

## **The complaint**

Mr M complains that NewDay Ltd, trading as Aqua, lent to him irresponsibly.

## **What happened**

In January 2018 Mr M opened a credit card account with NewDay. He had an initial account limit of £1,200 which was increased to £2,400 in September 2018. Further increases in January and May 2019 resulted in an eventual credit limit of £4,300.

Mr M says that NewDay shouldn't have lent to him because he couldn't afford it. He indicates that if NewDay had done the checks on him which it should have done it would have realised he couldn't afford to repay the credit extended to him in a sustainable way over a reasonable period of time.

NewDay says that it did all the necessary and proportionate checks and these showed that Mr M could afford the credit that was extended to him.

Our investigator thought that NewDay shouldn't have lent to Mr M. They thought that NewDay should have completed further checks when it noted Mr M's very low income and that these likely would have shown that he would struggle with any more debt. Our investigator thought that NewDay's checks showed that Mr M had very little disposable income and would have struggled to make his repayments on the card in a sustainable way. Our investigator said that NewDay should refund any interest and charges paid by Mr M and it should remove any adverse information on Mr M's record as a result of the interest and charges.

Mr M agreed with our investigator's view. Despite a number of contacts with NewDay it did not respond to the view of the investigator. As NewDay did not respond with formal agreement, the case has been passed to me to make a 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.

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 considered Mr M's complaint.

NewDay needed to take reasonable steps to ensure it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr M could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts, Mr M's borrowing history and his income and expenditure.

NewDay says its credit check results didn't show anything negative to suggest it would have been unreasonable to have provided Mr M with the credit. It says it asked him about his income and it also had information about other credit he had elsewhere and that none of this caused concern. It says there was no evidence of hardship or vulnerability.

However, I think that the results of NewDay's checks should have been a cause for concern. Mr M told NewDay that he earned only around £12,000 a year – less than £1,000 net a month. He had a mortgage of over £50,000 and no other income in the household. Even though it seemed he had only £400 in other unsecured debt his indebtedness score was high. NewDay didn't have any information about whether Mr M had any payday loans. I think these elements alone should have made NewDay seek a better understanding of Mr M's financial situation before lending to him by at the very least verifying his income and expenditure.

It's not possible to tell exactly what additional checks NewDay might have done. In the absence of any further checks I think it's reasonable to rely on the bank statements that Mr M has provided to this service to show what NewDay likely would have seen if it attempted to verify Mr M's income and expenditure. Having reviewed these I think it is clear that he would struggle to repay any additional lending. His net income was actually only around £720 with his essential outgoings amounting to more than this. Mr M had no disposable income and no way of sustainably affording further credit.

I think it should have been evident to NewDay that Mr M wouldn't have had the capacity to sustainably repay the new account. It follows that I agree with our investigator that NewDay was wrong to lend to Mr M in the first place.

Although it is not necessary for me to review the affordability of the further credit limit increases given my finding that NewDay should not have offered credit to Mr M at all, I think it is useful to set out what NewDay knew when it provided these increases.

Mr M quickly got into trouble with the credit after opening the account. Within three months of the account opening he began to be regularly over the limit of his account and incurring charges for this. For a period of several months he seemed unable to bring his borrowing down below his credit limit and this was compounded by the charges imposed by NewDay. His available unsecured credit through other revolving credit sources increased greatly throughout the next few months until in September (when the first credit increase was provided) it had risen to over £4,000 and in December 2018 it reached nearly £14,000 – considerably in excess of a year's gross income for Mr M. NewDay increased Mr M's credit limit further in January 2019. This was clearly unaffordable for Mr M, and had he not been provided with the credit account in the first place these further increases couldn't have happened.

## **Putting things right**

As I don't think NewDay ought to have opened the account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I think Mr M should pay back the amounts he has borrowed. Therefore, NewDay should:

- Rework the account removing all interest and charges that have been applied.
- If the rework results in a credit balance, this should be refunded to Mr M 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 regarding this account from Mr M's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange

an affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

\*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mr M a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

### **My final decision**

I uphold Mr M's complaint and direct that NewDay Ltd trading as Aqua put things right in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 October 2022.

Sally Allbeury  
**Ombudsman**