

The complaint

Miss M complains that NewDay Limited, trading as Aqua, irresponsibly lent to her by providing her with two credit cards and by regularly increasing her credit limits.

I know that NewDay did not make the initial lending decisions in Miss M's case. But it is responsible for answering the complaint. To keep things simple, I'll refer to NewDay throughout this decision.

What happened

Miss M initially applied for a credit card in November 2011. NewDay opened the first credit card account ('CC1') with a credit limit of £600. A second account ('CC2') was opened on 30 July 2012 and a credit limit of £500 was applied to the account. The credit limits were increased several times up to October 2015 and at that point, each card had a limit of £8,000.

Between April 2012 and April 2013, Miss M requested and was granted five credit increases (three in respect of CC1 and two in respect of CC2). Between July 2013 and October 2015, NewDay increased Miss M's credit limit on 11 occasions. Five increases were in respect of CC1 and six were in respect of CC2.

In February 2021, Miss M complained to this service. She said that NewDay should not have agreed to her having two accounts at the same time. She told us she had only made the minimum payments on each card for a long time and was using a high level of her credit limit. On that basis, she said NewDay should not have agreed to increase her credit limit.

Miss M said that if NewDay had checked her credit record, it would have seen she had missed payments, significantly increased her borrowing with other creditors and had defaulted on payments elsewhere. In a call with our adjudicator, Miss M said she was using her credit cards for essential spending, which NewDay would have known about.

NewDay told us that every time it increased Miss M's credit limit, it reviewed how she managed CC1 and CC2. It said it also considered external data provided by credit reference agencies. More specifically, it said its checks would have shown that Miss M had no arrears on her NewDay credit cards and that she was not in arrears with any other credit providers. She kept within her credit limit and did not routinely use her credit cards to withdraw cash.

NewDay also said that Miss M did not have any high cost short-term lending accounts. She had made only one late payment to her NewDay credit cards.

Our investigator didn't think the complaint should be upheld. She said Miss M managed her credit well and NewDay did not lend irresponsibly.

Miss M did not agree with that view and the matter was passed to me to make a final decision.

My provisional decision

I issued a provisional decision in this matter as I thought the complaint should be partly upheld. I said:

'NewDay is required to lend responsibly. What that means is it must check whether Miss M could affordably and sustainably repay the credit. These checks would need

to be proportionate. There is no set list of checks NewDay had to do. So reasonable checks in Miss M's case would depend on a number of things, such as: what NewDay knew about her personal circumstances, how she managed her accounts, her overall credit limit and how much she would have to pay each month, which would include any new interest and charges she'd have to pay.

The first thing I've considered is whether the checks undertaken by NewDay were proportionate. If the checks were proportionate, I've looked at whether NewDay made a fair lending decision based on the information it had at the time.

CC1 was opened in November 2011. I haven't been provided with a copy of the application Miss M filled out. That's not unusual given how long ago the application was made. Businesses aren't required to keep records indefinitely. NewDay says it would have undertaken a credit reference check. It looks as though Miss M would have been earning just over £2,000 net a month at the time. The initial credit limit was relatively modest at £400. And it doesn't look as though NewDay's credit check would have indicated any financial difficulties at that point. From the information I've seen, I can't say NewDay was irresponsible for agreeing to open CC1.

In April 2012, NewDay agreed Miss M's application to increase her credit limit and a new limit of £1,300 was agreed. NewDay said it checked Miss M's credit file and looked at how she managed her NewDay accounts. Miss M said that between November 2011 and April 2012, she'd opened two new credit card accounts. But looking at the information NewDay had, I can see that she managed CC1 well at that point. She'd generally been paying more than the minimum payment, had not incurred late fees or exceeded her credit limit. The information didn't suggest she was behind with her other repayments. Overall, I think the checks NewDay undertook were proportionate and its decision to increase the credit limit at this point was fair.

CC2 was opened in July 2012. Miss M says NewDay shouldn't have agreed to her having two accounts at the same time. I don't think it was necessarily wrong of NewDay to agree for Miss M to have two accounts. But when it was making lending decisions, I don't think it should have viewed the new account in isolation. I think it should have had regard to both accounts when deciding whether to lend to Miss M. So when it received the application for CC2, I think it would have been reasonable for NewDay to consider what it knew about how Miss M managed CC1.

In accepting Miss M's application for CC2, her new limit across both accounts would have been £1,800. I think it was proportionate for NewDay to consider the credit file, which again did not show any adverse information, such as a default. NewDay's information didn't show that Miss M had any high-cost short-term borrowing. Although Miss M had used CC1 almost up to its limit, I think NewDay would have reasonably concluded that Miss M was managing her accounts well. I don't think NewDay would have seen anything to suggest Miss M was having financial difficulties.

At Miss M's request, two credit limit increases were agreed for CC1 and CC2 in October 2012 for £400 and £250 respectively. Miss M applied for a further increase to CC2 in March 2013 and CC1 in April 2013. New Day agreed £500 for each account. When these increases were agreed, Miss M's credit limit across both of her accounts was £3,450. It looks as though Miss M had three other credit cards and a bank loan. But I don't think there was anything to suggest to NewDay that she was having difficulty maintaining her accounts. And she appeared to be managing her NewDay accounts fairly well. I can see she paid a significant amount off CC1 in October 2012, and she was not at the limit in respect of CC2.

NewDay then applied a further increase of £750 to CC2 in July 2013. In November 2013, NewDay increased Miss M's credit limit for CC1 by a further £1,100. CC2 was

increased by another £1,000 in February 2014. At this stage, I think it was again proportionate for NewDay to rely on the information from Miss M's credit file. I think it would have shown she'd opened a new credit card in July 2013. By this time, she would have been paying towards five credit cards and a loan. Again, the information doesn't suggest she was in any difficulty

with these accounts. She had not missed any payments and her credit file did not appear to show she was having problems financially.

It follows then that up to February 2014, I think the checks NewDay undertook were proportionate and that its lending decisions in respect of CC1 and CC2 up to that point were fair. I know Miss M said that some of her other accounts had defaulted and that she was using her credit cards for everyday items. Looking at the statements we have, I can't say she was routinely using her NewDay cards for essential spending. And I haven't seen anything to suggest any of her accounts were in default up to this point.

However, in June 2014, NewDay offered to increase CC2 by a further £1,000. This would have brought her credit limit across both accounts to £7,300. By this point, I think NewDay would have seen that in just over 12 months, Miss M's credit limit and indebtedness to it had doubled. She had been granted 8 credit limit increases in the space of two and a half years and each time, her indebtedness had increased. She had not made significant inroads into paying down what she owed for some considerable time. Miss M had not made more than the minimum payment for some months. I can see she'd made significant transactions on both CC1 and CC2 between February 2014 and June 2014 such that her outstanding balances were almost £6,000 before the increase had been applied.

At this stage, I think NewDay should have undertaken more thorough checks before it agreed to increase Miss M's credit limit further. By that, I mean it would have been proportionate for NewDay to have discussed Miss M's personal situation with her. The credit limit increase was offered on 17 June 2014. Had NewDay discussed Miss M's situation at this point, I think it would have found out that Miss M had left or was about to leave her job. I can see from Miss M's bank statements that she did not receive a full salary in June 2014. And she confirmed to our investigator that she did leave her job at around the same time. In those circumstances, I think NewDay would have seen she was unlikely to have any income with which to repay her credit card at that stage. In fact, she was actually out of work and without payments from work until September 2014.

NewDay offered a further credit limit increase in July 2014. Again, I think it would have been proportionate for NewDay to discuss Miss M's situation with her before it offered more credit. Had it done so, I think it would have seen she was not working and so had no employment income. I think a discussion about her financial circumstances would have also shown that she had taken out a bank loan for £15,000 at the beginning of July 2014 and appeared to be using this loan, as well as assistance from family and friends, to manage her day to day essential expenditure. Had NewDay discussed the situation with Miss M, I think it would have concluded that the credit limit increases were not affordable, nor were the repayments sustainable.

In December 2014, NewDay increased the limit on CC1 by a further £1,300 and CC2 by £1,200. This brought Miss M's credit limits to £10,700. These limits were offered shortly after a late payment fee was applied to Miss M's account. I think these increases were significant, and it would have been proportionate for NewDay to have a discussion with Miss M before agreeing to further lend to her. I think such discussions would have shown that although Miss M had a new job by this point, she was not paid the same every month and her income fluctuated. She was persistently

overdrawn. She had taken out a new credit card in September 2014, which meant that she was making significant repayments towards seven credit cards. It appears that most of those cards were at or approaching the relevant credit limits. Miss M was also making repayments towards two bank loans.

In light of Miss M's fluctuating income, when her credit repayments were taken into account alongside her rent liability, utilities and other essential expenditure, there may have been some months where Miss M could meet her repayments on a strict pounds and pence basis. But there were other months when that may not have been the case. NewDay had to consider whether the repayments were sustainable. By that I mean NewDay should have considered whether Miss M could make her repayments on time, along with her other reasonable expenditure without undue difficulties. If NewDay had discussed Miss M's financial situation with her before offering further credit, I think it would have seen that due to her variable income, the December 2014 increases were not sustainable.

In April 2015, NewDay increased the limit of CC1 by £1,700 and in May 2015, CC2 was increased again by £1,550. There were further increases in September 2015 and October 2015. By this stage, the credit limit on each of Miss M's credit cards was £8,000, or £16,000 in total. My provisional view is that these increases were substantial, and it would have been proportionate for NewDay to discuss Miss M's financial situation with her before the additional credit was offered.

Had those discussions occurred, I think NewDay would have been aware that in addition to the seven credit cards, two bank loans and her persistent overdraft, Miss M was repaying £482.50 a month towards what appears to be a high-cost, short-term loan. Her income still fluctuated. Taking her income at the lower end of that fluctuation, I think NewDay would have seen that Miss M's expenditure on rent, utilities and debt repayments was roughly the same as that income. That means she would have had very little left for other essential things such as groceries and travel to work.

I understand Miss M may have repaid the outstanding balances on both cards in full. I further understand that she was able to do this after receiving financial assistance from a family member. Whilst there may not be an outstanding balance as things stand, this does not change my current view that the lending was not sustainable at the point NewDay agreed to increase Miss M's credit limits from June and July 2014 respectively.

Putting all of this together, if NewDay had discussed Miss M's financial situation with her, I think it would have concluded that she may have difficulty in meeting her other reasonable commitments. She wasn't making any inroads into her debts and her finances did appear to be under some pressure. I think NewDay would have concluded that Miss M could not sustainably make the additional repayments.

As things stand, I intend to find that NewDay should not have increased Miss M's credit limits from June 2014 onwards in respect of CC1 and CC2. I intend to tell NewDay to take action to put that right.'

I asked the parties to provide me with any further information or evidence they wanted me to consider before I issued a final decision. Miss M responded to say she would await the final decision. NewDay provided a brief response in which it stated that it continued to believe it acted fairly and in accordance with the relevant rules.

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.

Having considered the response from NewDay, I appreciate that it believes it acted fairly in this case, but it has not set out how or why it considers the reasoning in my provisional decision to be wrong. Neither party provided any further information or evidence for me to consider.

In the absence of any further information or evidence and as no substantive response has been received from either party to my provisional decision, I see no reason to depart from my provisional findings. So for the reasons set out above, I partly uphold this complaint and require NewDay to take action to put things right.

Putting things right

NewDay must take the following action:

- rework CC1 to ensure that from June 2014, interest is only charged on the first £3,300 outstanding - to reflect the fact that no further credit limit increases should have been provided;
- rework CC2 to ensure that from July 2014, interest is only charged on the first £3,000 outstanding to reflect the fact that no further credit limit increases should have been provided;
- if these reworks result in a credit balance on either account, this should be refunded to Miss M along with 8% simple interest per year† calculated from the date of each overpayment to the date of settlement of the account. NewDay should also remove all adverse information recorded after either June 2014 on CC1 or July 2014 on CC2 – or both depending on the result of these reworks.
- or, if after the rework the outstanding balances exceed either £3,330 on CC1 or £3,000 on CC2 then NewDay should arrange an affordable repayment plan with Miss M for the remaining amount. Once Miss M has cleared the outstanding balance, any adverse information recorded after June 2014 on CC1 and/or July 2014 on CC2 in relation to the account should be removed from her credit file.

† HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Miss M a certificate showing how much tax it's taken off if she asks for one.

My final decision

I partly uphold Miss M's complaint about NewDay Limited, trading as Aqua.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 7 December 2022.

Nicola Bowes
Ombudsman