

## The complaint

Miss D 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

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

Miss D applied and was accepted for a credit card with NewDay in August 2013. Over the course of the next three years she was offered several credit limit increases. The dates of these are as follows:

	Date	Limit
Account opening	August 2013	£250
1 <sup>st</sup> increase	June 2015	£500
2 <sup>nd</sup> increase	January 2016	£1,000
3 <sup>rd</sup> increase	June 2016	£1,600
4 <sup>th</sup> increase	October 2016	£2,200

In July 2021 Miss D 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 that each credit limit increase was provided to Miss D correctly and in line with its lending policy. It said it was satisfied adequate checks were completed to ensure these were affordable.

Miss D wasn't satisfied and brought her complaint to the service. She said NewDay didn't tell her about the credit increases and that it wouldn't help her when she told it she had financial difficulty. She said at the time she took out the credit card she was working limited hours on a low income and the credit limit kept being increased despite her income not matching the affordability. She said the debt has financially crippled her. And it has triggered mental health problems including anxiety. She said she had to borrow money from friends and family.

In his view on the merits of the complaint our investigator concluded that the decision to agree the application in August 2013 and the credit limits of July 2015 and January 2016 were reasonable. And he couldn't identify any certain signs that suggested the repayments were likely to have been unsustainable for Miss D and unaffordable as a result. But he concluded that the lending decisions in June 2016 and October 2016 were unaffordable. NewDay disagreed and asked for a final decision from an ombudsman. It provided additional comments to which I have responded below where appropriate.

## 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 considering complaints about unaffordable and irresponsible lending is set out on our website. I've had this approach in mind when I've considered Miss D's complaint.

Before granting credit, NewDay was required to carry out a reasonable and proportionate assessment of Miss D'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 Miss D 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.

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 fewer checks can be made.

If I think Miss D has been disadvantaged in any way by NewDay's actions, I'll go on to consider what I think is a fair way to put things right.

#### Account opening and first two credit limit increases

	Date	Limit
Account opening	August 2013	£250
1 <sup>st</sup> increase	June 2015	£500
2 <sup>nd</sup> increase	January 2016	£1,000

In this context, I think it's reasonable to say that the initial issue of the credit card with a limit of £250 could be considered a modest amount of credit – and so I think the checks could've been less than for the higher limits.

I think NewDay completed proportionate checks before approving the credit card. From the application data provided by Miss D I can see an income of £22,000. The information suggested she was employed. There was some unsecured debt on her credit file of £8,700, but she was performing well on her credit commitments. She hadn't incurred any defaults on her accounts, and she wasn't in arrears. There was also no evidence of any County Court judgements.

The application date was 26 July 2013. Miss D provided a copy of her P60 for financial year to April 2014 to this service which states her annual income of £14,529. It's not clear to me why the income at the end of that financial year was lower than the figure Miss D provided to NewDay in the previous July but I don't think there was anything that suggested NewDay needed to verify the income Miss D had reported. Miss D has said she was in arrears with essential living costs at the point of sale and that NewDay should have picked up on this. I'm not disputing Miss D when she says she was having difficulty at this stage but there's no evidence that NewDay could rely on to suggest this was the case in the checks that it did do. On that basis given the low level of Miss D's credit limit I don't think NewDay was wrong to approve the credit card application.

In June 2015 the limit was increased to £500 and then to £1,000 in January 2016. I can see that both increases were offered to Miss D proactively and made based on how Miss D was managing her credit card. I can see that Miss D had one late fee in September 2015 but she

brought the account up to date the following month. She also exceeded her credit limit in May 2015 and November 2015 but each time she made a significant payment the following month exceeding the minimum payment necessary. This suggests Miss D was aware she'd gone over and made a concerted effort to bring her account to order. Prior to March 2016 NewDay's external credit check with credit reference agencies was reporting a low level of debt, £228 in July 2015 and £221 in January 2016. So I think the checks NewDay carried out for each of these raises were proportionate. I don't have enough evidence to suggest that the borrowing was unaffordable based on Miss D's stated income at the time of the initial application. And Miss D herself was responsible for providing that figure.

### Third and fourth limit increases

	Date	Limit
3 <sup>rd</sup> increase	June 2016	£1,600
4 <sup>th</sup> increase	October 2016	£2,200

I think at this point, June 2016, NewDay shouldn't have offered to increase the credit limit without further checks being carried out. I can see from Miss D's credit file that shortly after the previous increase Miss D applied for more credit in the form of short-term loans and mail order credit. Between January 2016 and June increases there were two loans and then before October 2016 there were another four loans and mail order credit accounts. Miss D used her full credit allowance almost immediately in June 2015 and January 2016 and incurred a late payment fee in March 2016.

I can see from the external credit reference agency data provided by NewDay as evidence of its risk and affordability check that in March 2016 Miss D's level of debt increased sharply from zero to £15,000 for one particular agency. This indicates to me that either Miss D's other creditors weren't reporting her debt to the external agency or NewDay hadn't collected data from that agency previously. Either way from March 2016 NewDay was aware that Miss D's overall indebtedness was much higher than previously reported.

Had NewDay applied further proportionate checks, given the proposed credit increase was six times then nine times the original limit, by, for example, verifying Miss D's income and examining bank statements for income/expenses it would've seen that Miss D was likely relying on loans and credit. Miss D provided copies of her P60 for 2014-2018. In 2014 she earned £14,500, in 2015 she earned £11,800 and in 2016 she earned £10,800. Had NewDay gone further and examined her income and expenditure it would've realised Miss D was no longer earning the £22,000 she stated in her initial application and was in fact earning substantially less. Miss D's income during 2016 would've averaged £900 per month. I've examined Miss D's credit file and can see that just prior to June 2016 a large proportion of her income, more than 85%, was used for loan repayments.

I think it's unlikely that NewDay would've agreed to the increases – I don't think the checks it did were proportionate to the limits it offered and in Miss D's circumstances. And I think had they done the checks NewDay would've seen that Miss D would've been unlikely to make repayments sustainably.

In response to our investigators view NewDay said an automatic review was carried out in which an assessment of regulatory, risk and affordability exclusions was conducted. It said credit limit increase offer letters were sent to Miss D following a successful assessment. The increases were then manually accepted by Miss D following her receipt of them. Miss D has said she didn't receive these letters. NewDay provided a copy of these and I'm satisfied they were likely sent.

NewDay went on to say that automatic offers can be declined at any point prior to the actual increase taking place and any opt-in offer that is not accepted by the customer will be removed post expiration. It said alternatively, the customer can contact it to have the increase applied sooner and it said it withdraws offers during the offer period if a customer's financial situation changes.

I accept that Miss D could've opted out of the offered increases and indeed Miss D should accept some responsibility as I mentioned above. But I don't believe this removes NewDay's obligations in ensuring they carry out proportionate checks to ensure the lending is affordable and can be repaid sustainably.

NewDay went on to say that Miss D exceeded her credit limit twice and made two late payments in the 12 months before the June 2016 credit limit increase. But, it said, they were not consecutive and appear to NewDay to be isolated incidents. It said Miss D caught up with her missed payments and brought the account back under her credit limit in a timely manner. I can see that seemingly isolated incidents might not raise a red flag, NewDay increased Miss D's credit card limit from £250 to £2,200 without doing additional checks on her income and expenditure and ability to repay. While I'm satisfied the checks were proportionate for the borrowing up to £1,000, I'm persuaded that at this point additional checks were needed. And, had they been done I don't believe NewDay would've increased the credit limits as it did.

### **Putting things right**

As I don't think NewDay should have increased Miss D's credit limit from £1,000, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Miss D has had the benefit of all the money she spent on the account so I think she should pay this back.

To put things right NewDay Ltd, trading as Aqua must:

1. Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £1,000.
2. If the rework results in a credit balance, this should be refunded to Miss D 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 June 2016 regarding this account from Miss D's credit file.
3. Or, if after the rework the outstanding balance still exceeds £1,000, NewDay should arrange an affordable repayment plan with Miss D for the remaining amount. Once Miss D has cleared the outstanding balance, any adverse information recorded after June 2016 in relation to the account should be removed from her credit file.

As NewDay has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with it to ensure the redress set out above is carried out promptly.

\*HM Revenue & Customs may require NewDay to take off tax from this interest. If it does, the business must give Miss D 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 23 November 2022.

Maxine Sutton  
**Ombudsman**