

The complaint

Miss B complains that NewDay Ltd trading as Aqua gave her credit that she couldn't afford to pay back.

What happened

Miss B applied for a credit card in May 2017. It was approved with an initial limit of £300. Miss B was given five further credit increases.

In September 2017 the limit was increased to £900. In January 2018 the limit was increased to £1900. In August 2018 the limit was increased to £3150. In December 2018 the limit was increased to £4350 and in November 2020 the final increase was to £5350.

Miss B says that she was constantly in debt. She was in low paid work and not able to repay what she had borrowed. She said that the increases only made things worse and she wasn't able to make any inroads into her debt. Miss B says that if NewDay had done proper checks it would have seen she was struggling and would not have given her the card or the increases.

Our investigator thought that Miss B's complaint should be upheld in part. They thought that the lending decisions prior to January 2018 were responsible. But from that point they thought that NewDay ought to have realised Miss B was having problems managing her money given her management of the account. They thought that NewDay shouldn't have given Miss B any more credit from January 2018 and it should refund all fees and charges from that point.

NewDay disagreed with this view and said in summary that although Miss B had gone over her limit in November and December 2017 this was quickly rectified. Miss B was able to make repayments to her account, and on occasions paid more than the minimum so there was no reason to think that she was struggling.

Miss B also didn't agree with the investigator and maintained that the credit should never have been given to her given her circumstances. Miss B also thought that any refund should have interest added and that any adverse markers should be removed from her credit file.

As the parties haven't been able to agree the matter has been 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.

Our approach to unaffordable/irresponsible lending – including all the relevant rules, guidance, and good industry practice – is set out on our website and I have taken it into account when making this decision.

NewDay is required to lend responsibly. It needed to conduct checks to make sure that the

credit facilities it was giving to Miss B were affordable and sustainable. Such checks needed to be proportionate to things like the credit limits offered to Miss B, how much she needed to repay (including interest and charges) each month, her borrowing history and what it knew about her circumstances. There is no set list of checks and what is reasonable and proportionate depends on the type and level of borrowing.

This means that I need to consider whether the checks carried out by NewDay were proportionate at the time of the credit card application and for each subsequent credit limit increase. If so, did NewDay make fair lending decisions based on the results of those checks and if not, what better checks are more likely to have shown. I also need to consider the circumstances at each additional advance in credit and whether there was a point at which NewDay ought reasonably to have realised it was increasing Miss B's indebtedness in a way that was unsustainable or harmful and so shouldn't have provided further credit.

Looking first at the card application in May 2017 and the initial limit of £300. In her application Miss B told NewDay she was working full time, renting her home, and earning £12,600 a year. Miss B states that she didn't have any borrowing but NewDay's checks suggested that she had £100 outstanding. There was no adverse credit information such as missed repayments or defaults. Although Miss B was on a low income there was nothing in those initial checks which suggested that Miss B wouldn't be able to repay the initial limit of £300. I think it was a fair lending decision in the circumstances given the relatively small amount of credit being offered relative to Miss B's income. So, I don't think better checks were required or would have made any difference.

Miss B used the card and made the repayments as required. I think that the decision to increase the credit limit to £900 in September 2017 was also reasonable. There was nothing to suggest that Miss B wouldn't be able to sustainably afford the repayments on this increased amount based on the information available to NewDay. It was still a relatively small proportion of her income.

Miss B used the new credit limit provided in September 2017 and by November and December 2017 had exceeded her limit and was charged a fee. This would suggest that Miss B might have been having problems managing her money. Although I have taken account what NewDay have said about this being a short term issue I still think it suggests difficulty and that the increased limit in January 2018 which added a further £1000 to Miss B's credit limit was unaffordable in the circumstances. I think that the signs were there that Miss B was struggling.

Miss B's financial position didn't substantially improve and in April 2019 NewDay wrote to Miss B outlining that it considered she was in persistent debt as she had paid more in fees and charges than in reducing her balance over the previous 18 months. This does not suggest that Miss B was managing her borrowing sustainably yet NewDay substantially increased her indebtedness during that period.

In the circumstances I think that NewDay shouldn't have given Miss B any of the credit limit increases beyond the first increase in September 2017. I think that the following four increases were unsustainable and Miss B has paid additional fees and charges that should be refunded to her.

Putting things right

As I don't think NewDay should have increased Miss B's credit limit from £900, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Miss B has had the benefit of all the money they spent on the account so I think they should pay this back. Therefore, NewDay should:

- Rework the account removing all interest and charges that have been applied to balances above £900.
- If the rework results in a credit balance, this should be refunded to Miss B 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 recorded after January 2018 regarding this account from Miss B credit file.
- Or, if after the rework the outstanding balance still exceeds £900, NewDay should arrange an affordable repayment plan with Miss B for the remaining amount. Once Miss B has cleared the outstanding balance, any adverse information recorded after January 2018 in relation to the account should be removed from their credit file.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Miss B a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

My final decision is that I uphold this complaint in part and NewDay Ltd should put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 7 November 2022.

Emma Boothroyd
Ombudsman