

## **The complaint**

Mr M complains about irresponsible credit card lending made to him by NewDay Ltd trading as Aqua. He says he couldn't afford either the initial lending to him of £300 in July 2017, or the increase to £500 later in that year, and NewDay should have realised that.

## **What happened**

Mr M is supported by professional representatives in this complaint. But this remains his complaint, so I'll refer to him throughout.

Mr M said he was already having financial difficulties when he made this application. He thought that NewDay should have realised this. By lending to him, Mr M said that NewDay had made a bad situation worse.

Mr M sent us a copy of his credit report and bank statements, showing his financial position at the time. He wanted NewDay to refund all the interest and charges it had applied to lending on this card, to pay 8% statutory interest, and to remove any adverse marks from his credit file.

NewDay said it had done appropriate checks when it agreed the initial lending to Mr M, and when it later increased his credit limit. It sent us the information it had at the time, including Mr M's declared income, his overall indebtedness, his previous credit problems, and a score provided by a credit reference agency, saying whether there was any cause for concern with Mr M's finances. NewDay also showed us how Mr M used the card at the relevant times.

Our investigator thought this complaint should be upheld. He considered the checks that NewDay did when Mr M first applied for this lending, and looked at Mr M's financial position at the time.

Our investigator has provided considerable detail on why he thought NewDay should not have made this lending to Mr M. To summarise what I consider to be the key points - he noted that Mr M had a low income. Mr M also already had a history of defaults, and two publicly recorded debts, which were likely to be county court judgments. And the results from the credit reference agency indicated there was already cause for concern on Mr M's credit file from his existing lending, before this new lending was made.

Our investigator also obtained information from Mr M which showed a series of gaming transactions, each for small amounts but repeated to an extent which would have amounted to significant spending overall. He noted that Mr M's overall indebtedness had increased markedly not long before he applied for this card.

Our investigator didn't think NewDay should have lent to Mr M in 2017.

Our investigator also said there was no evidence Mr M's overall financial position had improved by November 2017, when NewDay increased Mr M's credit limit. He said Mr M's overall debts had nearly doubled in value in that time.

NewDay didn't change its mind. It said sufficient checks were done, and it was adamant that there were no indications of any financial strain. NewDay repeated that Mr M did not have any active payday loans, and no arrears at the time of the application. NewDay didn't address the specific points that our investigator had raised, and our investigator didn't change his mind. Because no agreement was reached, this case was passed to me for a final 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.

I've reached the same overall conclusion on this complaint as our investigator.

When NewDay checked Mr M's financial position in July 2017, it was aware of four previous defaults and two public debts. I agree with our investigator that it is most likely that these were county court judgments. Mr M hadn't cleared these historic debts at the time. He also had other outstanding credit, and what NewDay noted to be a low income.

NewDay obtained a score from a credit reference agency, summarising Mr M's overall indebtedness. NewDay has told us it doesn't have permission from the relevant agency to explain what lies behind the score of "50" that Mr M received at that time. But there is some publicly available information on this, and that says that a score this high shows clear cause for concern about Mr M's existing financial position, before any additional lending was made.

So I think NewDay should have realised that there was cause for concern over Mr M's ability to sustainably repay any additional lending, from the data it received in July 2017. And it also seems the rating NewDay received from the credit reference agency at the time provided a clear warning about this. I agree with our investigator that this suggested there was significant risk to Mr M in borrowing further. With that in mind, I think that NewDay should have investigated Mr M's financial position more closely, before taking a decision to lend.

If NewDay had investigated Mr M's financial position more closely, then it seems likely that NewDay would have found that the annual income Mr M had declared, of £23,000, wasn't supported by his bank statements. I think it is very unlikely that, if NewDay had investigated further in July 2017, it would have decided that it could responsibly offer lending to Mr M.

Later in 2017, NewDay made a decision to extend Mr M's available credit, from £300 to £500. NewDay has shown us that it was aware that Mr M's overall indebtedness had almost doubled between August and September 2017. But at the start of October 2017, NewDay wrote to Mr M to offer additional credit. I don't think NewDay should have done this without investigating the reasons behind Mr M's greatly increased overall lending. It doesn't appear to have done so. Although I appreciate that Mr M was managing his debt on this card, I think if NewDay had investigated the overall position of Mr M at this time, then again, it is very unlikely NewDay would have decided that it could responsibly offer him additional lending.

For these reasons, I also think this complaint should be upheld. And I have reached the same overall conclusion on the appropriate redress as our investigator.

NewDay must refund all the interest and charges Mr M has paid on this lending to date.

If Mr M hasn't yet paid off this debt, NewDay must reduce the outstanding capital balance by the amount of this refund. If that doesn't clear the debt, then NewDay must make sure that the remaining debt isn't subject to any historic or future interest or charges. If it does clear the debt, then any surplus should be given back to Mr M and 8% simple interest should be added to the surplus.

NewDay must also remove any adverse information recorded on Mr M's credit file as a result of this lending.

### **My final decision**

My decision is that NewDay Ltd trading as Aqua must refund all the interest and charges Mr M has paid on this lending to date.

If Mr M hasn't yet paid off this debt, NewDay Ltd must reduce the outstanding capital balance by the amount of this refund. If that doesn't clear the debt, then NewDay Ltd must make sure that the remaining debt isn't subject to any historic or future interest or charges. If it does clear the debt, then any surplus should be given back to Mr M and 8% simple interest should be added to the surplus. (HM Revenue & Customs may require a business to take off tax from this interest. If it does, NewDay Ltd must give Mr M a certificate showing how much tax it's taken off if he asks for one.)

NewDay Ltd must also remove any adverse information recorded on Mr M's credit file as a result of this lending.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 June 2022.

Esther Absalom-Gough  
**Ombudsman**