

## **The complaint**

Miss B complains that NewDay Ltd trading as Aqua have irresponsibly lent to her.

## **What happened**

Miss B was accepted for a NewDay branded credit card in February 2020 with a £900 credit limit. This was later increased to £1,650 in August 2020. She says that NewDay irresponsibly lent to her as she was pregnant, jobless and desperate at the time she applied for the account. Miss B made a complaint to NewDay.

NewDay did not uphold Miss B's complaint. They said that they had considered the information she included on her application, such as being employed with a gross annual salary of £18,000 and having unsecured debt of £2,500. They also said that external information available to them showed that she had eight defaults, totalling £2,900 with the last one occurring 30 months prior to her application, she had an adverse public record recorded 37 months prior to her application, no payday loans and no accounts in arrears.

Miss B brought her complaint to our service. Our investigator upheld her complaint. He said that the lending was unaffordable for Miss B as she had eight defaults and he asked Miss B for her credit file, which showed she had taken five short term loans in the month prior to being accepted for the NewDay account, which showed she had a reliance on borrowing. Our investigator said that he had seen no indication that Miss B's finances had improved when NewDay increased her credit limit, so this would be unaffordable for her also.

Our investigator said NewDay should refund the fees and charges Miss B had incurred and use this to reduce any outstanding balance. He said if this creates a positive balance then this amount should be paid back to Miss B, with 8% simple interest added and any adverse information should be removed from her credit file.

NewDay asked for an Ombudsman to review the complaint. They said they believed sufficient checks had been completed and there was nothing to indicate that Miss B would struggle with the credit card payments. They explained they wouldn't have been able to see the frequent short term borrowing on Miss B's credit file due to when it was taken out being so close to when she was accepted for the account as her credit file would not have updated yet to show this information.

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 the credit limit for Miss B, NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable for her. 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.*

*Initial credit limit - £900*

*I've looked at what checks NewDay said they did prior to accepting Miss B's application. They said at the time of applying for the credit card, they considered the information that Miss B had given them, such as her being employed, earning a salary of £18,000 a year and they looked at external data available to them. NewDay said that the data showed she was not in arrears at the time of the application on any of her accounts.*

*So I've considered if the checks that NewDay carried out were proportionate to the level of credit that Miss B was given. And despite Miss B being approved for a relatively modest credit limit, compared to the income she declared, I'm persuaded there are other factors which should have persuaded NewDay to make further checks and I'll explain why below.*

*NewDay's data showed that Miss B had eight accounts which previously defaulted with a total of £2,900, with the last one being 30 months ago. The data also showed that Miss B had an adverse public record which was for £500, 37 months prior to being accepted for the NewDay card. This could indicate that Miss B was not able to manage her unsecured borrowings.*

*So, I would have expected NewDay, as part of a proportionate check, to ask for further information from Miss B to ensure that a £900 credit limit would be affordable and sustainable for her, especially as she had had not previously maintained a credit agreement which led to an adverse public record for £500 – which was nearly half of the proposed credit limit that NewDay would be approving for her. They could have done this by contacting Miss B to discuss her personal circumstances at the time, or they could have asked for information about her income and outgoings, such as requesting her recent bank statements, to see whether the credit limit would be sustainable and affordable for Miss B.*

*So I asked Miss B if she could provide her bank statements for the time period before her NewDay credit card application was accepted, as I'm persuaded this is something that NewDay could have done as part of a proportionate check to see if the NewDay credit card would be affordable for her and to ensure she could make payments in a sustainable manner based on the reasons I've already mentioned. While Miss B provided me with her bank statements for a secondary joint account, in which the transactions were limited and these showed no signs of financial difficulty, she was unable to provide me with the bank statements for her sole account.*

*While I've considered the volume of the accounts and total balances which have defaulted or have had public records attached to them, I've also needed to consider that a customer's past behaviour would not always be indicative of how they may manage an account in the future. Although Miss B had a history of not managing credit, I can't say that this factor alone makes a relatively low credit limit automatically unaffordable or unsustainable.*

*I've also considered what our investigator highlighted to NewDay regarding the short term borrowing which shows on Miss B's credit file. But I'm persuaded that if NewDay had asked for a full copy of Miss B's credit file as part of a proportionate check given what I've already mentioned, then this information would not have shown on her credit file at the time. I say this as it was approximately four weeks or under between Miss B taking out the short term credit and her being approved for the NewDay account. A credit file would typically take longer to update than four weeks, therefore it would be unfair to say that NewDay should be aware of the frequent short term lending Miss B took, when her credit file at the time would not show this.*

*So on the face of it, it does look like NewDay should've made further checks here. But as my role is impartial, that means I have to be fair to both sides and although I'm satisfied that NewDay should've done more checks here – I can't say whether that would've revealed further information which means they wouldn't have lent. So as Miss B hasn't been able to provide me with her bank statements for her sole account, that means that it wouldn't be fair for me to say that NewDay shouldn't have lent here, because I don't know what further checks would reveal.*

*August 2020 credit limit increase - £900 to £1,650*

*I've looked at the information that NewDay had available to them when they increased Miss B's credit limit to £1,650. They increased the credit limit by £750. NewDay had gathered a lot of information of how Miss B had used her account since she opened the account and they had gathered a lot of external data from credit reference agencies which show how Miss B was managing her external finances also. So, I would need to see that the data NewDay had available to them would support the increase. I'm persuaded that it did and I'll explain why.*

*While NewDay's data showed that Miss B's total active unsecured credit had increased from £2,500 prior to being accepted to the card to £3,813 in the month her credit limit was increased to £1,650, the data shows that £813 of the increase was due to the NewDay card itself, so the rise wasn't as a result of Miss B taking a significant amount of credit elsewhere.*

*The data does not show a trend of Miss B's unsecured debt rising month by month and Miss B had reduced the outstanding total unsecured debt from it's highest point since the NewDay credit card was opened (£4,310) to £3,813. As Miss B had stated she was earning £18,000, then the outstanding active debt would have been slightly over a fifth of her declared gross annual income, so I'm not persuaded it was significantly high or unmanageable.*

*But that's not all the data showed. The data showed that Miss B made a late payment on her NewDay card. While a late payment could show signs off financial difficulties, it could also show that there was an oversight in forgetting to make a payment, so I'm not persuaded this alone should mean NewDay should have carried out further checks.*

*I say this as despite the late payment, Miss B's account seemed to be well managed prior to the credit limit increase here. Apart from the missed payment, Miss B made substantially higher repayments to her NewDay credit card than the minimum repayment. But the payments were not too high that it would alert NewDay that this may be from a source other than the income she declared to them. Miss B has told me that she used gambling winnings to make the high repayments. But NewDay would not be aware of this and I'm not persuaded that there were signs which should have alerted them to this.*

*I say this as Miss B had not incurred any cash transactions by gambling on the NewDay credit card since it was opened. While there was a ban on using credit cards to gamble a couple of months after she was approved for the account, she did not use the card to gamble before the ban. So the repayments would be consistent with someone earning £18,000 gross per year. NewDay would have no reason to doubt the information Miss B gave them as part of the application and how she managed her account once it was opened would support the information Miss B originally gave them.*

*The external data NewDay gathered showed that Miss B was not in arrears in any of her other active accounts and she had stayed within her credit card limit, often utilising a lower amount of credit as opposed to the full credit limit.*

*If Miss B was in financial difficulties or struggling to make payments or the debt was*

*unsustainable, I would expect this to be shown in a number of factors, for example, utilising the full credit limit often, regularly missing payments, taking cash from the credit card, only making roughly the minimum payment, being in arrears on her external accounts. But the account activity did not suggest this. So I can't say NewDay made an unfair lending decision here to increase the credit limit to £1,650. So it follows, I don't intend to ask NewDay to do anything further here."*

I invited both parties to let me have any further submissions before I reached a final decision. Miss B did not respond to the provisional decision. NewDay agreed with 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.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 18 October 2022.

Gregory Sloanes  
**Ombudsman**