

The complaint

Mr P complains that NewDay Ltd trading as Aqua has irresponsibly lent to him.

What happened

Mr P was approved for a branded NewDay credit card in June 2019 with an initial £900 credit limit. NewDay increased the credit limit on multiple occasions which I have detailed below:

January 2020	£900 to £2,150
September 2020	£2,150 to £3,150
March 2021	£3,150 to £4,150
May 2021	£4,150 to £5,150

Mr P complained that NewDay had irresponsibly lent to him. NewDay did not uphold his complaint for irresponsible lending. They said that when Mr P applied for the credit card, he had declared an income of £28,500, he was employed, and he had total unsecured debt of £28,700. They said he had no defaults, no CCA's, no payday loans and no accounts in arrears. Mr P brought his complaint to our service.

Our investigator upheld Mr P's complaint. She said that Mr P had more unsecured debt than his gross annual salary and considering he was living with his parents, this was concerning because his debts relative to his income were high. So any additional credit would have a significant impact on him and his ability to repay them in a sustainable and affordable way. So she said NewDay should have completed further checks to see if Mr P could afford any further credit. She said reasonable and proportionate checks would have shown that Mr P wouldn't have been able to make his repayments sustainably over a reasonable period of time given the credit limit that NewDay approved for him.

Our investigator said that to put things right for Mr P, NewDay should rework Mr P's account so that all the interest, fees and charges applied to the account from the date NewDay agreed to give him the credit card, in June 2019, onwards are removed. If an outstanding balance remained once these adjustments have been made, then NewDay should contact Mr P to arrange a suitable repayment plan. Our investigator said if no outstanding balance remained, any adverse information should be removed from his credit file, and if the refund means there's no remaining balance, any extra should be treated as overpayments and returned to Mr P, and NewDay should pay interest of 8% simple a year on any overpayments from the date they were made (if they were) to the date of settlement.

NewDay asked for an Ombudsman to review the complaint. They said that although Mr P had a large amount of outstanding debt compared to his gross annual income, this did not mean that Mr P could not manage his debt. They also said that as he was living at home with his parents then he likely had less outgoings than if he rented or owned his own accommodation.

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 or increase the credit available to Mr P, NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable for him. 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 listed below what checks NewDay have done and whether I'm persuaded these checks were proportionate.

Acceptance for the account - initial credit limit:

I've looked at what checks NewDay said they did when initially approving Mr P's application. I'll address the credit limit increases later on. NewDay said they looked at information provided by credit reference agencies and information that Mr P had provided before approving his application.

But I'm not persuaded that the account opening checks were proportionate. I say this as the information showed that Mr P had total unsecured borrowings of £28,700 when he was approved for the account, but he had declared a gross annual income of £28,500. So prior to Mr P being accepted for the account, his unsecured debt was more than 100% of his gross income. This as a percentage would increase even higher if this was compared to his take home pay – his net income. This might indicate that Mr P may be hungry for credit and not be able to manage his finances well, even if he is living with his parents, if he has a high proportion of unsecured debt compared to his earned income.

So for these reasons, I'm persuaded that as part of a proportionate check, NewDay should have requested information from Mr P to discuss his finances, for example, one of the things they could have asked Mr P to provide is his recent bank statements to ensure the credit would be affordable and sustainable for Mr P. They could have also looked at his credit file more closely to see if the debt which was taken out had been recent or if Mr P had been sustaining the repayments for a number of years.

Mr P has provided both his credit file and his bank statements so we could see how he managed his money at the time his account was accepted. Mr P's credit file shows he had taken out a loan and a credit card within eight months prior to being accepted for the NewDay credit card. This could indicate that he was hungry for credit. Mr P had paid off a third party loan around the same time he took out a new third party loan with the same provider. But his monthly repayment was nearly 2.5 times the original payment (£208 per month repayment on the settled loan and £492 per month on the new loan), so this would have taken up some of his disposable income.

The credit card was approved in November 2018 (seven months prior to the NewDay card being opened). The credit limit was £3,850, but it appears that Mr P used the majority of the credit limit by the time he was approved for the NewDay credit card. So as Mr P had just recently taken on these accounts and incurred further outgoings as a result of the recent debt, I've had a look at his bank statements leading up to the acceptance of his NewDay account, which I'm persuaded is one of the things NewDay could have looked at to ensure that the repayments would be affordable and sustainable for Mr P as part of a proportionate check given his individual circumstances which I've already detailed.

Mr P's bank statements show that his employment income was around £1,750 per month. So while Mr P had declared a gross income of £28,500, it appears from his statements that

his actual gross income was less than what he had declared. So he would not have as much disposable income that NewDay believed he had. His statements also show he is paying £152.41 a month for car insurance and £291.88 a month to a car leasing firm, which may not have been apparent to NewDay based on the checks they completed. But even if these were part of the data that NewDay saw, Mr P's bank statements show in two of the three months prior to him being accepted for the NewDay credit card, that he incurred an unpaid transaction fee. The statements also show payments being made from his family members into his bank account.

So I'm persuaded that Mr P was unable to afford his outgoings based on the information shown on his bank statements with his salary alone and he also incurred unpaid transaction fees even though he was receiving money into his account from family. So, if NewDay would have looked at his credit file in more detail (which showed he was increasing his unsecured borrowings regularly) and looked at Mr P's bank statements, as part of a proportionate check due to how much debt he already had compared to his declared gross annual salary, then I'm persuaded they would have realised that Mr P would struggle to afford any more credit and that any credit they approved for him would be unlikely to be sustainable based on his actual salary alone and therefore they shouldn't have approved his application for the NewDay credit card.

January 2020 (£900 to £2,150), September 2020 (£2,150 to £3,150), March 2021 (£3,150 to £4,150) and May 2021 credit limit increases – (£4,150 to £5,150)

If Mr P's application was not accepted, then none of the credit increases would have happened on this credit card either. I think there is an argument for saying that Mr P's complaint about the subsequent lending decisions should be upheld without making a finding on reasonable and proportionate checks.

After all, if matters had played out as the evidence suggests they should have done in June 2019, I'm not persuaded Mr P would've been able to add to the credit (given that I'm persuaded the application for the credit card shouldn't have been approved), especially as he took out further unsecured borrowing out shortly before and after his application was approved, including a bank account with an overdraft in May 2019 (I had not included this in my earlier analysis, as it's unlikely this information would have been available to NewDay when they made their checks in June 2019) and the credit increase was more than double his initial credit limit even though NewDay would've been aware that his level of unsecured debt was more than his declared gross annual salary also. So it follows I intend to ask NewDay to put things right for Mr P."

I invited both parties to let me have any further submissions before I reached a final decision. Mr P accepted my provisional decision. NewDay said they had nothing to add to the provisional 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.

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.

Putting things right

In my provisional decision, I said I intend to uphold the complaint and I intend to require NewDay Ltd to do the following:

NewDay should arrange to transfer any debt back to themselves if it has been passed to a debt recovery agent;

Rework the account removing all interest and charges that have been applied;

If the rework results in a credit balance, this should be refunded to Mr P 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 P's credit file;

Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mr P for the remaining amount. Once Mr P has cleared the balance, any adverse information in relation to the account should be removed from his credit file. I'm still satisfied this is a fair outcome for the reasons given previously.

**If NewDay considers that it's required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr P how much they've taken off. They should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

My final decision

I uphold this complaint. NewDay Ltd should settle the complaint in line with the instructions in the *"putting things right"* section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 August 2022.

Gregory Sloanes
Ombudsman