

The complaint

Mr G has complained that NewDay Ltd trading as Aqua irresponsibly lent to him. He says he was provided with credit that he couldn't afford and he lost out as a result.

What happened

Mr G opened a credit card account with NewDay in November 2015. His credit limit was initially £300. In February 2016 his credit limit was increased to £950.

Mr G, through his representative, says that NewDay shouldn't have allowed him to open an account and it shouldn't have increased his credit limit once it had. Mr G says he was struggling to meet his repayments and had a lot of credit elsewhere, too. He says if NewDay had done adequate checks on his situation it would have seen that he wouldn't be able to repay his balance in a reasonable length of time.

NewDay says it didn't lend irresponsibly to Mr G and that it did all the necessary checks before it lent to Mr G – and when it increased his credit limit.

Our adjudicator thought that Mr G's complaint should be partially upheld. They thought that the lending decisions were reasonable, but that by August 2016 it was clear that Mr G was struggling with managing his finances and that NewDay should have stepped in at this point and shown him forbearance so his situation didn't get worse.

Our adjudicator said that NewDay should remove any interest and charges applied after 31 August 2016 and that it should arrange for his credit file to be amended if the outstanding balance had been cleared as a result.

NewDay disagreed. It said it had done sufficient checks and there were no indications of any financial strain. It said that Mr G hadn't contacted it about his financial difficulties until December 2021. NewDay disputed that this service should look at the way the account was managed by it outside of the two lending decisions.

As NewDay disagreed 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 I have considered Mr G's complaint.

NewDay needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr G

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 and Mr G's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

Certain factors might point to the fact that NewDay should fairly and reasonably have done more to establish that any lending was sustainable for Mr G. These factors include things like understanding Mr G's income, the total amount Mr G borrowed, and the length of time Mr G had been indebted. There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

When Mr G opened his account NewDay conducted a credit check. NewDay told us there were no signs of financial difficulties based on the checks it did. Having reviewed the results of the checks, I don't think there is anything to suggest that it would have been unreasonable for NewDay to have approved the account. They showed that Mr G was relatively highly indebted elsewhere but that he was managing his finances appropriately – there were no recent defaults or arrears and he wasn't in any payment or debt arrangements. They showed he had only £700 in unsecured debt.

I think this suggests that the decision to lend the initial £300 was reasonable. There were no obvious signs of financial distress and he had relatively low levels of debt. So, I don't think NewDay did anything wrong with its original lending decision.

Similarly, I think that when NewDay made the decision to increase Mr G's credit limit to £950 in February 2016 that there were no obvious reasons from NewDay's credit checks to think Mr G wasn't managing his finances well. Mr G had managed his credit card account well for the preceding three months and had made his payments on time. In the credit check data NewDay has provided there is limited information about his external credit at the time of the credit limit increase but there were no defaults or arrears.

This changed two months later in April 2016 when more information became available through the credit checks, and it became apparent that Mr G had been heavily reliant on pay day loans. It's not clear why this information wasn't available to NewDay from the first checks it did. The later checks showed Mr G had taken 56 payday loans in the past. It's not clear over what period but I think even if it was over a number of years this shows a reliance on high cost easily accessible credit. It also showed that he had opened three of these in the preceding three months (that is, from January 2016). The checks also showed that Mr G had a high level of revolving credit - £5,651.

I do not think NewDay's credit check data was particularly reliable. Mr G has provided a copy of his credit file and this shows that in January 2016 alone he took seven payday loans totalling about £1,700. In November and December 2015, he took a total of six payday loans totalling £1,094. He settled these quickly, never defaulting, but clearly at a very high cost.

From April to August 2016 Mr G went over his new limit in four of the five months, incurring charges each month. Even though this may not always be a sign of financial difficulty on its own, and he was still making his repayments each month, I think this should have been a cause for concern for NewDay. I say this because it now had more information available to it from its monthly credit checks. By August Mr G's revolving credit had risen to over £7,000. Mr G indicates that he was borrowing to pay off other debts and NewDay knew that Mr G was using payday loans – even if it didn't understand the full extent. And, of course, Mr G was regularly utilising more than 100% of the credit NewDay considered it appropriate to extend to him..

It's at this point I think NewDay should have stepped in. NewDay disagrees. It submits that this service should not review how it managed Mr G's account separately to his core complaint that the lending decisions were unaffordable for him. It says, '*The overlimit and payday lending activity have no correlation to the risk checks that were undertaken and so it follows that any concerns regarding financial difficulty and the way in which the business treated Mr G at that time, is separate to the complaint in hand.*' I disagree. As I have explained above, I think NewDay should have acted on the risk checks undertaken throughout the lending relationship. Mr G's complaint is about unaffordable lending as a whole, so it makes sense that I should look at the evidence in relation to the account in its entirety.

NewDay further submits that when customers go over their credit limits it writes to them to tell them to contact it if they are finding it difficult to pay. NewDay says it also signposts customers to debt management help. It says that it was Mr G's responsibility to contact it and tell it he was in financial trouble and that he didn't do this until December 2021. It also points to parts of the Financial Conduct Authority handbook (known as CONC) and Office of Fair Trading guidance which it submits indicates it met its obligations in relation to Mr G.

CONC 6.7.3B tells firms to '*take appropriate action where there are signs of actual or possible financial difficulties.*' CONC 1.3.1 identifies possible signs of financial difficulties such as adverse accurate entries on a credit file, which are not in dispute or an inability to meet repayments out of disposable income or at all, for example, where there is evidence of the customer having to borrow further to repay existing debts.

I am satisfied that the heavy reliance on payday loans indicated that Mr G was unable to meet repayments out of his disposable income and that the use of payday loans constitutes 'adverse entries'. I think it was clear, taking into account the new credit check information, Mr G's management of his credit limit and the number of over limit charges he incurred in a short period of time following the credit limit increase, that Mr G may be in financial difficulty. In these circumstances CONC 6.7.3B details '*appropriate action*' to include the firm doing one or more of the following:

- (a) *considering suspending, reducing, waiving or cancelling any further interest, fees or charges (for example, when a customer provides evidence of financial difficulties and is likely to be unable to meet payments as they fall due or is only able to make token payments, where in either case the level of debt would continue to rise if interest, fees and charges continue to be applied);*
- (b) *accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock, from a customer who demonstrates that meeting the customer's existing debts would mean not being able to meet the customer's priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills);*
- (c) *notifying the customer of the risk of escalating debt, additional interest, fees or charges and of potential financial difficulties; and*
- (d) *providing contact details for not-for-profit debt advice bodies and encouraging the customer to contact one of them.*

NewDay intimates that by writing to Mr G that it met its obligations. I haven't seen evidence of such a letter sent to Mr G, but even if it was sent I don't think this was enough to meet NewDay's obligations to him. NewDay now had new and relevant information available to it that it didn't have when it opened Mr G's account and gave him a credit limit increase. It should have acted on that information when there was also evidence that Mr G was struggling to manage his account. I think that proportionate action should have been more

proactive than sending a generic letter. I agree with our adjudicator that NewDay should have stopped charging interest and late payment charges.

Putting things right

As I don't think NewDay should have continued to charge Mr G from 31 August 2016, I don't think it's fair for it to charge any interest or charges from that point. However, Mr G has had the benefit of all the money he spent on the account, so I think he should pay this back. NewDay indicates that Mr G's account is now closed but for the avoidance of doubt NewDay should:

- Rework the account removing all interest and charges that have been applied to balances from 31 August 2016.
- If the rework results in a credit balance, this should be refunded to Mr G 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 31 August 2016 regarding this account from Mr G's credit file.
- Or, if after the rework the outstanding balance still exceeds £950, NewDay should arrange an affordable repayment plan with Mr G for the remaining amount. Once Mr G has cleared the outstanding balance, any adverse information recorded after 31 August 2016 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 G 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 tax.

My final decision

I uphold Mr G's complaint in part and direct NewDay Ltd, trading as Aqua, to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 14 October 2022.

Sally Allbeury
Ombudsman