

## **The complaint**

Miss G has complained that NewDay Ltd trading as Aqua irresponsibly lent to her. She says she was provided with credit that she couldn't afford, and she lost out as a result.

## **What happened**

Miss G opened a credit card account with NewDay in August 2015. Her credit limit was initially £100. In December 2015 her credit limit was increased to £1,100. In June 2016 it was increased again to £2,150. A final credit limit increase was applied in August 2019 when it was increased to £2,950.

Miss G says that NewDay shouldn't have allowed her to open an account and it shouldn't have increased her credit limit once it had. Miss G says she was a student on very low income when she opened the account and that she had opened other credit accounts and was gambling too.

Miss G says that when her credit limit was first increased she had opened even more credit accounts and had taken a payday loan. She says her situation continued to deteriorate until at the point of the last credit limit increase she had multiple payday loans and car finance as well as using the card to take out cash.

She says if NewDay had done adequate checks on her situation it would have seen that she wouldn't be able to repay her balance in a reasonable length of time.

NewDay says it didn't lend irresponsibly to Miss G and that it did all the necessary checks before it lent to Miss G – and when it increased his credit limit.

Our adjudicator thought that Miss G's complaint should be partially upheld. They thought that the original lending decision was reasonable, but that by the time of the June 2016 increase to £2,150 it was clear that Miss G was struggling with managing her finances and that NewDay should not have increased her credit limit.

Our adjudicator said that NewDay should remove any interest and charges applied after 31 August 2016 and that it should arrange for his credit file to be amended if the outstanding balance had been cleared as a result.

NewDay disagreed. It said it had done sufficient checks and there were no indications of any financial strain. But it did agree to uphold Miss G's complaint from the final credit limit increase in August 2019. Miss G did not agree with this, but she did agree with the adjudicator's view.

As NewDay disagreed with the adjudicator's view the case has been passed to me to make 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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I've taken that into account when I have considered Miss G's complaint.

NewDay needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Miss G could afford to repay what she was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Miss G's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

Certain factors might point to the fact that NewDay should fairly and reasonably have done more to establish that any lending was sustainable for Miss G. These factors include things like understanding Miss G's income, the total amount Miss G borrowed, and the length of time Miss G had been indebted.

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

When Miss G opened her account NewDay conducted a credit check. NewDay told us there were no signs of financial difficulties based on the checks it did. Having reviewed the results of the checks, I don't think there is anything to suggest that it would have been unreasonable for NewDay to have approved the account. They showed that Miss G had £100 of unsecured debt with one active account elsewhere and there was no indication of any defaults, arrears, County Court Judgments (CCJs) or payday loans. Miss G declared an income of £12,000 a year.

I think this suggests that the decision to lend the initial £100 was reasonable. There were no obvious signs of financial distress and Miss G had low levels of debt. So, I don't think NewDay did anything wrong with its original lending decision.

NewDay increased Miss G's limit for the first time in December 2015. At this point Miss G had only occasionally used the account and she had managed the account well. While NewDay didn't provide data from third party credit reference agencies there was no indication that Miss G was experiencing financial difficulties. Having said this, given the significant increase in the credit limit – more than ten times the original limit – I think it would have been reasonable for NewDay to have made a more detailed affordability assessment. However, I have no information available to indicate that had NewDay done this that it would have found evidence that NewDay shouldn't have given Miss G the credit limit increase.

Similarly, when it came to the credit limit increase six months later in June 2016, I think NewDay should have made more checks to ensure the increased lending was affordable for Miss G, by verifying her income and expenditure. By this time, looking at NewDay's data, Miss G's financial situation was less stable. Miss G had incurred an over limit fee two months before. She was utilising a high proportion of her credit limit and in the six months before the increase she had utilised the cash withdrawal facility on at least 12 occasions over the course of two months. There is limited information available about her credit use elsewhere although the number of active credit accounts elsewhere had increased to four.

Miss G provided bank statements from around this time. They showed that her existing credit repayments accounted for more than half of her income a month and that after the payment of essential expenses such as food and travel, Miss G had very little disposable income each month. The additional borrowing would have left her with an estimated £7.55 in disposable income a month if she had utilised it fully.

NewDay has seen these bank statements and disputes Miss G's income. It says that a year earlier she had disclosed a higher income and she hadn't let NewDay know that it had decreased. This may be the case. But Miss G wasn't obliged to proactively let NewDay know of a change in income and NewDay didn't ask her. Had it done so – as I have said it should have done – it would have had a better idea of her financial circumstances, which combined with the information it did have ought to have alerted it to the probability that the increased credit limit was not affordable for Miss G.

NewDay indicates we should ask for more bank statements over a longer period of time. It does not indicate why we should do this. I am satisfied that the information I have is sufficient for the purposes of making this decision.

So, on balance, I am satisfied that NewDay did not do sufficient checks to make a fair and reasonable decision on the matter of the June 2016 credit limit increase and I think Miss G has lost out as a result.

### **Putting things right**

As I don't think NewDay should have increased Miss G's credit limit from £1,100, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Miss G has had the benefit of all the money she spent on the account so I think she should pay this back. Therefore, NewDay should:

- Rework the account removing all interest and charges that have been applied to balances above £1,100.
- If the rework results in a credit balance, this should be refunded to Miss G 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 June 2016 regarding this account from Miss G's credit file.
- Or, if after the rework the outstanding balance still exceeds £1,100, NewDay should arrange an affordable repayment plan with Miss G for the remaining amount. Once Miss G has cleared the outstanding balance, any adverse information recorded after June 2016 in relation to the account should be removed from her credit file.
- If NewDay has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

\*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Miss G 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 tax.

**My final decision**

I uphold Miss G's complaint in part and direct NewDay Ltd, trading as Aqua, to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 29 November 2022.

Sally Allbeury  
**Ombudsman**