DRN-3381949

The complaint

In summary, Mr C has complained that NewDay Ltd trading as Aqua Loans, provided him with a loan when he wasn't able to afford it.

What happened

In November 2017, NewDay provided Mr C a loan for £2,700 repayable over 24 months. The interest rate on the loan was an APR of 37.9%. The total charge for the credit was £1,007.38, which meant the total amount repayable by Mr C for the £2,700 he was borrowing, was £3,707.38. The monthly repayments were £154.48.

In its response to Mr C's complaint, NewDay explained why it thought the loan was affordable and that it wasn't upholding his complaint. It had identified that Mr C needed to have maintained an Aqua card account well. Taking into account the information Mr C had provided on his application and from credit reference agencies, it identified he was left with surplus income of £896 a month.

When NewDay provided its file, it explained that it had verified Mr C's income using a credit reference agencies (CRA) "TAC service" and had verified his outgoings through the Office of National Statistics (ONS).

Mr C's concerns were reviewed by one of our investigators. She explained that she didn't think the checks NewDay had carried out were reasonable and proportionate. Having looked at everything she had been provided with, including Mr C's bank statements prior to the loan being taken out, she thought the complaint should be upheld.

In response, NewDay said it didn't think Mr C's complaints about his loan and credit card account should have been split. It said that as per its agreement with our service the complaints should have been looked at together as they had been dealt with under one final response.

NewDay also didn't agree with the investigator's assessment. It said it used an affordability model that was privy to the business and data provided by CRAs. The type of lending it provided, it said didn't require it to ask consumers for evidence of income such as bank statements. And it performed checks as required by CONC section 5.2A. This was based on a firm basing its creditworthiness assessment on sufficient information, where appropriate from a customer and where necessary from a CRA.

NewDay went on to say it didn't request bank statements as part of its assessment, and it said it wasn't required to do so. It also said that as Mr C had paid the loan for around 13 months before requesting a settlement figure, this demonstrated he could make the repayments.

As NewDay didn't agree with the investigator's assessment of the complaint, it has been passed to me to review.

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.

Before I set out my findings in relation to the merits of Mr C's complaint, I'll address the point made by NewDay regarding the separation of the two aspects of Mr C's complaint. In this particular case Mr C has complained about two different products. And I don't think it's unreasonable as a result, that the complaints have been split.

If the complaints about the two different products were considered together, then Mr C would be put in the position of potentially having to accept an outcome for both aspects of his complaint, where one part might be upheld and the complaint about the other product not upheld. And in this case, I don't think that would be fair to Mr C. So, I'm satisfied that it was appropriate to set up two separate complaints in this particular case.

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

Having done so, I've decided to uphold Mr C's complaint. I'll explain why.

There are several questions that I've thought about when deciding if NewDay treated Mr C fairly and reasonably when it provided him with the loan.

1) Did NewDay complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay his loan in a sustainable way?
2) If not, what would reasonable and proportionate checks have shown at the time?
3) Ultimately, did NewDay make a fair lending decision?
4) Did NewDay act unfairly or unreasonably in some other way?

Did NewDay complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay his loan in a sustainable way?

In its response to the investigator's assessment, NewDay referred to the CONC rules it says it had to follow at the time the loan was sold to Mr C. It said it didn't need to ask to see Mr C's bank statements as it didn't think it was required to do so.

But the rules that NewDay had to follow, required it to carry out checks that would enable it to reasonably assess, whether Mr C could afford to repay the loan he was wanting to take out. This is often referred to as an "*affordability assessment*".

The rules don't set out what specific checks it needed to carry out, but they did set out that those checks needed to be proportionate to the circumstances of the application. I think what this meant in practice, was that the scope and extent of NewDay's checks needed to reflect the nature of the loan, bearing in mind things such as the amount of credit, the interest rate, the duration of the loan, the monthly and total amounts repayable, and any indications of customer vulnerability.

The checks NewDay needed to carry as part of its affordability assessment, had to be "borrower focussed". What I mean by this, is that the checks needed to consider whether paying the loan back would cause Mr C any difficulties or have any adverse consequences for him. They would also need to take account of factors such as the amount of money being lent, the term of the loan and the monthly repayments, total charge for the credit and the interest rate being charged. This isn't an exhaustive list.

And because of the above, I think reasonable and proportionate checks needed to be more thorough if Mr C had a low income. This would reflect that it could be more difficult for him to make the loan repayments with a low income.

NewDay would also need to be more thorough the higher the amounts Mr C had to repay, as it would be more difficult to make higher loan repayments on a given income.

The length of the loan term would also be relevant, partly because where the loan duration is longer, the total cost of credit was likely to be higher. It would also be relevant because there is greater risk of a negative change in circumstances affecting Mr C's ability to repay, where repayments need to be sustained over a longer period.

With these principles in mind I've thought about whether NewDay completed reasonable and proportionate checks to satisfy itself that Mr C would be able to repay his loan in a sustainable way.

In summary then, the circumstances of the loan application are as follows:

- Mr C was applying for a loan which had an APR of 37.9%
- Mr C was recorded by NewDay as having a monthly income of approximately £2,100 when the loan was taken out.
- The total cost of the loan was very high, particularly when viewed as a percentage of what Mr C borrowed.
- Mr C had a credit card account with NewDay that had seen several credit limit increases in 2017.

Individually and taken together, there are several risk indicators here. So, I think that it was important for NewDay to have conducted checks which gave it a thorough understanding of Mr C's financial position and to scrutinise the information it gathered carefully, asking follow-up questions where necessary, before agreeing to lend.

NewDay has said it did carry out some verification checks to validate the information Mr C gave it in his application before it agreed to provide him with the loan. This seems to have been based on Mr C's completed application form, credit file, ONS data and some electronic verification of his bank account.

But it's not clear from what NewDay's said or the information it's provided, what those checks showed about Mr C's income and expenditure. It's surprising given the information it has provided, that it hasn't been able to provide a copy of the credit report (although it has provided some information from the report) and of the income and expenditure verification checks that it carried out.

Whilst I accept that general statistical data can in some circumstances be useful, I think the information NewDay had about Mr C's financial circumstances should have led it in this particular case, to interrogate Mr C's financial circumstances in a borrower focussed fashion rather than relying on statistical data.

This is because there were several flags that should have alerted NewDay to carry out reasonable and proportionate checks. I think Mr C's usage of his NewDay credit card should have been considered in a wider context rather than just as to whether he had no late payment or over limit fees.

I say this because the data provided by NewDay shows that in the three months prior to the loan being approved, Mr C had been making approximately minimum payments in respect of the outstanding balance on his credit card account. Also, the total balances shown on the information provided by the CRA it used, indicated a credit balance in excess of £7,000. And it had offered him a further credit limit increase on his credit card of £900 in the September of 2017.

So, taken together, I think the information NewDay had about Mr C, should have prompted it to look more closely at Mr C's financial circumstances and carry out borrower focussed checks; to ensure that the further lending it was proposing to provide him with, was sustainably affordable for him.

What would reasonable and proportionate checks have shown at the time?

I think NewDay should have ensured that the scope and extent of its checks were adapted to the circumstances of Mr C's application. This was a high cost loan being taken out by an individual who had a significant existing credit balance. Given this and the information NewDay had about Mr C regarding the management of his credit card account with NewDay and other borrowing, further checks would in my opinion, need to verify his income and expenditure, in addition to the checks it had already carried out. And this was needed to establish that he was able to afford the loan.

At the investigator's request, Mr C has provided copies of his bank statements. These show that for the three months prior to this loan being taken out Mr C's account was overdrawn by several thousand pounds each month. There is evidence of payments on other credit card accounts with payments of a similar amount to those paid on his NewDay credit card being made. And the statements show discrepancies with the information recorded on Mr C's application in respect of his income and outgoings. And I think that if NewDay had carried out reasonable and proportionate borrower focussed checks; it would have identified that Mr C was struggling financially

Did NewDay make a fair lending decision?

I think the information NewDay already had about Mr C, together with the information it would have seen if it had carried out reasonable and proportionate checks by for example looking at his bank statements, should all have led it to conclude that it was unlikely Mr C would be able to sustainably afford to make the monthly payments for this loan. The fact that he repaid the loan early, doesn't persuade me that his circumstances indicated that he should have been provided with the loan in the first place.

For the reasons I've set out above, I think in the particular circumstances of Mr C's case, NewDay should have concluded that it wasn't appropriate to provide him with the loan.

Putting things right

Mr C has repaid the loan. So, to put things right NewDay needs to refund to Mr C the interest he paid on the loan together with interest at the rate of 8% a year simple, from the dates interest was paid by Mr C, to the date the compensation is paid to Mr C, if he accepts my decision.

My final decision

For the reasons I've set out above, my final decision is to uphold Mr C's complaint about NewDay Limited. If Mr C accepts my decision it needs to calculate and pay Mr C compensation, using the methodology I've set out above.

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

Simon Dibble
Ombudsman