

The complaint

Mr V complains that NewDay Ltd (NewDay) didn't carry out appropriate checks when agreeing to lend to him. And that if it had, NewDay would've seen that the lending wasn't affordable for him.

Mr V is also unhappy with the way NewDay responded to his personal circumstances and failed to treat him as a vulnerable customer.

Mr V wants NewDay to amend his credit file.

What happened

In June 2018, NewDay gave Mr V an Aqua credit card with a credit limit of £450. Mr V exceeded his credit limit later in the year. He went on to miss payments in 2019 and asked NewDay for help.

NewDay didn't think the lending was unaffordable. It said it carried out proportionate checks and that these showed Mr V could afford to repay what it lent to him.

When Mr V complained to this service, the investigator thought that NewDay had lent irresponsibly. He asked NewDay to refund interest and charges and remove the account from Mr V's credit file.

NewDay disagreed with the investigator's recommendation. It said Mr V declared an annual income of £30,000. The search it carried out didn't reveal any negative information and there was no indication of financial strain.

As NewDay didn't agree with the proposed outcome, the complaint came to me to make a final decision.

My provisional findings

After considering all the evidence, I issued a provisional decision on this complaint to Mr V and to NewDay on 8 November 2021. I said:

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

I realise that I've summarised this complaint in less detail than the parties and I've done so using my own words. I'm not responding to every single point made by the parties involved. I don't intend any discourtesy by this. Instead I've concentrated on what I consider to be the key issues. The rules that govern this service allow me to do this.

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

Before deciding to lend, NewDay needed to carry out reasonable and proportionate checks to make sure Mr V could afford to repay his borrowing in a sustainable way. These checks had to be borrower focussed. NewDay needed to consider the impact of any credit repayments on Mr V – not just whether it was likely to get its money back from him.

There was no set list of checks NewDay needed to complete. But the checks had to be proportionate in the circumstances. This could vary depending on the amount of credit, the duration, the total amount repayable and the consumer's individual circumstances, including their lending history.

NewDay says that Mr V declared an annual income of £30,000 and that its checks showed no arrears, defaults, or county court judgments. NewDay says that it doesn't require evidence of income and expenditure by way of bank statement for example. Instead, it relies on data given to it by the applicant and external credit reference information including data that gives an estimate of expenditure. NewDay is satisfied that it was reasonable to lend to Mr V based on what it knew about his circumstances at the time.

The investigator disagreed with NewDay's assessment of Mr V's affordability because he thought it hadn't taken proper account of some areas of concern on Mr V's credit file. The investigator noted that NewDay could see two payday loans on Mr V's credit file. And that these should've alerted NewDay to possible issues about affordability.

However, I'm not persuaded that NewDay was aware of the two payday loans. In its final response to Mr V, NewDay said there wasn't any evidence of payday lending in the checks it carried out. This is reflected in the affordability spreadsheet that NewDay has given this service. At the time that NewDay agreed Mr V's credit card, there is a "0" against the "number of active payday loans".

NewDay has also given this service an underwriting document on which the entry next to payday loans has a "-2". This is a default entry that its system inputs because there wasn't any data available and/or no data was received. It's not an indication that NewDay was aware that Mr V had two payday loans at the time.

Mr V's credit limit was a modest £450 against a declared annual income of £30,000. NewDay couldn't see any evidence of late or missing payments on its credit search and there were no defaults. It appeared that Mr V had outstanding credit of £100 – again, a modest amount.

Although NewDay's checks showed that there had been three credit searches carried out against Mr V in the past 12 months, I don't consider this was excessive or a cause for concern. I wouldn't have expected NewDay to go further with its checks based on what it knew about Mr V's circumstances.

I appreciate that Mr V's financial situation was worse than he told NewDay, but I don't consider proportionate checks would've revealed this. It's for this reason that I don't intend requiring NewDay to do anything in response to Mr V's complaint.

Mr V has also expressed concern about the way in which NewDay responded to his financial difficulties. The investigator dealt with these concerns in some detail and I don't have much more to add to what he has already told Mr V.

I appreciate that Mr V's personal situation and restrictions placed on him by the terms of his visa, made it difficult for him to claim additional support. But I'm satisfied that NewDay

responded reasonably to his financial circumstances. It offered short-term help and suggested charities that might be able to assist him. I wouldn't have expected NewDay to do more than this. It follows that I don't require it to compensate Mr V for this aspect of his complaint.

Overall, I'm not persuaded that it was unreasonable of NewDay to lend to Mr V based on what it knew about his circumstances. And I consider that once Mr V was unable to keep up with his repayments, it treated him fairly. I would just remind NewDay of its ongoing duty to treat Mr V reasonably and sympathetically.

As I don't intend upholding this complaint, it follows that I won't require NewDay to refund any money to Mr V or amend his credit file. I'm sorry that this is likely to come as a disappointment."

Further submissions

NewDay didn't respond to my provisional decision but Mr V was unhappy with my provisional decision. He made several submissions which I summarise as follows:

- From four successful credit card applications, NewDay was the only lender to give him a credit limit of £450. The other lenders gave him a credit limit of £250 or less.
- Mr V doesn't consider a £450 credit limit to be modest.
- Mr V's primary goal is to have the default removed from his credit file.
- Mr V points out that he has a limited residential history and that his credit history didn't start until November 2018 (although I think Mr V meant to say November 2017). He thinks this should've prompted Aqua to carry out additional checks and has referred to guidance from the Financial Conduct Authority in support.
- Mr V thinks NewDay should've placed a hold on his account when he lost his job in 2019. And that this would've allowed him to avoid the default and resume payments when he was back in full time employment – as evidenced by what he did with another credit card company.
- Mr V says the default has had a negative impact on his life and ability to apply for further credit
- Mr V says that NewDay hasn't given him a copy of its policy regarding vulnerable customers despite asking for this; and
- Mr V asks whether NewDay's checks take account of the fact he can't access the benefits system because of his visa restrictions

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 can see that Mr V has gone to a great deal of effort to respond to my provisional findings, but it hasn't changed my decision not to uphold his complaint.

I appreciate that my reference to £450 being a modest credit limit might be subjective, but I was thinking about this in relation to Mr V's declared annual income of £30,000. The fact that other credit card companies gave Mr V lower credit limits doesn't mean that NewDay was wrong to offer a higher limit based on what it knew about him.

I understand Mr V's point that he had a limited residency and credit history. But I can't say that this means NewDay was wrong to agree to lend. I can't speak for all the factors NewDay took account of when considering his credit card application. But NewDay wasn't alone in agreeing to lend to Mr V based on his credit history and financial information. According to his credit report, Mr V was able to open two bank accounts since June 2017 and other credit card companies agreed to lend to him around the same time as NewDay. This all makes it hard for me to say that NewDay made a mistake or that its affordability checks should have been more rigorous than they were.

As Mr V couldn't keep up with his repayments, I can't conclude that NewDay was wrong to default his account. I appreciate that this makes things difficult for Mr V but NewDay has an obligation to record accurate information about the way he managed his account.

Mr V has sent this service some links to information about the difficulties faced by people who can't access public funds due to conditions attached to their visa. I sympathise with Mr V's position, but I can't see how NewDay would've been aware of this limitation when Mr V applied for credit. And the question of a lack of support for those finding themselves without access to public funds isn't one that I would expect NewDay to answer – it seems more suited to intervention by the government.

I still think NewDay responded reasonably to Mr V's financial problems by giving him some short-term assistance and signposting him to further help. I have already told Mr V that I felt the investigator had dealt with these concerns in some detail. So, I don't have anything further to add.

Although I appreciate the impact that the default has had and continues to have on Mr V, for all the reasons I've outlined, I don't uphold his complaint. This means I can't require NewDay to convert the default into a payment arrangement as Mr V would like. But I do of course remind NewDay to treat Mr V reasonably and sympathetically should he make any offers to settle the debt.

Finally, Mr V would like to see NewDay's policy on supporting vulnerable customers. If NewDay has such a policy, I don't see why it can't send Mr V a copy, but this doesn't change my decision not to uphold his complaint.

My final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 23 February 2022.

Gemma Bowen
Ombudsman

