

The complaint

Ms M complains that NewDay Ltd trading as Aquacard ('NewDay') irresponsibly gave her a credit card account that she couldn't afford.

What happened

On 4 February 2015 Ms M applied for a credit account with NewDay. She was given an initial credit limit of £100. The credit limit was increased four times to £3,600 on 5 February 2017. The credit increases were as follows; to £600 on 31 May 2015, to £1,500 on 30 September 2015, to £2,750 on 3 March 2016 and to £3,600 on 5 February 2017.

On 26 August 2021, Ms M complained to NewDay to say that the account shouldn't have been opened for her because it wasn't affordable and that NewDay ought to have made a better effort to understand her financial circumstances before increasing her credit limits.

NewDay thought we couldn't consider the first two lending decisions as they were made more than six years before the complaint was raised. Our adjudicator agreed with that. He then assessed the complaint about the lending decisions from 30 September 2015 and thereafter. Our adjudicator recommended the complaint be upheld in part. NewDay didn't agree. So, the complaint was passed to me to decide.

I disagreed with the adjudicator and NewDay about the scope of our investigation, and I'll repeat some of that argument below. But, in a sense, no-one has suffered detriment as our adjudicator thought that the complaint should be upheld only from the last credit increase. And so, presumably, even had he been able to consider the initial credit limit and the first credit limit increase, he wouldn't have upheld them.

I issued my provisional decision in respect of this complaint on 22 August 2022, a section of which is included below, and forms part of, this decision.

"What I've provisionally 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.

Jurisdiction

I've considered all of the available evidence and arguments provided by Ms M and NewDay to decide whether I'm able to look at this complaint.

There are rules about the types of complaints that this service can and can't look at. One of those rules is about how quickly complaints need to be raised. It says that, where a business doesn't agree, I can't consider a complaint made more than six years after the event complained of. Or, if later, more than three years after the complainant (in this case, Ms M) was aware, or ought reasonably to have been aware, of cause for complaint. Dispute Resolution rule 2.8.2R can be found on the Financial Conduct Authority's website, or a copy can be provided on request.

Ms M's complaint is that the credit given to her by NewDay was irresponsibly given because it was unaffordable and unsustainable for her. She says it caused her to suffer protracted financial difficulties. NewDay says that the account in question was opened in February 2015 and the first credit increase was in May 2015, which would be the "event" talked about in the rules. I can see that her CMC raised a complaint with NewDay on 26 August 2021. So, clearly more than six years after the initial credit limits were given.

The question is whether I think she knew, or ought reasonably to have known, that she had cause to complain about NewDay more than three years before she first did so. In that way, I can decide whether her complaint was made within the second part of the time limit or not. It is disappointing to see that NewDay has not really engaged with this second aspect of the relevant DISP rules.

As already explained, I am required to consider Dispute Resolution rule 2.8.2R 2(b) when determining whether the complaint has been brought in time. Not whether Ms M knew she could raise concerns in general, but whether she ought reasonably to have known that she had cause to make this complaint.

It may well be that Ms M was aware before 26 August 2021 that she was experiencing financial difficulties in relation to this account. But the question is not whether she was aware of that, but whether she ought reasonably to have become aware that those difficulties might be the result of acts or omissions of NewDay before 26 August 2018. That is because she has three years from that point of awareness to raise a complaint.

In short, I have seen nothing to suggest that Ms M should have realised that she had cause for complaint against NewDay prior to her raising her complaint in 2021, nor has NewDay offered any evidence or arguments to support that conclusion. Without evidence to show that Ms M ought reasonably to have known that she had cause for complaint against NewDay, I'm satisfied this complaint was not brought too late.

And so, I am proceeding to consider the complaint in its entirety.

Merits

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've read and considered the whole file, but I'll confine my comments to what I think is relevant. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

NewDay will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

Our adjudicator's assessment provided a detailed account of all the increases of credit and they are summarised above. Neither party has called the specifics into question, so, I don't intend to cover them off here.

Ms M's complaint is that NewDay made credit available that was unaffordable. It's not easy to determine affordability when Ms M has been unable or unwilling to provide bank statements for her day to day account from the times in question. If Mrs M has some bank statements, I would be happy to consider them before progressing the case further.

NewDay has explained that it carried out a credit check using a credit reference agency to determine the amount of credit it was able to offer and to consider this in association with Ms M's management of her account in making further lending decisions about credit limit increases. It's possible that NewDay failed to make adequate checks before providing Ms M with credit. But even if that's true, I don't think better enquiries would have caused NewDay to think the initial credit limits or the credit increases were unaffordable.

I say this because the initial credit limit was modest and the minimum monthly payments for that credit were also relatively modest. From the evidence submitted, there were no payment issues in the life of this account through all of the increases to the credit limit. Overall, I have placed more weight on this matter than our adjudicator did; that the account was well managed throughout. And Ms M did not, until after the last credit increase, use anywhere near the full amount of her credit limit and she appears to have missed not a single payment.

So, having considered all the submissions made in this case, and in the absence of any extra evidence from Ms M to the contrary, I have seen insufficient evidence to think that more thorough affordability checks would have led NewDay to think that the credit it provided Ms M was unreasonable. Further, I'm not persuaded that the way Ms M was managing her account or what NewDay could see of her management of other credit ought to have prompted it to have acted differently than it did.

I know that Ms M will be disappointed with my decision, but I want Ms M to know that I considered all the submissions made in this case. But having considered all the submissions in this case, particularly those at the time of the credit and the credit increases, I have not found sufficient evidence to uphold this complaint.

My provisional decision

For the reasons given above, I'm currently minded not to uphold this complaint."

I apologise for the fact that the letters which accompanied the provisional decision referred to a response date of 5th September. In the provisional decision, I asked the parties to the complaint to let me have any further representations that they wished me to consider by 19 September 2022. As this date allowed more time to respond, I have waited for that date to pass before proceeding.

At the time of writing, neither NewDay nor Ms M have acknowledged receiving the decision, or made any further submission, or asked for an extension to do so. I think that both parties have had sufficient time to make substantive further submissions if they had wished to. So, I am proceeding to my final 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.

Given that there's no new information for me to consider following my provisional decision, I have no reason to depart from those findings. And as I've already set out my full reasons for not upholding Ms M's complaint, I have nothing further to add.

My final decision

For the reasons set out, I don't uphold this complaint.

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

Douglas Sayers
Ombudsman