

## The complaint

Ms B complains that NewDay Ltd, trading as Aqua, should not have agreed her credit card application or increased her credit limit as the lending was both unaffordable and irresponsible.

## What happened

Ms B is represented in this complaint. However, for the sake of simplicity in this decision I have referred to all the submissions from Ms B's representative as being made by Ms B.

Ms B applied and was accepted for an Aqua credit card with NewDay in November 2016. Over the next three years she was offered several credit limit increases. The dates of these are as follows:

	Date	Limit
1 <sup>st</sup> increase	March 2017	£1,250
2 <sup>nd</sup> increase	September 2017	£2,250
3 <sup>rd</sup> increase	January 2018	£2,750
1 <sup>st</sup> Decrease	July 2018	£1,450
4 <sup>th</sup> increase	July 2019	£2,450

In December 2021 Ms B complained to NewDay. She said she was provided with credit she could not afford nor was it sustainable given her financial circumstances.

In its final response NewDay said it was satisfied Ms B had been provided with the account correctly and in line with NewDay's responsible lending policy. It went on to say that it was satisfied that each credit limit increase was provided to Ms B correctly, again, in line with its lending policy. It said it was also satisfied adequate checks were completed to ensure these were affordable.

Ms B didn't agree and brought her complaint to this service. Our investigator concluded the checks NewDay did during the application stage of the credit card were reasonable and proportionate and he didn't think there was any indication that Ms B would have had difficulty repaying the account. But he thought that the checks NewDay did prior to the first credit limit increase and for the subsequent increases, were not reasonable and proportionate. He also concluded that had NewDay done such checks they would've likely shown that Ms B wouldn't have been able to make her repayments sustainably and that NewDay wouldn't have lent to her on that basis.

NewDay didn't agree and asked for a final decision from an ombudsman. It said it still believed it acted fairly and that sufficient checks had been done. It said they had no indication of any financial strain for Ms B and there was nothing which indicated that Ms B would struggle to make repayments. It said she had no arrears, no defaults, no payday loans, no over limit fees, and no late payment fees.

## 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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance, and good industry practice - on our website and I've taken that into account when I have considered Ms B's complaint.

Before granting credit, NewDay was required to carry out a reasonable and proportionate assessment of Ms B's ability to sustainably repay the debt. This is often referred to as an 'affordability check'. This check had to be borrower-focussed. This means it needed to be concerned with whether Ms B could sustainably afford the borrowing (considering her specific circumstances), rather than how statistically likely she was to repay. The latter is the risk posed to NewDay as the lender, or their 'credit risk' but this is not necessarily the same as an assessment of affordability.

What's considered reasonable and proportionate will vary depending on several factors and there isn't a one-size-fits-all approach to what is considered proportionate.

### *Account application*

	Date	Limit
<i>Account opening</i>	<i>November 2016</i>	<i>£250</i>

NewDay said it doesn't rely on evidence of income and expenditure by way of bank statements. It said, for example, when assessing creditworthiness, it used the information submitted by Ms B, which was then verified against several external data sources.

NewDay went on to explain it assesses applications for affordability via a credit reference agency income and expenditure model. It said the underwriting data for Ms B's application showed that NewDay completed reasonable and proportionate checks before accepting the application.

As part of the checks NewDay did at the time of the application Ms B told NewDay that she worked as a part-time contractor, and her annual income was £18,000. The checks NewDay did with credit reference agencies showed she owed approximately £200 to other creditors, and all her credit accounts were up to date with no sign of any historic credit problems.

It's important to note that the checks must be proportionate to the amount being lent – so the higher the amount, the greater the checks likely should be, and the lower the amount, then less thorough checks can potentially be made. In this case the original application was for a modest credit limit of £250. I think the checks done by NewDay were reasonable and proportionate and I've not seen any evidence that this credit limit would be unaffordable for Ms B.

### *1<sup>st</sup> Credit limit increase*

	Date	Limit
<i>1<sup>st</sup> increase</i>	<i>March 2017</i>	<i>£1,250</i>

NewDay offered Ms B a credit limit increase from £250 to £1,250 three months after the account was opened. Given it was such a short time after the account opening there isn't a lot of data to support how she was managing the account for NewDay to rely on when deciding to increase her credit limit. NewDay hasn't provided any evidence that it sought

further information after the account opening. So NewDay would've likely relied on the information Ms B provided when she opened the account and on information from credit reference agencies either at the time of the application or updated two to three months later.

As I mentioned above an opening credit limit of £250 was modest but as Ms B's lending increased so I would expect NewDay's affordability checks prior to lending more to be deeper. A £1,250 increase is a fourfold increase on her original limit and given its proximity in time to the account opening it appears NewDay relied only on the application information when assessing the affordability of this increase.

I say this because Ms B's lending appeared to have increased sharply after she opened her NewDay account according to the credit data provided to NewDay. She had only one account when she applied for the card, with £200 owed to her creditors. When NewDay applied the credit limit increase this had increased to four accounts with nearly £1000 owed to creditors. So, I believe further reasonable and proportionate checks to verify her income were likely needed to ensure payments would be sustainable for the increased credit limit.

Ms B provided this service with bank statements from November 2016 onwards. In her application data Ms B said she was a part-time contractor with an annual income of £18,000. This would equate to an average of £1,500 per month. From the bank statements I can see that Ms B's income from employment was intermittent and significantly lower than £1,500 per month – around £200-400 in the months prior to the increase. Ms B was also in receipt of tax credits and child benefit which formed a substantial portion of her income. I'm persuaded that had NewDay verified her income it would've shown that Ms B would be unlikely to sustainably afford repayments on a credit limit of £1,250. And I think it unlikely it would have increased Ms B's credit limit as it did.

#### *Subsequent credit limit increases*

	Date	Limit
<i>2<sup>nd</sup> increase</i>	<i>September 2017</i>	<i>£2,250</i>
<i>3<sup>rd</sup> increase</i>	<i>January 2018</i>	<i>£2,750</i>
<i>1<sup>st</sup> Decrease</i>	<i>July 2018</i>	<i>£1,450</i>
<i>4<sup>th</sup> increase</i>	<i>July 2019</i>	<i>£2,450</i>

NewDay applied two further credit limit increases proactively to Ms B taking her credit limit to £2,750. As I've concluded that NewDay should have completed further affordability checks prior to the first increase and I think it likely these checks would've impacted NewDay's lending to Ms B it follows that this would've also impacted the lending decisions of September 2017 and January 2018. I note from NewDay's affordability data Ms B's unsecured credit had increased to almost £1,946 in September 2017 and £3,632 in January 2018. Had NewDay verified Ms B's income for the increases in these periods it would have likely seen that Ms B's financial situation hadn't improved. Her monthly income through employment appeared to remain substantially below £1,500 and she was relying on her benefits and financial payments from her partner. In August 2017 Ms B was able to make payments totalling £1,360 to her NewDay credit card account but, having examined her bank statements, I'm persuaded this was only possible because of significant payments into her bank account by her partner.

It is also noticeable that Ms B's bank statements consistently do not show any utility, council tax or rental payments going out and that along with tax credits she is in receipt of child benefit for one child. This indicates to me she has a dependent child and that she herself was likely financially dependent on her partner or others.

In July 2018 NewDay wrote to Ms B to say it had reviewed her account and was reducing

her credit limit to £1,450. But NewDay hasn't explained how it came to decide that a £1,450 credit limit was affordable for Ms B. I can see that Ms B hasn't missed payments or exceeded her limit. In its response to this service NewDay said that Ms B fell into financial hardship a year after her final credit limit increase. And that there is no evidence of her financial difficulty prior to the increases. In its letter to Ms B dated July 2018 NewDay said it felt the limit of £1,450 to be more appropriate. This suggests to me that NewDay was somewhat aware of the need to reduce Ms B's credit limit, because it did, which would indicate Ms B was under some financial pressure. At the time of the credit limit increase there is a public record (e.g. County Court Judgement) noted on Ms B's credit file.

A year later NewDay increased the credit limit again to £2,450. As Ms B already had one public record on her credit file and an increasing debt burden (around £4,500) since the credit limit had reduced, I consider that further reasonable and proportionate checks were likely necessary to see if the new limit was affordable. I say this because NewDay had reduced her credit limit to what it thought was more appropriate. And so, I would expect that a subsequent decision to increase the credit limit would be based on new or revised information about Ms B's financial situation to ensure that increasing the limit was also appropriate.

While I accept that Ms B was making payments and not exceeding her limit this represents an assessment of the risk posed to NewDay, it doesn't necessarily mean the payments were affordable. Further checks could have included verification of Ms B's income, and at this point I'm persuaded that proportionate checks should have also included a review of Ms B's income verses expenditure. I say this because NewDay had previously reduced her credit limit while Ms B's debt burden had increased along with the public record appearing on her credit file.

Had NewDay done this it would likely have seen that Ms B continued to rely on benefits, including by now Income Support, and assistance from her partner. And that Ms B had started to make payments to a debt collection company.

Ms B's debts appear to reduce occasionally. But I note no substantial payments towards her NewDay account from Ms B's own bank account. And as our investigator noted it doesn't appear to make any difference to her overall situation. Ms B's financial circumstances hadn't changed much, if at all, since NewDay agreed to increase the limit in March 2017. And so there appears to be no obvious reason that she would be able to take on more credit beyond the first increase.

In summary I'm persuaded that NewDay should have implemented further affordability checks prior to the credit limit increases in September 2017 and January 2018. I'm also persuaded NewDay was aware that Ms B was under some financial pressure because it reduced her credit limit in July 2018. And as a result of that I think NewDay should have at least verified Ms B's income prior to the increase in July 2019. Had it done so I think NewDay would have concluded that payments on the credit limit of £2,450 wouldn't have been affordable for Ms B. So, I'm persuaded that NewDay shouldn't have increased Ms B's credit limit from £250.

After our investigator issued their view Ms B noted that her second NewDay credit card account had not been considered within this complaint. I note that on the original complaint to NewDay only the Aqua credit card was the subject of the complaint. In its final response NewDay only considered the Aqua credit card. If Ms B believes that her second credit card was unaffordable and that NewDay lent to her irresponsibly she must first complain to NewDay so that it has a chance to investigate prior to bringing the complaint to this service.

## **Putting things right**

As I don't think NewDay should have increased Ms B's credit limit from £250 I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Ms B has had the benefit of all the money she spent on the account.

To put things right NewDay Ltd must:

- Rework the account removing all interest, fees, charges, and insurances (not already refunded) that have been applied to balances above after March 2017.
- If the rework results in a credit balance, this should be refunded to Ms 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 March 2017 regarding this account from Ms B's credit file.
- Or, if after the rework the outstanding balance still exceeds £250, NewDay should arrange an affordable repayment plan with Ms B for the remaining amount. Once Ms B has cleared the outstanding balance, any adverse information recorded after March 2017 in relation to the account should be removed from her credit file.

\*HM Revenue & Customs may require NewDay to take off tax from this interest. If it does, NewDay must give Ms B a certificate showing how much tax it's taken off if she should ask for one.

## **My final decision**

My final decision is that I uphold this complaint and NewDay Ltd, trading as Aqua, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 17 January 2023.

Maxine Sutton  
**Ombudsman**