

The complaint

Mr M says NewDay Ltd trading as Aqua irresponsibly lent to him.

What happened

Mr M's complaint is about a credit card account provided by NewDay. The account was opened in September 2015. Mr M was given an initial credit limit of £900. This was increased to £1900 in January 2016 and to £3100 in July 2016. The account was closed in April 2018.

Mr M complains that NewDay irresponsibly lent to him.

Our adjudicator upheld the complaint. He didn't think that NewDay had carried out reasonable and proportionate checks in relation to the second credit limit increase and said NewDay should've carried out an income and expenditure check to confirm that the second credit limit increase was affordable.

NewDay disagreed with the adjudicator so the complaint has been passed to me for 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.

The general approach to complaints about unaffordable and irresponsible lending, including the key relevant rules, guidance and good industry practice, are set out on this service's website.

NewDay needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice, this means that it should've carried out proportionate checks to make sure Mr M could afford to repay what he was being lent in a sustainable manner.

There isn't a set list of checks that a business needs to carry out. NewDay needed to make sure that the checks were reasonable and proportionate when considering things like how much was being lent, the repayment amount and the consumers income and expenditure.

I can see that when Mr M applied for the account, he stated that he had annual income of £19,331. NewDay carried out a credit check which showed that Mr M had £2200 consumer credit commitments across nine different accounts. The credit check showed no defaults or county court judgments.

I've thought about whether the checks carried out by NewDay at the time when Mr M applied for the account were reasonable and proportionate. At this time, Mr M's level of debt was relatively low and there was no adverse information on his credit file. I don't think there was any information at this time to suggest that Mr M wouldn't be able to sustainably repay the lending. Based on what I've seen, I think the checks were reasonable and proportionate.

The credit limit was increased from £900 to £1900 in January 2016. This was around 4 months after Mr M opened the account. During this time, Mr M hadn't exceeded the credit limit or missed any payments. NewDay carried out a credit check before increasing the credit limit. This showed that Mr M's consumer credit commitments had increased to £2823. Although the increased credit limit was quite high in relation to Mr M's income, he had maintained his account well. Taking this into account, I think the checks were reasonable and proportionate and that the decision to increase the credit limit was fair.

The credit limit was increased from £1900 to £3100 in July 2016. This was around 6 months after the first credit limit increase. During this time, Mr M hadn't exceeded the credit limit or missed any payments. NewDay carried out a credit check the month before increasing the credit limit. This shows that Mr M's consumer credit commitments had increased to £4873. By the following month it had increased to £16,058. However, I don't think the business would have seen this latter figure because it appeared in the same month as the credit limit increase.

Even if NewDay didn't see the increase in consumer credit commitments, I think that the level of active debt the month before the increase (£4873) should've alerted NewDay to the fact that Mr M wasn't able to sustainably repay any further lending. This is because Mr M's active debt had doubled since January 2016 and his income was, by comparison, low. In these circumstances, NewDay should have carried out further checks on Mr M's income and expenditure to check that the credit limit increase was affordable.

For these reasons, I don't think the checks carried out by NewDay for the second credit limit increase were reasonable and proportionate.

Putting things right

Because I think NewDay lent to Mr M irresponsibly, I'm asking it to refund all interest and charges which have been applied to balances over £1900.

I don't think it's fair for NewDay to report adverse information about a debt which was lent irresponsibly, so I'm also asking it to remove any adverse information relating to the account from Mr M's credit file.

My final decision

My final decision is that I uphold the complaint. NewDay Limited trading as Aqua must;

Rework the account and remove all interest and charges which have been applied to balances above £1900.

If the rework results in a credit balance, this should be refunded to Mr M along with 8% simple interest per annum from the date of each overpayment to the date of settlement.* NewDay should also remove any adverse information recorded on Mr M's credit file after 26 July 2016 in relation to the agreement.

If after the rework the balance exceeds £1900, NewDay should agree an affordable repayment plan with Mr M. Once Mr M has cleared the outstanding balance, any adverse information relating to the agreement after 26 July 2016 should be removed from his credit file.

*HMRC require NewDay to deduct tax from this refund of interest. It must give Mr M a certificate showing how much tax has been taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 November 2022.

Emma Davy
Ombudsman