the term of the loan and the monthly repayments, total charge for the credit and the interest rate being charged. This isn’t an exhaustive list.

And as a result of the above, I think reasonable and proportionate checks needed to be more thorough if Mr M was on a low income. This would reflect that it could be more difficult for him to meet the credit card repayments on such an income.

NewDay would also need to be more thorough the higher the amounts he had to repay, as it would be more difficult to make higher repayments depending on his income.

With these principles in mind I’ve thought about whether NewDay completed reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the loan in a sustainable way.

In summary then, the circumstances of the loan application are as follows:

- Mr M was applying for the loan which had an APR of 21.94%.
- Mr M was recorded by NewDay as having a net monthly income of £1,600.

- The total cost of the loan was high, particularly when viewed as a percentage of what Mr M was borrowing.
- By the time of the loan application, the credit limit on Mr M's Aqua credit card had risen from £300 in January 2017 to £1,300 in May 2017, to £2,300 in September 2017 and to £3,050 in January 2018.

It seems NewDay did request some information regarding the loan. This included asking Mr M for details of his monthly income and expenditure. NewDay also obtained information from a credit reference agency and assessed how he was managing his Aqua credit card.

I think Mr M's management of his credit card ought to have given NewDay cause for some concern in the circumstances. I say that because the loan was taken in addition to several significant increases to the credit limit of the card in a relatively short space of time. In all, Mr M's credit limit rose in just a few stages from £300 to £3,050 and in only 12 months. That itself was a big responsibility for someone in Mr M's position to take on, let alone with a £7,500 loan, taken over 60 months, taken out in addition.

What's more, it seems a pattern had developed by this time whereby Mr M was maximising each new and increased credit limit, meaning the amount he owed on the card had risen sharply over a relatively short period of time. Like NewDay, I note that the balance was below the credit limit at the time of the loan. But the balance remained significant and it seems that Mr M had missed a payment in the recent past.

So, there was at least some cause for concern that I think should have prompted NewDay to look more closely at Mr M's financial situation before deciding whether to provide the loan. NewDay doesn't appear to have carried out borrower focussed checks as I'd have expected it to, given the situation Mr M was in at the time of this additional borrowing. And, as a result, checks should have been carried out to ensure he would be able to sustainably repay the loan.

What would reasonable and proportionate checks have shown at the time?

From Mr M's bank statements, I think additional checks by NewDay would have brought to light that his account was consistently overdrawn – often significantly so – in the period leading up to the loan application. In fact, his balance virtually wasn't in credit at all in the three months before the loan application.

Even more concerningly, Mr M's bank statements also show he'd taken a loan with another lender just weeks before taking the NewDay loan. It seems he used that loan to pay for daily living expenses as well as to pay back some of what he owed on his Aqua credit card. These were all worrying signs that Mr M was struggling financially.

Did NewDay make a fair lending decision?

That Mr M's bank account was regularly overdrawn, and he'd recently taken out a loan that he's used to pay off existing borrowing, indicates to me that he was struggling financially.

I also think based on the information NewDay did have about Mr M that it should have concluded that it was unlikely he'd be able to sustainably afford to make the monthly payments for the new loan. And if it had carried out reasonable and proportionate checks, for example by looking at his bank statements, then the information I've summarised above should have reinforced the conclusion it should have reached on the information it did have; that the loan was unlikely to be sustainably affordable for him.

So, based on the information NewDay did have about Mr M, I'm not satisfied that it could have reasonably concluded that he'd be able to sustainably afford to make the monthly payments for the loan.

For the reasons I've outlined above I think that, in the circumstances of Mr M's case, NewDay should have realised it was unlikely he'd have been able to repay the loan, and that it wasn't appropriate to lend to him.

Putting things right

I think it's fair and reasonable for Mr M to repay the principal amount that he borrowed, because he had the benefit of that lending. But he's paid interest and charges on a loan that shouldn't have been provided to him. So, I think Mr M's lost out and that NewDay should put things right for him. NewDay should:

a) Remove all interest, fees and charges applied to the loan from the outset. Any payments made by Mr M should then be deducted from the new starting balance. If the payments Mr M has made total more than the amount he was originally lent, then any surplus should be treated as overpayments and refunded to him with 8% simple annual interest† calculated on any overpayments made, from the date they were paid by Mr M, to the date the complaint is settled.

b) If there's still an outstanding balance on the loan, then NewDay should agree an affordable repayment plan with Mr M, bearing in mind the need to treat him positively and sympathetically in those discussions, and take account of his current ability to repay the loan.

c) Remove any adverse information recorded on Mr M's credit file as a result of the loan.

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

My final decision

For the reasons given, I've decided to uphold this complaint. I require NewDay Ltd, trading as Aqua, to put things right for Mr M as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 November 2021.

Nimish Patel
Ombudsman