

The complaint

Ms D complains that NewDay Ltd trading as Aqua have irresponsibly lent to her.

Ms D is represented by a claims management company in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Ms D herself.

What happened

Ms D was accepted for a NewDay branded credit card in March 2017 with a £300 credit limit. This was later increased to £750 in December 2017. She says that NewDay mis-sold the card to her and they didn't carry out sufficient checks prior to granting her credit. The debt was later sold to a third party debt management company. Ms D made a complaint to NewDay.

NewDay did not uphold Ms D'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 £25,000 and having unsecured debt of £2,800. They also said that external information available to them showed that she had three defaults, totalling £1,300 with the last one occurring 32 months prior to her application, no adverse public records, payday loans with outstanding balances of £352 and no accounts in arrears.

Ms D brought her complaint to our service. Our investigator partially upheld her complaint. He said that the initial lending decision was fair, but the credit limit increase was unaffordable for Ms D as she had taken out unsecured loans in March and November 2017 which showed her total unsecured borrowings significantly increase.

Our investigator said NewDay should refund the fees and charges Ms D had incurred over £300 and use this to reduce any outstanding balance. If there was a balance remaining then NewDay should make an affordable arrangement plan with Ms D. He said if this creates a positive balance then this amount should be paid back to Ms D, with 8% simple interest added and any adverse information should be removed from her credit file when the outstanding balance was repaid.

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 Ms D would struggle with the credit card payments as although her total unsecured borrowings had increased, NewDay said the repayments were still manageable based on her £25,000 income and they had only increased the credit limit by £450.

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 Ms D, 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 - £300

I've looked at what checks NewDay said they did prior to accepting Ms D's application. They said at the time of applying for the credit card, they considered the information that Ms D had given them, such as her being employed, earning a salary of £25,000 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 Ms D was given. And despite Ms D 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 Ms D had three accounts which previously defaulted with a total of £1,300, with the last one being 32 months ago. The value of at least one of these defaults would have been comparable to the initial credit limit of her NewDay card. The data also showed that Ms D had payday loans outstanding, with balances totalling £352. This could indicate that Ms D was not able to manage her finances well.

So, I would have expected NewDay, as part of a proportionate check, to ask for further information from Ms D to ensure that a £300 credit limit would be affordable and sustainable for her, especially as she had previously not maintained credit agreements which led to defaults and she had outstanding payday loan balances of £352 – which is more than the credit limit NewDay initially accepted her for. They could have done this by contacting Ms D 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 Ms D.

So I asked Ms D 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. But Ms D did not respond to any requests to provide me with her bank statements.

While I've considered the accounts and total balances which have defaulted, 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 Ms D had a history of not managing a small amount of credit compared to her income, I can't say that this factor alone makes a relatively low credit limit automatically unaffordable or unsustainable. Even though she had outstanding payday loan balances of £352, this may be because she had an emergency and needed money quick. Given her defaults, she may have not been able to meet an unexpected expense through cheaper methods of finance.

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 Ms D hasn't provided me with her bank statements, 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.

December 2017 credit limit increase - £300 to £750

I've looked at the information that NewDay had available to them when they increased Ms D's credit limit to £750. They increased the credit limit by £450, which saw the credit limit more than double. NewDay had gathered a lot of information of how Ms D had used her account since she opened the account and they had gathered a lot of external data from credit reference agencies, which showed how Ms D was managing her external finances also. So, I would need to see that the data NewDay had available to them would support the increase. But I'm not persuaded that it did and I'll explain why.

NewDay's data shows that Ms D incurred either late payment charges or overlimit charges on four occasions in the seven months prior to her credit limit increasing. This may be an indication that Ms D was struggling with managing her finances. But this is not all NewDay's data showed. The data also showed that Ms D's unsecured debt had risen from £2,800 when she applied for the account to £16,333 in the month prior to Ms D being approved for the account.

The data shows that on credit cards, Ms D had total outstanding balances of £3,129 against a combined credit limit of £3,150. So this would indicate that Ms D's financial situation was not improving, and she was using virtually all of the credit available to her. In the space of a number of months she had doubled the number of accounts she held from four at application stage, to eight in the month prior to her credit limit being increased.

So I'm persuaded that it wasn't a fair lending decision to more than double the credit limit on Ms D's account based on the combination of how she managed her existing NewDay card, with frequent late or overlimit charges, a significant increase of her overall unsecured active debt, rising nearly six times the amount from £2,800 to £16,333 (which would be 65% of her declared gross annual salary) over the space of eight months and the number of accounts she held doubling, showing that Ms D was hungry for credit and using an increasing amount of debt, including utilising the majority of her credit card limits with third parties also.

So as NewDay had all of this information, and the fact that Ms D had defaulted on smaller credit limits than the proposed credit limit increase from NewDay, I'm persuaded that Ms D would not be in a position to pay the credit back in an affordable or sustainable manner in a reasonable timeframe. So it follows I intend to ask NewDay to put things right for Ms D."

I invited both parties to let me have any further submissions before I reached a final decision. Ms D accepted the provisional decision. NewDay said they had no further information 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 in part and I intend to ask NewDay Ltd trading as Aqua to do the following:

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

NewDay should also rework the account, refunding all interest and charges that have been applied to any balances above £300. If the rework results in a credit balance, this should be refunded to Ms D 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 recorded from December 2017 regarding this account from Ms D's credit file.

Or, if after the rework the outstanding balance still exceeds £300, NewDay should arrange an affordable repayment plan with Ms D for the remaining amount. Once Ms D has cleared the outstanding balance, any adverse information recorded from December 2017 in relation to the account should be removed from her credit file. I'm still satisfied this is a fair outcome for the reasons given previously.

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

My final decision

I uphold this complaint. NewDay Ltd trading as Aqua 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 Ms D to accept or reject my decision before 7 October 2022.

Gregory Sloanes
Ombudsman