

## **The complaint**

Miss B complains that NewDay Ltd has irresponsibly lent to her.

## **What happened**

Miss B was accepted for a branded credit card in September 2018 with a credit limit of £500. In February 2019, the credit limit was increased from £500 to £1,400. Miss B was accepted for another differently branded credit card in April 2019 with a credit limit of £450. In August 2019, the credit limit on this card was increased from £450 to £1,700 and in January 2020 the credit limit was increased from £1,700 to £3,450.

Miss B complained to NewDay that they had irresponsibly lent to her by accepting her application for both of these credit cards and by increasing the credit limit on both cards. She said at the time of being accepted for the first credit card she had a large amount of outstanding debt which was continually increasing and was significantly more than her personal income.

NewDay did not uphold Miss B's complaint. They said they relied on the information Miss B gave them on her application and information from credit reference agencies. NewDay also said that they carried out an affordability check. NewDay said that on her first application she told them she was employed with a gross annual salary of £20,000 with other household income of £1,284 per month and unsecured debt of £34,500. As she met the acceptance criteria, they accepted her application with a £500 credit limit as she had no adverse data on her credit file. NewDay said she had nine accounts showing on her credit file.

In relation to her Aqua credit card, NewDay said that Miss B had declared an income of £21,500 and unsecured debt of £35,200. As she met the acceptance criteria, they accepted her application with a £450 credit limit as she had no adverse data on her credit file. NewDay said Miss B had accepted the credit limits they offered, when she could have declined them and said that as she had raised concerns about the affordability of the credit cards they would close them for future spending, but the accounts would stay open for payments only. Miss B brought her complaint to our service.

Our investigator partially upheld Miss B's complaint. She said that NewDay had not irresponsibly lent for the first credit card or the credit limit increase on this card, but they irresponsibly lent to Miss B for accepting Miss B's application for her Aqua credit card and the subsequent credit limit increases. She highlighted that £31,492 of the £35,200 unsecured debt Miss B had at the time of the application was on credit cards and this wasn't sustainable. As part of proportionate checks, our investigator said that NewDay should have considered looking at her bank statements which would have shown Miss B had a high level of gambling transactions. She said that NewDay should refund all of the interest and charges that they had charged Miss B on her Aqua credit card.

NewDay did not agree with our investigator. They asked for the complaint to be reviewed by an Ombudsman. In summary, they said, that the type of lending they provide does not require them to ask the consumer for additional evidence of income and affordability, such as bank statements. They use an affordability model, which is privy to the business and data

provided by the credit reference agencies. NewDay said that there was no evidence that Miss B had been experiencing financial difficulties with other lenders and had rarely missed her payments. They said they monitor how she would use her account internally as one factor when they increase a credit limit and they said they had not irresponsibly lent to her.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

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

*Before agreeing to make credit available or increase the credit available to Miss B, NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable for her. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances.*

*In isolation, a £500 initial credit limit on the first card and a £450 initial credit limit on the Aqua credit card that NewDay offered to Miss B was proportionate compared with her income alone. But there are other factors which persuade me that further checks should've been made to ensure the credit was affordable and sustainable for her and I'll explain these below.*

*I've looked at what checks NewDay said they did prior to accepting Miss B's application for the first credit card. They used information from credit agencies and information from Miss B and saw that she had several active accounts/cards. NewDay had assessed that Miss B had unsecured borrowings of £34,500 against income which was declared as £20,000 gross. This would have been a debt to her own income ratio of 172.5%. In addition, as the majority of this unsecured debt was in the form of credit cards, I'm persuaded the outcome of NewDay's affordability calculations should have raised questions. I say this as the outgoings which NewDay's data shows is monthly accommodation costs of £100 and monthly living expenses as £800 a month. That only left £384 of available income. But when that's considered against what she owed elsewhere here, I think NewDay should have realised that it was likely that most of this available income would've been used to repay other debts.*

*So, this could indicate that the acceptance of the first credit card and subsequent credit limit increases might not be affordable or sustainable for her in the longer term. As from the information NewDay had here, it appears that she may not have enough disposable income to meet her outgoings - as the majority of her income would be spent on servicing her existing credit card debt, even if only the minimum payments were being made.*

*As NewDay have said, they are a second chance lender, so they may be able to give credit to people who have poor credit scores. But if they had asked Miss B for her outgoings as part of a proportionate check where they knew she already had several unsecured borrowings and a high degree of indebtedness, then I'm persuaded that the bigger picture would've been apparent, and this would have been one reason to prompt them to do further checks based on the repayment commitments for all of the unsecured borrowings she had.*

*Miss B hadn't had any defaults or County Court Judgments prior to the acceptance of her both credit cards. This would suggest that Miss B hadn't had any major issues in maintaining her payments previously with other providers. But that alone does not show the full picture here and I think it's that which was missing from the assessments. I'm persuaded that it would have been proportionate to the amount and type of credit being borrowed here to investigate the unsecured debt Miss B had in more detail, along with her outgoings prior to*

acceptance for both of the credit cards. I say this because if these checks had been made then it would show that Miss B would be unlikely to be able to service any more unsecured debt.

So I asked Miss B how she was managing to meet her outgoings around the time she was accepted for her first account. She said her salary would literally go towards paying her debt, and then throughout the month she was borrowing again to live off. She's said she was sometimes having to use her credit cards to pay her catalogue payments. She also said she often had to borrow from her mother. This led me to ask for her bank statements so I could see the extent of her situation prior to being accepted for both of the credit cards. This is something that I'm persuaded NewDay should have wanted to see if they asked for details of her outgoings prior to the acceptance of the credit cards – and each subsequent credit limit increase. Miss B's financial situation ultimately got worse as time went on and so where even the original limits of the cards looked to have been unaffordable, this would have even more likely looked to have been the case when NewDay increased the limits here.

There are also other reasons that I think NewDay shouldn't have only proceeded on the checks they did here. For example, Miss B's August 2018 bank statement transactions show in the month before she was accepted for the first credit card, that Miss B had made over 100 gambling transactions on her account. The bank statement also showed six payments totalling £1,148.74 from a credit provider who acts as an alternative to overdrafts, credit cards and loans. Miss B also borrowed a total of £173 in seven payments that month from her mother. Her statements prior to being accepted for the Aqua credit card also shows multiple gambling/lottery transactions and borrowing from her mother on several occasions, while NewDay's affordability information shows her unsecured borrowings grew to £35,200, although Miss B's salary increased to £21,500 – this still shows a debt to income ratio of 163.7% when she was accepted for the Aqua credit card.

So I'm satisfied from the information I've seen here that Miss B could not afford her commitments and when NewDay accepted her for the first credit card and later increased the limit and accepted her for the Aqua credit card and increased that limit also. In my view, all of this was unaffordable for Miss B. If NewDay had asked for details of her outgoings/bank statements as part of a proportionate check when considering her first credit card application and Aqua applications then I'm persuaded they would have seen the payments would not have been sustainable or affordable and I'm satisfied they wouldn't have accepted her application for either of the credit cards based on someone who was clearly struggling to meet her commitments and borrowing from a number of sources just to do so.

So, I intend to ask NewDay to remove all interest and charges applied to both the first and Aqua accounts and recalculate what (if anything) Miss B owes from the initial amount she borrowed (taking account of any payments she's made). As I'm persuaded that had NewDay completed further checks which were proportionate to her individual circumstances, they wouldn't have lent to her. They should also remove any adverse information from Miss B's credit file relating to the first credit card and Aqua credit card."

I invited both parties to let me have any further submissions before I reached a final decision. Miss B accepted my provisional decision. NewDay did not accept the provisional decision and made a number of points. In summary they attached a copy of their affordability paper detailing the type of lending they offer. They also said that when the accounts were opened, Miss B had no accounts in arrears, no public records, no defaults, no financial difficulty indicators or repayment plans. They also said that the accounts were well maintained and they felt they didn't have any reason to believe that the credit limit increases

weren't sustainable. NewDay said there was no indicators that Miss B was experiencing financial difficulties with other lenders.

NewDay also said it was unreasonable that Miss B could use their credit cards and the Ombudsman's view is that interest should be removed to essentially allow Miss B to make interest free spending.

### **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 what NewDay have said regarding the checks they had made and the type of lender that they are. I addressed this in my provisional decision but I will also copy an excerpt of this here. I said NewDay *"used information from credit agencies and information from Miss B and saw that she had several active accounts/cards. NewDay had assessed that Miss B had unsecured borrowings of £34,500 against income which was declared as £20,000 gross. This would have been a debt to her own income ratio of 172.5%. In addition, as the majority of this unsecured debt was in the form of credit cards, I'm persuaded the outcome of NewDay's affordability calculations should have raised questions. I say this as the outgoings which NewDay's data shows is monthly accommodation costs of £100 and monthly living expenses as £800 a month. That only left £384 of available income. But when that's considered against what she owed elsewhere here, I think NewDay should have realised that it was likely that most of this available income would've been used to repay other debts.*

*So, this could indicate that the acceptance of the first credit card and subsequent credit limit increases might not be affordable or sustainable for her in the longer term. As from the information NewDay had here, it appears that she may not have enough disposable income to meet her outgoings - as the majority of her income would be spent on servicing her existing credit card debt, even if only the minimum payments were being made.*

*As NewDay have said, they are a second chance lender, so they may be able to give credit to people who have poor credit scores. But if they had asked Miss B for her outgoings as part of a proportionate check where they knew she already had several unsecured borrowings and a high degree of indebtedness, then I'm persuaded that the bigger picture would've been apparent, and this would have been one reason to prompt them to do further checks based on the repayment commitments for all of the unsecured borrowings she had."*

I considered what NewDay have said regarding it being unreasonable that Miss B could use their credit cards and an Ombudsman's view is that interest should be removed to essentially allow her to make interest free spending. But as I mentioned in my provisional decision *"If NewDay had asked for details of her outgoings/bank statements as part of a proportionate check when considering her first credit card application and Aqua applications then I'm persuaded they would have seen the payments would not have been sustainable or affordable and I'm satisfied they wouldn't have accepted her application for either of the credit cards based on someone who was clearly struggling to meet her commitments and borrowing from a number of sources just to do so."* If the applications weren't accepted based on her outgoings as part as a proportionate check then Miss B would not have the opportunity to have spent anything on NewDay's credit cards.

In summary, NewDay's response hasn't changed my view and my final decision and reasoning remains the same as in my provisional decision. I know NewDay will be disappointed with the decision, but I hope they understand my reasons.

## **Putting things right**

In my provisional decision I said I intended to ask NewDay to remove all interest and charges applied to both the first and Aqua accounts and recalculate what (if anything) Miss B owes from the initial amount she borrowed (taking account of any payments she's made). As I'm persuaded that had NewDay completed further checks which were proportionate to her individual circumstances, they wouldn't have lent to her. They should also remove any adverse information from Miss B's credit file relating to the first credit card and Aqua credit card. I'm still satisfied this is a fair outcome for the reasons given previously.

## **My final decision**

I uphold the complaint. NewDay Ltd should:

Refund all interest and charges applied to the accounts from the date the accounts were opened to the date of any final decision;

If at any period this resulted in Miss B's accounts being in credit, pay 8 per cent simple annual interest on the date that balance arose to the date of settlement; and

Remove any adverse entries on Miss B's credit file relating to her first credit card and Aqua credit card.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 7 September 2021.

Gregory Sloanes  
**Ombudsman**