

The complaint

Mrs L complains that NewDay Ltd, trading as Aqua (NewDay) lent to her irresponsibly when they agreed a credit card for her and then continued to increase the credit limit on several occasions.

What happened

I issued a provisional decision to both parties on 1 March 2022. My provisional decision set out the background to Mrs L's complaint and explained why I was minded to uphold Mrs L's complaint in part, and it set out what NewDay needed to do to put things right.

A copy of the background to what has happened and my provisional findings, taken from my provisional decision, are set out below and form part of this final decision.

What happened

Mrs L applied online for a credit card with NewDay and the account was opened on 18 March 2014 with a credit limit of £500.

The following credit limit increases were made by NewDay:

*June 2014 increase to £1,200
November 2014 increase to £1,800
March 2015 increase to £2,800
July 2015 increase to £4,050
December 2015 increase to £5,300*

Mrs L says NewDay should not have agreed to give her a credit card in March 2014, nor should they have subsequently increased the credit limit as described above. Mrs L has said there were red flags NewDay should have recognised as indicators that she was struggling financially - such as using cash withdrawals to pay for other credit and making cash withdrawals as soon as the limit was increased; being close to the credit limits, and noting that she was borrowing in excess of her income. Mrs L felt NewDay should also have realised she was finding things difficult as she primarily made minimum payments towards the account.

Mrs L said the initial application wrongly stated she was self-employed and recorded her income as higher than it was. She also said NewDay was wrong to rely on her husband's income in their considerations to lend.

Mrs L also shared with us that she suffers with anxiety and that dealing with this matter has caused her much stress.

NewDay's position was that they were unaware of any mental health challenges Mrs L had been facing whilst she had the card. They noted Mrs L had never opted out of the credit limit increases. And they said their credit searches had shown Mrs L managed to meet her financial commitments and met the minimum payments required. NewDay said Mrs L had

declared an income of £12,000 as a self-employed person (which as noted above, Mrs L said was incorrect). And they didn't think the cash withdrawals automatically demonstrated there was anything to be concerned with until prior to the last credit limit increase. NewDay said the last limit increase should not have been approved as Mrs L's behaviour of repeated cash withdrawals prior to the last increase were more indicative that something was wrong. NewDay therefore agreed to put things right for Mrs L from the point of the last credit limit increase and also made the decision to close Mrs L's account – which Mrs L found unfair.

Our investigator reviewed Mrs L's case and they felt it should be upheld. In summary, the investigator said NewDay had not carried out proportionate and reasonable checks to see if Mrs L could sustainably meet the commitment of a new credit card and they concluded Mrs L should not have been given the credit card from the outset.

NewDay didn't agree with this, so the complaint has come to me to decide.

What I've provisionally 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 – this includes Mrs L's most recent submissions outlining in detail why she believes NewDay have acted unfairly.

We've set out our approach to complaints about unaffordable and irresponsible lending on our website – which I've also taken into account.

I understand this will not be the outcome Mrs L was hoping for, but having reviewed all the available evidence and submissions, I'm minded to reach a different conclusion to that of our investigator. That is, I think Mrs L's complaint should be upheld in part and I'll explain why.

Mrs L has highlighted NewDay's obligations as a lender. And as I've mentioned, our role as a service is to consider what is fair and reasonable when deciding cases taking into account, amongst other things, the relevant regulations.

NewDay's obligations as a lender were to lend responsibly. So they had to assess whether Mrs L could afford to sustainably meet the repayments for her credit card – and as Mrs L has noted, this meant a focus on the borrower's circumstances not just what the risk would be to NewDay as a lender.

Mrs L took out the credit card on the cusp of regulatory changes, but the responsibilities were still broadly the same. That is, NewDay needed to carry out reasonable and proportionate checks when assessing whether to lend. For example, it would not have been proportionate to verify someone's income, complete a credit search, request bank statements, and complete a detailed budget analysis if the individual earned a reasonable income and was borrowing a small amount.

At the time of Mrs L's initial application for the credit card in March 2014 NewDay explained they didn't require evidence of income and expenditure, but instead relied on information from the customer and data supplied by the credit bureau.

NewDay's internal records of the online application show Mrs L's income was £12,000 a year alongside other household income of £26,000. NewDay's additional searches at the time showed Mrs L had unsecured debt of £13,400 and that she had no recorded arrears, public records, defaults, payment arrangements or debt management plans in place.

I understand Mrs L has commented NewDay was increasing the level of her borrowing to a sum in excess of her income, but this isn't something which automatically means her

complaint should be upheld. Borrowing totalling in excess of an income is not uncommon – for example, mortgage borrowing is often well in excess of a borrower's annual income, but it is the consideration given to the affordability of the repayments which is key. So did NewDay complete reasonable and proportionate checks to assess Mrs L's creditworthiness – her ability to sustainably repay the credit – when they approved the card?

The credit limit of £500 did not significantly increase Mrs L's existing borrowing and there was nothing in the searches carried out to suggest Mrs L was struggling to manage her credit commitments at the time. NewDay relied on information from the application made online, which did not contain anything to suggest it should be questioned - so I don't think there was anything, at this point, that could have prompted NewDay to verify Mrs L's income or carry out additional checks. In the circumstances, NewDay agreed to provide Mrs L with a credit card – and I'm minded to say this was reasonable. I think the checks NewDay took at this time were therefore reasonable and proportionate.

Mrs L didn't seek the credit limit increase from NewDay in June 2014, but I note she could have opted out and chose not to.

NewDay said that when reviewing their customers' accounts they used a range of data to assess if the credit limit could be extended, including the internal information they had about the account management, as well as external information from the credit reference agencies and then they assessed this against their lending policy – so a customer's credit limit could be increased or reduced depending on the review.

Again, I've considered whether NewDay's checks at the time of the increase - only a short few months later - were reasonable and proportionate.

I think it was a fair assumption to make that Mrs L's details were unlikely to have changed in the short time since the credit card was approved, so I think it was reasonable not to query Mrs L's income at this point. And there was of course, now additional information available to NewDay in terms of how Mrs L was managing the account.

I've considered what Mrs L has said about her borrowing against the card within the first month of having it – including the cash withdrawals and some retail spending which took her to around 74% of the credit limit. But I'm also mindful that the month before the first credit limit increase Mrs L paid off a significant amount of the outstanding balance. The card had also only been in place for a few months and I don't think there was anything to alert NewDay to any problems Mrs L was having at that time - payments were being made each month and not much time had passed since the initial application that there was any reason to check if her circumstances had changed. So based on what I've seen, I think the checks and considerations NewDay took at this time were still reasonable and proportionate.

However, by the time of the second credit limit increase in November 2014 the limit had now increased significantly. Mrs L had also made three consecutive cash withdrawals each month since the last credit limit increase (£400, £250 and £100); there was retail spending on the account every month and Mrs L had only made minimum payments since the start of having had the card (except for the one larger payment noted earlier). The balance on the card now also sat close to the limit and had therefore grown in the short months since the previous credit limit increase.

In view of this, I think at this point it would've been reasonable for NewDay to complete additional checks when reviewing Mrs L's account for another credit limit increase. So I don't think the checks carried out before the November 2014 limit increase were reasonable or proportionate. I think it would have been reasonable for NewDay to look more closely at what they now knew about Mrs L's management of the account and made further enquiries

about her creditworthiness.

I think if NewDay had carried out reasonable and proportionate checks at that time they would've found Mrs L's situation was less than comfortable. I think at this point it would've been reasonable for NewDay to verify Mrs L's income. If they had done this they would've seen Mrs L's income was in fact significantly below the sum declared on the initial application form.

Mrs L's bank statements show that Mrs L's monthly income in July 2014 was £417.19; August 2014 it was £392.99; September 2014 it was £319.79; November 2014 it was £458.08 and in December 2014 it was £379.38. I've not seen October 2014's income, but I'm satisfied it would've shown a similar sum to those set out above.

In her submissions to our service, Mrs L also supplied details of her earnings as set out in her P60s for 2015 (£4,893.23) and 2016 (£4,574.88) and I think these go some way to further supporting that Mrs L's income was not the £12,000 initially declared on the application form.

I think with a better understanding of Mrs L's actual income, it would've then been reasonable for NewDay to further assess Mrs L's other financial commitments to understand what Mrs L could in fact afford.

Having reviewed Mrs L's bank statements, she had a number of regular monthly financial commitments which taken together exceeded her income. Our investigator detailed Mrs L's commitments in their opinion to both parties showing the monthly commitments were regularly over £700 each month. So, even taking into account the monthly child benefit payments Mrs L received (£134.80), Mrs L's outgoings were still more than her income and I think it's fair to say an income and expenditure form would've highlighted this.

If NewDay had requested Mrs L's bank statements as part of their checks, they would've seen the above mentioned financial commitments, and it would've been possible to see there were cash deposits into Mrs L's bank account to help her manage the account and avoid account fees. While I've not looked in detail at where these cash payments came from, given the cash withdrawals on the NewDay credit card and Mrs L's submissions on how she managed her credit using other credit facilities to make her payments, I think it wouldn't have taken much for NewDay to query the source of the cash payment and question whether Mrs L could in fact afford any more credit.

I note there has been some debate in the submissions as to whether one of Mrs L's financial commitments was essential. Given Mrs L was contracted into making this payment (so to break the contract would potentially have had repercussions) and she's told us the service she was paying for provided something she used to help with her work, I think it's fair to say this was something that was essential to Mrs L.

So I think from this point – November 2014 - NewDay should not have increased Mrs L's credit limit any further.

I'm aware of Mrs L's submissions about her husband's income and NewDay's reference to this as part of their considerations and I think it fair to say that Mrs L's husband's income could only have been taken into consideration if NewDay had reasonably questioned this at the start – which they did not. In the application Mrs L was noted as a homeowner and NewDay's credit search for Mrs L had not shown that she had any responsibility for a mortgage – so as a starting point I don't think it would've been unreasonable to assume the other household income may have been paying for other such financial commitments and therefore unavailable to Mrs L.

Mrs L should note that my considerations above have not taken the additional household income into account.

I'm aware Mrs L has also mentioned in her submissions the Financial Conduct Authority's position on how businesses should deal with vulnerable customers. I am sorry to hear to hear of Mrs L's situation and that she experiences severe anxiety. I realise this can be very debilitating and so I can see how this matter will have caused Mrs L much stress and exacerbated things for her. My findings here are not intended to cause additional stress, but I must consider what is fair in all the circumstances of the case. And it's difficult for me to say that NewDay should have done anything differently when handling Mrs L's account if there was no suggestion or awareness that Mrs L was a vulnerable customer. So I can't say they should have done anything prior to the increase in November 2014.

I'd also add that it was not unreasonable of NewDay to close Mrs L's account in the circumstances. Either party can choose to end the agreement and I'm not aware that NewDay put Mrs L in a difficult position by doing so. I understand that Mrs L took out a loan in January 2020 and used this, in part, to consolidate the outstanding credit card debt prior to her complaint to NewDay and their final response letter issued in March 2020.

Overall, I think it was reasonable of NewDay to approve Mrs L's credit card in March 2014 and increase the credit limit in June 2014. However, at the time of the next credit limit increase in November 2014 I don't think NewDay's checks were reasonable or proportionate and had they been I think they would've better understood Mrs L's circumstances and not increased her credit limit from that point. So I think there is more for NewDay to do in order to put things right.

Putting things right

When I find that a business has done something wrong, I'd normally direct that business to put the complainant in the position they would be in now if the mistake the business made hadn't happened, as far as is reasonably practical.

In this case, that would mean putting Mrs L in the position she would be in now if she hadn't been given the credit limit increase from November 2014. But Mrs L was given the increase, used the money and has already repaid the entire amount including interest and charges. So I think NewDay Ltd, trading as Aqua should:

- a) Rework the credit card balance over the time Mrs L held her credit card, by removing any interest charged relating to the balance above £1,200 and removing any charges the increased limits and interest caused.*
 - b) NewDay should then pay interest of 8% a year* on the total sum identified above as additional interest and fees paid by Mrs L, from the date Mrs L's account was closed until the date NewDay settles the matter.*
 - c) If, after reworking the credit card balance NewDay finds that Mrs L would, at times, have paid more than enough to clear her balance, then NewDay should also pay simple interest on the extra she paid, from the date she made the payment until the point Mrs L would've owed NewDay something on her credit card again. The interest should be 8% a year*.*
- Remove any adverse information from Mrs L's credit file in relation to this credit card.*

NewDay should tell Mrs L what they've done to work out a, b and c.

**If HM Revenue & Customs requires NewDay to take off tax from this interest NewDay must give Mrs L a certificate showing how much tax they've taken off if she asks for one.*

Responses to my provisional decision

Mrs L said she was disappointed as she didn't feel the cost of the loan she had taken out to clear the cost of the credit card had been taken into account. However, whilst she did not entirely agree with my findings, for the sake of resolving the matter Mrs L said she would accept the conclusions reached.

Mrs L also welcomed the direction to NewDay to explain how they would work out their calculations.

NewDay also replied to my provisional decision to say they did not agree with my findings. NewDay said they remained of the opinion that the credit limit increase arranged for Mrs L from November 2014 had been made using reasonable and proportionate checks. NewDay said that at this time, and at the time of the subsequent credit limit increases, they were not required to request evidence of Mrs L's income in the form of bank statements or payslips – so it was now unfair to rely on this information. NewDay said they reviewed how Mrs L was managing her account and the information reported to them by a credit bureau, and that until March 2016 they only received information from one credit bureau.

NewDay said there was no delinquency on Mrs L's account – no late payments, the credit limit was not exceeded, and cash withdrawals were a feature of the card and all withdrawals were made in line with their lending policy. Because of this, NewDay said there was no apparent evidence of financial difficulties.

And externally, there was also nothing to suggest Mrs L was struggling as there were no payday loans or arrears with other lenders, payment arrangements or reported affordability issues.

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 understand NewDay's response that they were under no obligation to obtain Mrs L's bank statements and their concern at applying information with hindsight. I recognise there is no set list of information that NewDay was required to obtain from Mrs L when reaching their decisions to lend to her and increase the credit limit. However, NewDay was required to carry out reasonable and proportionate checks to assess whether Mrs L could afford to repay the borrowing in a sustainable way.

As I set out in my provisional findings, at the time of the increase in November 2014, the level of credit approved for Mrs L was now significantly higher than when the credit card was first agreed. The original credit limit in March 2014 was £500, and the new proposed limit for November 2014 was £1,800. And I think this, together with the account management information available to NewDay – which they said they took into account as part of their reviews – did suggest it would be reasonable and proportionate to carry out further checks.

Aside from one larger payment, all other payments had been minimum payments to the card and prior to the credit limit increase in November 2014 Mrs L had taken out three consecutive monthly cash withdrawals which together with retail spending had taken the card balance close to the existing credit limit. Mrs L had also significantly increased the

balance as soon as the last credit limit had been agreed by making a cash withdrawal of £400 in addition to her retail spending on the card for £213.95.

While I note NewDay's comments about the information they found through the credit bureau, I think it's reasonable to say there was enough to be found from Mrs L's management of the account to prompt further questioning of her creditworthiness. And one reasonable check would've been to confirm Mrs L's income. Whether NewDay did this through bank statements or payslips, I think either would've shown her income to be less than originally declared and so prompted further consideration of Mrs L's circumstances. And I maintain, for the reasons given in my provisional findings above, that it wasn't fair of NewDay to rely on any other household income in their decision making unless they had properly understood what this was, and its availability to Mrs L.

I therefore think NewDay didn't do enough to check Mrs L's creditworthiness at the time of the credit limit increase in November 2014. Had they done so I think they would've realised Mrs L wasn't in a position to sustainably manage the higher level of credit.

I've noted Mrs L's point relating to the loan she took out to repay the outstanding credit card balance. Our service looks to put things right as far as it's reasonably practicable to do so – it is not an exact science. Mrs L should note that the remedy put forward in my provisional decision takes into account the times she may have paid more than the outstanding balance after it is re-worked to ensure she is compensated for any overpayments there may have been at that point. And I am mindful that Mrs L chose to repay the credit card using a new loan.

Putting things right

NewDay Ltd, trading as Aqua should follow the direction in the section *Putting things right* as described above in my provisional findings.

My final decision

For the reasons above, my final decision is that Mrs L's complaint is upheld in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 27 April 2022.

Kristina Mathews
Ombudsman