

The complaint

Mrs B complains that NewDay Ltd trading as Aqua (NewDay) lent to her irresponsibly when it gave her a credit card.

Mrs B is assisted in this matter by her son. But, for ease, I'll refer to Mrs B throughout.

What happened

Mrs B took out an Aqua branded credit card with NewDay in February 2020 with a credit limit of £1,200 and an APR of 29.7%. In summary, she complains that NewDay acted irresponsibly by providing her with the card as she wasn't able to afford it. She says that she applied under the pretence of earning £20,000 annually, but she actually hadn't been employed for a very long time and was receiving benefits at the time. Mrs B said that she has had to borrow money from family and friends to cover the repayments on the card, which has caused her anxiety towards the end of each month.

NewDay reviewed Mrs B's complaint but didn't think it had lent to her irresponsibly. It explained it was a second chance lender, and so its credit was designed to help consumers with a lower credit rating. In terms of Mrs B's application, it said it checked the data she had provided against external credit file information. Overall, Mrs B had met its acceptance criteria and so it didn't think it had lent irresponsibly.

Mrs B remained unhappy with NewDay's response, so she brought her complaint to this service. One of our investigators reviewed matters and didn't think NewDay had lent irresponsibly. He thought the checks it had completed at the point of application were reasonable and proportionate to the amount borrowed, which he thought was fairly modest. And, he didn't think NewDay needed to take further steps to verify the information it had seen.

NewDay didn't dispute our investigator's findings, but Mrs B did. In summary, she didn't agree that the credit limit was a modest amount. She reiterated that she wasn't employed at the time and was receiving benefits. She also pointed out that her credit file showed other outstanding debt, one of which was in arrears at the point NewDay supplied the credit card. And, there was a County Court Judgement (CCJ) which had been issued against her which was visible on the credit file, which she said ought to have raised concern with NewDay.

I issued a provisional decision explaining that I didn't think NewDay had completed proportionate checks and had it done so, I didn't think it would have lent to Mrs B. Mrs B responded to the decision. In summary, she agreed with the decision but also thought NewDay should pay her £300 for the stress she went through over the past two years because of this matter. She also explained that the outstanding balance had been sold on to a third-party debt purchaser.

NewDay also responded to the decision and, in summary, mostly repeated its earlier points. It also pointed out that Mrs B had provided incorrect information on her application to obtain credit. NewDay also said it was previously unaware that Mrs B was having trouble making

repayments. It explained that it would have taken steps to help her manage the account if she had contacted NewDay about this.

Shortly afterwards, further correspondence was sent to the parties which explained that I was still minded to uphold Mrs B's complaint for the reasons outlined in the provisional decision, however I had amended the redress I was recommending. This was mostly because it had come to my attention that NewDay had sold an outstanding balance on the account to a third-party debt purchaser. I also provided further clarification about how any adverse information should be recorded. Neither party provided any new information in response to the proposed redress amendment.

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.

Having done so I haven't changed the opinion I expressed in my provisional decision, or the amended redress I clarified in the subsequent correspondence sent. I've explained my reasoning below. But before I do so, I want to say that I have taken on board all of the additional comments that both parties raised in response to the provisional decision.

The rules and regulations in place at the time NewDay provided Mrs B with the credit card, required it to carry out a reasonable and proportionate assessment of whether she could afford to repay what she owed in a sustainable manner. This is sometimes referred to as an 'affordability assessment' or 'affordability check'.

The checks had to be 'borrower' focused. This means NewDay had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mrs B. In other words, it wasn't enough for NewDay to consider the likelihood of it getting the funds back – it had to consider the impact of any repayments on Mrs B.

Checks also had to be 'proportionate' to the specific circumstances of the lending. In general, what constitutes a proportionate affordability check will be dependent on a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they were seeking.

I've kept all of this in mind when thinking about whether NewDay did what it needed to before lending to Mrs B. NewDay has outlined that it is a second chance lender. I have also kept this in mind throughout, however, it's important I point out that it is still required to carry out reasonable and proportionate checks to ensure the lending is sustainably responsible.

NewDay said when considering Mrs B's application, it took into account the information she provided on the application and also information held by the Credit Reference Agencies (CRAs). Based on this, it gathered that Mrs B was: employed and earning an annual income of £20,000, had unsecured debts of £1,000, had no defaults, had no records of any pay day loans, had one account in arrears and one public record which was recorded 25 months ago.

Having thought about this carefully, I think NewDay should have ensured that the scope and extent of its checks were adapted to the circumstances of Mrs B's application. This was an application where NewDay was aware Mrs B had an outstanding CCJ for £1,600. This should have acted as a flag that if she wasn't able to satisfy that debt, then she might not be able to sustainably afford to repay the credit it was intending to provide her with. NewDay has also noted that Mrs B was in arrears on another credit card the month prior to her application with NewDay. This should have prompted NewDay to look more closely at

Mrs B's financial circumstances and carry out borrower-focused checks to satisfy itself that the credit would be sustainably affordable for her.

What would reasonable and proportionate checks have shown at the time?

Had NewDay completed further checks, and obtained more information about Mrs B's income and expenditure, it would have seen that Mrs B was receiving benefits of around £935 each month, with no other regular income, contrary to what she had inputted in her application. Mrs B has told this service that her rent and household bills amounted to approximately £833 each month – made up of £567 for rent and around £266 for household bills. Whilst most of these payments don't show on Mrs B's bank statements, she has told this service that these were paid using a payment card, which she loaded cash onto. Having reviewed Mrs B's statements, her cash withdrawals in the three months prior to opening the NewDay card support this and so, on balance, I find this plausible.

So, had NewDay completed further checks, it would have seen that Mrs B would have been left with just over £100 each month, not considering money for food or other essential spending. In addition, Mrs B's credit report shows that she had at least two other credit cards open at the time NewDay lent to her, one of which was in arrears. Mrs B said she paid the minimum monthly payments on these cards using bank giro, and therefore also in cash. So had NewDay completed further checks, it would have seen that overall, Mrs B was already left with very little disposable income at the time it lent to her.

I've considered that Mrs B declared that she was employed earning an annual income of £20,000, when this wasn't the case. However, this doesn't change my conclusion that NewDay needed to ensure it fulfilled its obligation to carry out proportionate checks before lending. And, in the circumstances of this particular case, I think the information it saw on Mrs B's credit file should have prompted it to carry out further checks into her wider financial circumstances. Had it done so, I don't think it would have lent to Mrs B. So, I'll need to next think about how it puts matters right.

Fair compensation – what NewDay should do to put things right

In most cases where credit has been provided where it shouldn't have been, it would be fair and reasonable for the lender to refund any interest and charges paid by the borrower, plus interest. And, the borrower would usually be expected to repay any remaining amount of the money they had been lent. So, I'd expect Mrs B to pay back the money she was lent, but not the interest.

I've considered that in response to the provisional decision, Mrs B has asked for additional compensation, in the region of £300 because of the stress the matter has caused her over the past two years. Whilst I don't dispute this matter would have been stressful for Mrs B, I'm not persuaded further compensation is due here. I say this because I've not seen enough to persuade me that NewDay has treated Mrs B so unreasonably, so as to require compensation over and above a refund of the interest and charges she paid.

With this in mind, NewDay should put things right for Mrs B by doing the following:

- Reworking Mrs B's credit card balance so that any interest, fees and charges applied to it are removed.

AND

- If an outstanding balance remains on the account once these adjustments have been made NewDay should contact Mrs B to arrange a suitable repayment plan for this. Any adverse information recorded should remain until any outstanding balance is cleared.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mrs B along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then NewDay should remove any adverse information, it is responsible for recording, from Mrs B's credit file.

† HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Mrs B a certificate showing how much tax it has taken off if she asks for one.

NewDay sold an outstanding balance on this account to a third-party debt purchaser. NewDay will need to either buy the account back from the third-party and make the necessary adjustments, pay an amount to the third-party in order for it to make the necessary adjustments, or pay Mrs B an amount to reflect the above to ensure that it fully complies with this direction.

My final decision

For the reasons I've explained above, my final decision is that I uphold this complaint. NewDay Ltd trading as Aqua should settle Mrs B's complaint in the way that I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 14 July 2022.

Hana Yousef
Ombudsman