

The complaint

Miss P complains that NewDay Ltd trading as Aqua have irresponsibly lent to her.

Miss P is represented by a claims management company in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Miss P herself.

What happened

Miss P applied for a NewDay branded credit card in January 2020. She was accepted for the credit card and was approved for a £1,200 credit limit. Miss P complained to NewDay and she said they irresponsibly lent to her.

NewDay did not uphold her complaint. They said they considered the data she provided them on her application, that she was self employed, earning £24,000 gross per annum, other household income of £19,800, she had unsecured debt of £2,600 and she was cohabiting.

They also said they looked at external information available to them which showed Miss P had two defaults, with the last one occurring 51 months prior to her application. The total value of the defaults was £2,700.

The data also showed she had a County Court Judgement (CCJ), which occurred 17 months before her application with a value of £700. But she also had no payday loans, no accounts in arrears, eight active accounts and four searches on her credit file.

Miss P brought her complaint to our service. Our investigator upheld her complaint. He said that the lending was unaffordable for Miss P and that she had previously missed payments. He concluded that the checks NewDay carried out were not proportionate so he said NewDay should refund the fees and charges Miss P had incurred and use this to reduce any outstanding balance. He said if this creates a positive balance then this amount should be paid back to Miss P, with 8% simple interest added and any adverse information should be removed from her credit file.

NewDay asked for an Ombudsman to review the complaint. They said that Miss P had no accounts in arrears and had no payment arrangements or debt management programs. They said the presence of external balances doesn't mean that a consumer wouldn't be accepted for credit.

NewDay said that while she incurred two late payment fees in the first 12 months of the account being opened, she made consistent payments and these were often in excess of her monthly minimum payment. NewDay also said that it could not be inferred from the data available at the time of her account opening that she would have subsequent financial difficulties - and these appeared to have manifested quite some time afterwards.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Before agreeing to approve the credit limit for Miss P, NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable for her. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances.

I've looked at what checks NewDay said they did prior to accepting Miss P's application. They said at the time of applying for the credit card, they considered the information that Miss P had given them, such as her being self employed, earning £24,000 a year and they looked at external data available to them. NewDay said that the data showed she was not in arrears at the time of the application on any of her accounts.

So I've considered if the checks that NewDay carried out were proportionate to the level of credit that Miss P was given. And despite Miss P being approved for a relatively modest credit limit, compared to her gross annual income, I'm persuaded there are other factors which should have persuaded NewDay to make further checks and I'll explain why below.

The application data shows a "null" value for the time that she had been self employed. So this could indicate that Miss P had just become self employed and as such she may have additional start-up costs or may not initially have the income to meet any additional outgoings (including new credit card repayments). In addition, NewDay's data showed that Miss P had a CCJ for a considerably lower amount (£700) than her approved credit limit (£1,200), only 17 months ago, which was fairly recent. This could indicate that Miss P may not be able to afford or sustain a £1,200 credit limit since she couldn't sustain £700 previously. I'm persuaded these factors should have prompted NewDay to make further checks.

So, I would have expected NewDay, as part of a proportionate check, to ask for further information from Miss P to ensure that a £1,200 credit limit would be affordable and sustainable for her. They could have done this by contacting Miss P to discuss her personal circumstances at the time, or they could have asked for information about her income and outgoings, such as requesting her recent bank statements, to see whether the credit limit would be sustainable and affordable for Miss P.

So I asked Miss P how long she had been self employed for when she applied for the NewDay card and if she could provide her bank statements for the time period before her NewDay credit card application was accepted, as I'm persuaded this is something that NewDay could have done as part of a proportionate check to see if the NewDay credit card would be affordable for her and to ensure she could make payments in a sustainable manner based on the reasons I've already mentioned. But Miss P did not respond to any requests to provide me with this information.

So on the face of it, it does look like NewDay should've looked more closely into these issues. But as my role is impartial, that means I have to be fair to both sides and although I'm satisfied that NewDay should've done more checks here - I can't say whether that would've revealed further information which means they wouldn't have lent. As Miss P hasn't provided me with the information I asked for, that means that it wouldn't be fair for me to say that NewDay shouldn't have lent here, because I don't know what further checks would reveal. So it follows I do not intend to ask NewDay to do anything further."

I invited both parties to let me have any further submissions before I reached a final decision. Neither party responded with any further information for me to consider.

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.

As neither party have provided me with any further information to consider, then my final decision and reasoning remains the same as in my provisional decision.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 22 July 2022.

Gregory Sloanes
Ombudsman