

The complaint

Ms S has complained that NewDay Ltd irresponsibly lent to her.

What happened

Ms S opened an Aqua credit card account with NewDay in December 2020. Her credit limit was set at £900.

Ms S, through her representative, says that NewDay shouldn't have allowed her to open an account as she had a poor credit history and was struggling to pay off multiple loans and credit agreements. NewDay says it carried out all the necessary checks including a credit check. It said Ms S had nine defaulted accounts with the most recent being 37 months prior to the application and two adverse public records. It said that in the 30 months prior to her application Ms S had no payday loans and no accounts in arrears. NewDay said that Ms S' credit limit wasn't increased and while she applied for a limit increase March 2021, this request was declined.

Our adjudicator thought that Ms S' complaint should be upheld. She thought that the information gathered by NewDay showed signs that Ms S was experiencing financial difficulty and that the checks carried out demonstrated that Ms S would have been unlikely to be able to make her repayments sustainably.

NewDay disagreed. It said Ms S' application was accepted after it was satisfied that she could afford the relatively small credit limit of £900. It said it had carried out sufficient checks.

This case has been passed to me, an ombudsman, to make a decision.

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.

Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website. I've had this approach in mind when considering what's fair and reasonable in the circumstances of this complaint.

Before providing the credit card, NewDay carried out a credit check. This showed that Ms S had previously experienced financial difficulties. I note that NewDay has said it provides credit to consumers with adverse information recorded on their credit files and I also note that the defaults recorded were historic. However, given Ms S had nine defaults recorded in 2016 and 2017 and also had two county court judgments in 2018 I think this should have raised concerns about Ms S' ability to manage her finances.

I have looked through Ms S credit file to understand her situation further and I can see that although Ms S did have some active accounts that hadn't defaulted the majority of her accounts had gone into default. This included several mail order accounts, a credit card account and communications accounts. While she had settled some defaulted accounts, she

still had nine that were active, and NewDay's credit search showed these to have a total balance of £6,500. Although NewDay's credit search suggested the adverse public records were at least 30 months old, the county court judgements were recorded in March and July 2018 around 18 months before the Aqua credit card was provided. As NewDay noted, these had a total value of around £1,900.

Taking the above information all into consideration, it shows Ms S had experienced financial difficulties from 2016 and while she may not have had arrears at the time of the application, she had had two county court judgements recorded within the previous two years. Ms S' only non-defaulted active accounts at the time of application were a communications account, three bank accounts (one of which was recorded as inactive at the time of application) and a loan account. The loan was with a high cost credit provider and was taken out less than two months before the agreement with NewDay. This new loan suggested that Ms S was continuing to face some financial difficulties.

On balance, I find Ms S' credit information suggested she had struggled financially for an extended period of time and I do not find the information from the time of the application was such that it showed her to be in a situation where further lending would be sustainably affordable. Therefore, I uphold this complaint.

Putting things right

As I don't think NewDay ought to have opened the account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I think Ms S should pay back the amount she has borrowed. Therefore, NewDay should:

- Rework the account removing all interest, fees, charges and insurances (which have not already been refunded) that have been applied.
- If the rework results in a credit balance, this should be refunded to Ms S along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding this account from Ms S' credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Ms S for the remaining amount. Once Ms S has cleared the balance, any adverse information in relation to the account should be removed from their credit file.

*HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Ms S a certificate showing how much tax it has taken off if she asks for one.

My final decision

I uphold Ms S' complaint in part and direct NewDay Ltd to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 21 September 2022.

Jane Archer
Ombudsman