

The complaint

Mrs M complains that NewDay Ltd trading as Aqua (“NewDay”) lent irresponsibly when they approved her credit card application and then increased her credit limit on two occasions.

Mrs M is represented by a claims management company (“the CMC”).

What happened

In January 2018, Mrs M applied to NewDay for a credit card. Her application was completed through an online comparison site. Mrs M’s application was assessed by NewDay and they agreed to provide a credit card account with an initial limit of £300.

In May 2018, NewDay increased the limit on Mrs M’s credit card account to £1,200. Similarly, in January 2019, NewDay increased Mrs M’s credit card account limit again to £1,950.

In June 2021, the CMC wrote to NewDay on behalf of Mrs M. They said Mrs M was struggling financially at the time the original application was approved. Mrs M’s credit history was very poor, and she’d subsequently missed or was late with payments. The CMC said Mrs M was struggling to pay the credit card along with other financial commitments.

The CMC said Mrs M was earning £1,200 a month with monthly expenses of £1,000, so had limited disposable income. They also said Mrs M had stated she wasn’t always able to make payments and it should’ve been clear she was struggling financially. Mrs M had said that she had to borrow to keep up with payments.

The CMC said NewDay hadn’t completed proper checks which would’ve shown that the credit card account wasn’t affordable for Mrs M. They thought NewDay should have completed a review of Mrs M’s income and expenditure before agreeing to lend. The CMC said Mrs M was often only paying the minimum required payments and there were instances where she was charged overlimit fees because she was continuously in excess of the credit limit. They thought this should’ve prompted further checks.

They asked NewDay to:

- refund all interest and charges; and
- pay 8% statutory interest; and
- remove any adverse marks from Mrs M’s credit file.

NewDay responded to the CMC and didn’t agree they’d acted irresponsibly when they agreed to lend to Mrs M. They said they’d used the information provided by Mrs M in her application together with information obtained from the credit reference agencies and bureau. NewDay didn’t agree they’d been any cause to undertake further checks and assessments.

NewDay also said that they’d reviewed Mrs M’s account together with other reported credit before offering to increase her limit. They gave Mrs M 40 days-notice so she could opt out of any limit increase. NewDay found no reason not to provide the limits they did.

The CMC didn’t agree with NewDay’s findings. So, they referred Mrs M’s complaint to this service.

Having considered all the information and evidence provided, our investigator thought NewDay's decision to initially provide a credit card with a £300 limit was reasonable. But our investigator thought NewDay had failed to complete further reasonable and proportionate checks when they increased Mrs M's credit limit. And that those checks would have demonstrated that the limit increases were unaffordable.

Our investigator thought NewDay should refund any interest and charges they applied relating to anything above the original limit and adjust the balance owed to what it would've been had the limit not been increased. They also thought NewDay should pay interest at 8% simple on any amount overpaid and due back to Mrs M.

NewDay didn't agree with our investigator's findings. They said they'd acted fairly, and appropriate checks had been completed. NewDay said there was no indication of financial difficulty.

As an agreement couldn't be reached, Mrs M's complaint has been passed to me to consider.

I reached a different outcome to that of our investigator. Because of that, I issued a provisional decision on 16 June 2022 – giving both Mrs M and NewDay the opportunity to respond to my findings below before I reached a final decision.

In my provisional decision, I said:

The rules and guidance relevant at the time NewDay provided Mrs M with a credit card were set by the Financial Conduct Authority (FCA) in the Consumer Credit Sourcebook (CONC). These required NewDay to carry out an assessment using reasonable and proportionate checks to determine whether Mrs M could afford to repay the credit card in a sustainable way. Those checks needed to be borrower focussed and consider whether making the repayments could result in financial difficulties for Mrs M.

This service believes that any checks needed to consider Mrs M's personal circumstances and would usually need to be more thorough:

- the lower a consumer's income; and
- the higher the amount due to be repaid; and
- the longer the term of the debt; and
- the greater the number and frequency of debts.

Conversely, a less detailed affordability assessment, without the need for verification, is far more likely to be fair, reasonable, and proportionate where the amount to be repaid is relatively small, the financial situation is stable, and the debt is for a relatively short period.

I've been provided with the information used to assess Mrs M's original credit card application. Mrs M stated her annual income as £120,000. She said she worked part time as a contractor and lived in rented accommodation. Data obtained from the credit bureau showed she had four active credit accounts with unsecured debt outstanding of £400. There was a record of three defaults. But the last of these was 40 months old. NewDay said that this is within their policy to lend. The data also showed that Mrs M had no other public records, no payday loans and none of her existing accounts were in arrears.

Given the information above and the level of credit offered relative to Mrs M's income, at the time, I don't believe it was necessary for NewDay to complete further checks and tests in assessing Mrs M's application. The credit offered equated to only 0.25% of her stated income and her total existing borrowings totalled 0.33% of that income. So, I'm persuaded that NewDay's decision to lend to Mrs M was reasonable.

NewDay later offered to increase Mrs M's credit limit to £1,200. She was given an option to opt out of this but didn't do so. Bureau information showed no adverse information reported and no pay day loans. In the two months prior to her limit being increased, Mrs M did exceed her credit limit twice by a maximum of £14.35. But relative to her stated income, I think this was a small amount and notice it was promptly adjusted each month.

Given all the information held and Mrs M's stated income, I don't think this would've prompted NewDay to complete further checks and tests. Rather, it could well have been a sign that Mrs M's initial limit wasn't sufficient for her needs. So, I don't think NewDay's decision to offer a limit increase was unreasonable.

Towards the end of 2018, NewDay completed a review of Mrs M's account for a second time. During the period since her limit was first increased, Mrs M had only exceeded the limit on two occasions. Again, this was promptly adjusted, and she was often paying more than the required minimum payment each month. There was no adverse data reported on her credit file and although her debt levels had increased elsewhere, this was proportionately low relative to her stated income.

Having considered the information available to NewDay, I don't believe there was anything that would've prompted them to complete further checks and tests. The proposed limit increase to £1,950 equated to just 1.6% of Mrs M's stated income. And accepting that her overall indebtedness had increased, this amounted to a little more than 9% of her stated income. So, I don't think NewDay's decision to offer a further limit increase was unreasonable here.

The CMC have provided a copy of Mrs M's credit file dated September 2021. Having reviewed this, a large proportion of the reported debts and accounts post-date any of NewDay's lending decisions. So, these wouldn't have influenced NewDay's assessments. Of the reported accounts that did pre-date NewDay's decisions, there is no evidence of financial difficulty, missed payments or arrears.

The CMC have asked NewDay to remove all adverse data reported on Mrs M's credit file. But having reviewed what the CMC have provided, I can't see that NewDay have recorded anything adverse. In fact, Mrs M's account has been maintained within the contractual terms throughout.

I've also seen Mrs M's written summary of her complaint. But this appears to raise different issues to that raised by the CMC. And as these weren't included within the original complaint, NewDay haven't had the opportunity to consider them. So, I'm unable to consider those points at this time.

Given all of the above, while I appreciate that Mrs M may be disappointed, I'm not persuaded that there's any reason for me to uphold her complaint. So, I don't intend to ask NewDay to do anything more.

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.

In my provisional decision, I asked both parties to respond with any new information or comments they wanted me to consider.

Despite follow up requests from this service, neither NewDay, Mrs M or the CMC responded to my provisional decision. And as I've not been provided with any additional comments or information, I've found no reason to vary from my original findings. So, my final decision remains the same.

My final decision

For the reasons set out above, I don't uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 11 August 2022.

Dave Morgan
Ombudsman