

## **The complaint**

Miss P complained that NewDay Ltd, trading as Aqua (“NewDay”), irresponsibly granted her a credit card account that she couldn’t afford to repay.

## **What happened**

Miss P took out a credit card with NewDay in May 2018 (card number ending 7900). This card account was closed in June 2020, and Miss P then took out another in September 2021 (card number ending 4479). The credit limit on the first card was £450.00, and on the second £900.00. There were no subsequent credit limit increases on either card.

Miss P said that her spending on the first card went up to the credit limit very quickly, and she incurred late payment charges and was only making the minimum monthly payment. The account was eventually referred to a debt collection agency, after which she made payments to clear the balance in full. The account was then closed.

In September 2021 Miss P took out the second card. Again, she said, she spent up to the credit limit very quickly, and the balance is now the subject of a payment arrangement as Miss P has financial difficulties.

Miss P complained that the second card was issued without the appropriate checks, and she thought that NewDay should cancel the card, write off the debt and refund the fees and interest paid. NewDay said that it had carried out appropriate affordability checks, and told Miss P that it did not uphold her complaint.

Miss P then brought her complaint to this service. Our investigator looked into it and thought it should be upheld. NewDay didn’t agree and asked for it to be reviewed by an ombudsman.

## **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, and I’ve taken this into account here.

I’ve decided to uphold Miss P’s complaint about the second credit card. I’ll explain why.

In summary, before providing credit, lenders need to complete reasonable and proportionate affordability checks. There isn’t a set list of checks required of a lender, but it needs to ensure the checks are proportionate when considering things such as the type and amount of credit being provided, the size of the regular repayments, the total cost of the credit and the consumer’s circumstances. So I’ve considered whether NewDay completed reasonable and proportionate checks to satisfy itself that Miss P would be able to make the repayments on the credit card account in a sustainable way.

NewDay provided a list of the checks it completed when opening both of Miss P's accounts, and its records of what was checked. It said that, for the first card, Miss P had stated that she was employed, with an annual salary of £13,580, and had an unsecured debt of £200. Its credit checks showed no defaults, no adverse records, no payday loans, and no accounts in arrears.

For the second card, Miss P had an annual salary of £20,500 and an unsecured debt of £700. Again, its credit checks showed no defaults, no adverse records, no payday loans, and no accounts in arrears.

On that basis, NewDay said that it considered that both cards were affordable for Miss P. In relation to the first card, I've concluded that NewDay gathered a reasonable amount of evidence and information from Miss P about her ability to repay. I've reviewed the information and evidence NewDay gathered, and having done so I'm satisfied that the checks that were completed showed that the agreement was likely to be affordable for Miss P. I say this because there was no evidence of financial difficulty on the credit checks, and Miss P only had a small amount of unsecured debt, so her salary indicated enough disposable income relative to the credit limit of £450. So I don't think NewDay acted unfairly in granting the first credit card.

However in relation to the second credit card, I don't think NewDay carried out sufficient checks before granting the credit.

The records NewDay sent in for the first card confirm what Miss P had said – that is, that shortly after the card was issued, Miss P had used almost all the credit available to her. The balance history shows that Miss P was unable to significantly reduce her debt, and on occasion exceeded her limit. And there were arrears on the card for some months.

The underwriting note for the second card refers to 'high indebtedness', but there's no evidence that NewDay made any additional enquiries of Miss P, such as discussing her income and expenditure (I can see a number of active accounts are recorded on the underwriting record), or that it took account of the payment history on the previous card - as the first card was issued by NewDay the detailed records would have been available to it. I can also see that the underwriting note doesn't reference Miss P's rent or living expenses.

Miss P's bank statements from around the time of the application for the second card show her rental payments and associated costs, and a number of credit commitments. There were, in fact two sets of rental payments – one being to family. We asked Miss P about this, and she told us that she was living with her family – and paying rent to them – while redecorating and furnishing her new home. I can see this would've been a temporary situation, but it is unclear how long this would've continued. I can also see payments on two credit cards, quite large payments to a mobile phone company and a number of statement entries relating to 'buy now pay later' companies. There are also entries related to short term credit with a company that is clearly related to the furnishings that Miss P mentioned. And in the two statements before she took out the second credit card her statements show she was at or near overdraft just before being paid.

NewDay argued that Miss P's problems with the first card stopped in February 2020, after which she repaid the whole balance over four months and was not then charged any over-limit or late payment fees. It said that credit records showed her total unsecured debt was falling during this time, so she was not using additional borrowing to repay this account - so using the negative information from around two to three years earlier to reject her application would've been unfair.

I've thought about what NewDay said. But I've no evidence to suggest that NewDay explored how Miss P was able to make quite large monthly payments to repay the card balance on the first card, after having only been able to make the minimum payment in preceding months. And the second credit card was granted only 15 months after the first card had been closed – with a credit limit twice that of the first card. I've also kept in mind that consumers who have had repayment difficulties in the past are more likely to experience similar issues again, so I would've expected NewDay to consider Miss P's record with the earlier card.

Taking all this into account, I'm not satisfied NewDay carried out reasonable and proportionate checks before issuing the second credit card. I think it should have looked at Miss P's income and expenditure in more detail. Had it done so, I think it's likely that such checks would've demonstrated that Miss P was already very committed – as I've set out above – and based on that evidence I'm not satisfied she would've been able to make the repayments sustainably. So I think Miss P has lost out as a result, and therefore I have decided to uphold her complaint about the second credit card (card number ending 4479).

### **Putting things right**

As I don't think NewDay ought to have opened the account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I think Miss P should pay back the amount she has borrowed. Therefore, NewDay should:

- Rework the account (card number ending 4479) removing all interest and charges that have been applied.
- If the rework results in a credit balance, this should be refunded to Miss 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 Miss P's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Miss P for the remaining amount. Once Miss P has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

\*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Miss P a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

### **My final decision**

For the reasons I've explained, I've decided to uphold Miss P's complaint. NewDay Ltd should compensate Miss P as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 12 May 2023.

Jan Ferrari  
**Ombudsman**