

The complaint

Mr H complains that NewDay Ltd trading as Aqua gave him a credit card when it should have known he wouldn't be able to repay what he borrowed.

What happened

Mr H applied for a credit card in December 2018. He told NewDay that he was employed and earning £27,000 a year. The card was approved with an initial limit of £1200. That limit was increased to £2,400 in August 2018, to £3150 in April 2019, to £4150 in October 2020, to £5150 in January 2021, to £6150 in May 2021 and to £7650 in September 2021. Mr H said that he should not have been approved for the card in the first place as he had a gambling addiction and was using the card to fund further gambling.

NewDay said it had done appropriate checks when it agreed the initial lending to Mr H and when it increased his credit limit. It said that at the point of account opening Mr H had £1065 outstanding in short term lending, 5 historic county court judgements and 8 historic defaults. His open accounts were up to date and there was nothing to suggest that Mr H was gambling. It said that based on its lending criteria it was reasonable to lend. Following Mr H's complaint NewDay agreed to refund all interest and charges incurred on the account after the credit limit increase to £5150 in January 2021.

Our investigator thought that the complaint should be upheld and that Mr H should not have been given the initial limit of £1200. They thought that the amount of historic CCJ's and defaulted accounts were significant. They thought this demonstrated that Mr H had been in difficulties repaying credit and managing his finances responsibly in the past and was likely to do so in the future.

NewDay didn't agree and replied to say in summary that it was a "second chance" lender and the defaults and judgements were historic. It said that Mr H successfully repaid his minimum repayments and did not fall into arrears. It said that Mr H continued to use his card which is why his balance did not decrease and it was never made aware that he had a gambling issue. It said that Mr H's circumstances have now changed and he is no longer working which could not have been foreseen at the time of the credit.

As the parties haven't been able to agree the complaint has been passed to me to decide.

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.

Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website. I've had this approach in mind when considering what's fair and reasonable in the circumstances of this complaint.

When Mr H applied for the credit card, he told NewDay that he was employed and earning

£27,000 a year and was a homeowner. NewDay undertook checks of Mr H's credit file.

When NewDay looked at Mr H's credit file in December 2017 it recorded that he had 8 defaulted accounts and 5 adverse public records or CCJ's. The most recent CCJ was 25 months ago and the last default was 42 months ago. Mr H also had an outstanding short-term loan with a balance of £1065. NewDay considered that Mr H was not over committed with his borrowing and there were no accounts in arrears.

Looking at the CCJ's, NewDay were aware that the total of the 5 that were recorded was £5,500. Further, it noted that Mr H had previously defaulted on 8 accounts which totalled £7,600. I agree with the investigator the combined total of over £13,000 together with the number of defaulted accounts was indicative that Mr H had been in serious difficulties managing credit.

I have taken on board what NewDay says about being a "second chance" lender. However, I don't think its checks were enough to enable it to conclude that Mr H's difficulties had passed. The amount and scale of Mr H's judgments and defaults were indicative of a failure to responsibly manage credit. Although around 2 years had passed since the last judgement Mr H had a short-term loan balance of £1065 which would suggest that despite his low indebtedness, he was still struggling to make ends meet.

So, I think that NewDay should have realised that there was cause for concern about Mr H's financial position and it should have investigated his finances more closely before offering a limit of £1200. I think that if it had investigated more closely NewDay would have discovered that Mr H was gambling and wasn't in a position to take on this borrowing.

It follows, that I think the additional credit offered to Mr H should not have been granted. I have taken into account that Mr H made his repayments but I don't think that suggests that the lending was responsible. Mr H continued to utilise the credit limits offered and made no significant progress in reducing his indebtedness.

For these reasons I think this complaint should be upheld and in addition to the steps already agreed by NewDay it should refund all interest and charges Mr H has paid on this lending.

Putting things right

Therefore, NewDay Ltd should:

- Rework the account removing all interest, fees, charges and insurances (which have not already been refunded) that have been applied.
- If the rework results in a credit balance, this should be refunded to Mr H 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 H's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mr H for the remaining amount. Once Mr H has cleared the balance, any adverse information in relation to the account should be removed from their credit file.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mr H 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.

Emma Boothroyd

Ombudsman