DRN-3403504

The complaint

Mrs H is unhappy that NewDay Ltd, trading as Aqua, provided new and further credit to her which wasn't affordable for her at that time.

What happened

Mrs H applied for a NewDay administer credit account in October 2018. Her application was approved, and NewDay issued Mrs H a credit card account with an initial credit limit of £900.

In January 2019, NewDay increased the credit limit on Mrs H's account from £900 to £1,900. Two further credit limit increases followed: from £1,900 to £3,100 in June 2019, and from £3,100 to £4,500 in January 2020.

In September 2020, Mrs H applied for a second NewDay administered credit account. This application was also approved, and Mrs H was issued with a new credit card account with an initial credit limit of £250. In January 2021, NewDay increased the credit limit on this new account from £250 to £1,250.

In May 2021, Mrs H raised a complaint with NewDay because she felt she hadn't been able to afford any of the new or further credit that NewDay had provided her with, and that this should have been apparent to NewDay, had they undertaken checks into Mrs H's financial position before offering the credit to her.

NewDay looked at Mrs H's complaint. They confirmed that in all instances they had undertaken checks into Mrs H's financial position before offering the credit to her, and that there hadn't been anything resulting from those checks which they felt should have given them cause to suspect Mrs H might not be able to afford the credit she was being offered.

Mrs H wasn't satisfied with NewDay's response, so she referred her complaint to this service. One of our investigators looked at this complaint. They felt that it was reasonable for NewDay to have approved Mrs H's first credit account application. But they felt that it should have been apparent to NewDay from the information available to them that Mrs H's financial position then worsened such that the second credit limit increase on that account, and all subsequent provisions of credit, shouldn't have been offered to Mrs H.

NewDay didn't agree with the view of this complaint put forwards by our investigator, so the matter was escalated to an ombudsman 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.

It's for a business to decide whether it will offer credit to a customer, and if so, how much and on what terms. What this service would expect would be, that before approving a customer for a new line of credit, or before increasing the amount of credit available to a customer on an existing line of credit, the business would undertake reasonable and proportionate borrower focussed checks to ensure that any credit being offered to a customer is affordable for that customer at that time.

NewDay believe that they did that here, and note that at the time of the application they took information from Mrs H about her employment status and annual income, and obtained information about Mrs H from a credit reference agency so as to get a better understanding of her wider financial position. And NewDay contend that there was nothing resulting from that information they feel should have given them any reasonable cause to believe that Mrs H might not be able to afford the credit she was subsequently approved for.

At the time of the first credit account application, in October 2018, Mrs H told NewDay that she was employed with a gross income of £26,000 per year. NewDay also reviewed Mrs H's credit file, which showed that Mrs H wasn't in arrears on any of her existing credit commitments at that time and had a relatively low level of existing unsecured debt of roughly £1,100. Taking these points into consideration, I don't feel that it was unreasonable for NewDay to conclude that Mrs H would most likely be able to afford a new credit account with the relatively low initial credit limit of £900.

It must be noted that Mrs H's credit file did show some defaults and public records (a category which includes County Court Judgements). But it also showed that the last default happened over three and half years before the application and the last public record was dated almost two years before. As such, I'm satisfied that it was reasonable for NewDay to consider these events to have happened sufficient long ago at the point of application for them to have not been of concern to NewDay, especially considering that Mrs H appeared to be able to comfortably afford the new line of credit she was applying for, as explained above.

In January 2019, three months after the account was opened, NewDay increased the credit limit on the account from £900 to £1,900. Before doing so, NewDay reviewed how Mrs H had managed and maintained the credit account up to that time and obtained updated information about Mrs H from a credit reference agency.

At first glance, there are elements of how Mrs H had maintained the credit account in those first three months that appear concerning. For instance, Mrs H had exceeded the £900 credit limit available to her during two of those three months and had incurred over limit fees as a result. Additionally, Mrs H had also withdrawn cash from the credit account during all three months, albeit at low amounts, and had again incurred fees as a result. And it should be noted that the use of a credit account to provide cash can be seen as indicator of potential financial difficulty, especially alongside other such indicators, such as going over the credit limit of an account, as Mrs H had.

But while Mrs H's management of her credit account did appear potentially concerning, the updated credit file information that NewDay obtained appeared to show that Mrs H's financial position appeared similar to how it had been when she applied for the credit account – with no record of Mrs H being in arrears on any of her existing credit commitments, and with Mrs H having a relatively low amount of existing unsecured debt at approximately £1,700.
In consideration of all these points, I do feel that it was reasonable for NewDay to have offered the further credit to Mrs H that they did. And this is because I feel that the affordability demonstrated by Mrs H's credit file carries greater weight than how Mrs H had managed her credit account up to that time – which given the apparent affordability of the credit account could plausibly have been a result of account mismanagement by Mrs H rather than being a symptom of any financial difficulty on Mrs H's part.

In June 2019, NewDay increased the credit limit on Mrs H's account again, from £1,900 to £3,100. At that time however, while Mrs H's recent management of her NewDay account appeared unproblematic, there were notable changes to her financial position apparent from her credit file which I feel should have given NewDay cause for concern.

Notably, the amount of unsecured debt that Mrs H held had increased several-fold, from £1,700 to over £8,300. This is a significant increase, with the majority of that increase taking place the month before NewDay offered the second credit limit to Mrs H. And at the very least I feel that this significant increase in Mrs H's use of credit should have prompted NewDay to take a more detailed look at Mrs H's financial position to confirm whether there might be any evidence of financial difficulty at that time before offering further credit to her.

There's no set requirement as to what form such further checks must entail. But given the circumstances here I feel that they should, in all likelihood, have included a review of Mrs H's current account statements for the months leading up to the increase. Accordingly, I've reviewed Mrs H's current account statements for these months, to assess what NewDay would have seen had they reviewed them. And having done so I feel that had NewDay undertaken further checks into Mrs H's position as I feel they reasonably should have done, it would have become apparent to them that the provision of further credit to Mrs H at that time most likely wouldn't have been in Mrs H's best interests.

One reason I say this is because it would have become evident to NewDay that Mrs H had taken loans from lenders often associated with short-term high-interest 'payday' loans. The use of such loans can be a strong indicator of potential financial difficulty, and further review of Mrs H's current account statements would have shown that her monthly communication, rent, and credit repayment commitments were already such that she was left with only approximately £175 per month to use on other essential spend, such as food and utilities.

So, while Mrs H continued to have not fallen into arrears on any of her existing credit commitments at the time of the second credit limit increase, it seems highly probable from Mrs H's financial information at that time that an increasing reliance on credit on Mrs H's part was a significant reason for this. A reliance on credit to maintain credit isn't sustainable, and so in consideration of Mrs H's deteriorating financial position here, I don't feel that it was reasonable or in Mrs H's interests for NewDay to have provided further credit to her at that time. And it follows from this that I'll be upholding this aspect of Mrs H's complaint.

In September 2020, Mrs H applied for a second NewDay administered credit account. At that time, Mrs H told NewDay that she was employed with a gross income of £27,200 per year. And Mrs H's credit file showed that Mrs H had unsecured debt of £11,400 and that she wasn't in arrears on any of her existing credit commitments or appeared to be in any financial difficulty at that time.

It should be reiterated that it's my position that, in regards to the first account, I feel that NewDay should have been given cause for concern by a sharp increase in Mrs H's total amount of unsecured debt such that they should have undertaken more detailed checks, and that I feel that those more detailed checks would have highlighted that Mrs H wasn't in a position whereby the provision of further credit to her was reasonable. So, I've considered whether a similar rationale applies regarding the application for the second credit account. This is because the ongoing credit file information the NewDay obtained in regard to the first credit account showed that, in the months leading up to the second credit account application, Mrs H's total amount of unsecured debt was generally reducing, reaching a low of roughly £6,700 in August 2020.

However, when Mrs H applied to NewDay for the second credit account a month later, in September 2020, her amount of total unsecured debt had increased significantly again, with NewDay using a figure of £11,400 in their assessment of Mrs H's second application – an increase from the previous month of £4,700.

While this higher amount of total unsecured debt isn't prohibitive taken in isolation, especially in consideration of Mrs H's declared gross annual income of £27,200, I do feel that the sharp rise in Mrs H's unsecured debt should have given NewDay cause to undertake more detailed checks into Mrs H's financial position before providing further credit to her. And once again, I feel that these checks should in all reasonableness have included a review of Mrs H's current account statements for the months leading up to the second account application.

Accordingly, I've reviewed Mrs H's current account statements for the months leading up to the second account application, so to understand what NewDay would have seen had they reviewed them.

It's evident from these statements that Mrs H was employed with a net monthly income of approximately £1,500. This net income amount isn't consistent with a person earning £27,200 per annum but is more consistent with a gross annual income of around £22,500. And it's notable from the statements that the amount that Mrs H was paid every month remained consistent and didn't vary, and so I'm satisfied that Mrs H's actual income was most likely lower than the amount she declared to NewDay.

It's also notable that Mrs H was making several payments to credit providers and that her account was maintained regularly in an overdrawn position. Perhaps most tellingly, it's evident from the statements that Mrs H was having to make transfers into her current account from another account in order to get by. I've asked Mrs H to provide statements for this other account, which it transpires is a Child's Instant Saver account, i.e. an account held in trust by Mrs H for the benefit of her children.

Given then that Mrs H was effectively having to use money that was held in trust for her children to supplement her income, which was insufficient to meet the needs of her existing credit commitments and provide enough for her monthly spending, I find it very difficult to conclude that the provision of further credit to Mrs H was in Mrs H's best interests at that time – and I feel that this should have been apparent to NewDay, had they undertaken the more detailed checks into Mrs H's financial position I'm satisfied they should have done.

All of which means that I feel that while it was reasonable for NewDay to have approved Mrs H's first application for credit in October 2018, and to have increased the credit limit on that account in January 2019, I feel that all subsequent provisions of new or further credit were provided irresponsibly by NewDay to Mrs H. And it follows that I'll be upholding this complaint in Mrs H's favour on that basis accordingly.

Putting things right

NewDay must reimburse to Mrs H's first credit account all interest and charges incurred on the account from the point of the credit limit increase to £3,100 in June 2019 onwards.

NewDay must also reimburse to this account all interest relating to any portion of the balance over £1,900 from that same time onwards.

And NewDay must reimburse to Mrs H's second credit account all interest, fees, and charges incurred on that account from the point of opening.

If these reimbursements result in one or both of the accounts having a credit balance in Mrs H's favour, NewDay must pay this balance to Mrs H along with 8% simple interest calculated to the date of repayment.

If the reimbursements instructed above result in one or both accounts having a balance remaining outstanding for Mrs H to pay, NewDay must contact Mrs H to arrange a suitable repayment plan with her.

Finally, NewDay must remove all adverse reporting from Mrs H's credit file in relation to the first credit account from June 2019 onwards and in relation to the second credit account from the point the account was opened.

My final decision

My final decision is that I uphold this complaint against NewDay Ltd on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 15 September 2022.

Paul Cooper
Ombudsman