

## **The complaint**

Mr L says NewDay Ltd, trading as Aqua, irresponsibly lent to him.

## **What happened**

Mr L opened an Aqua card in March 2021. It had a £900 credit limit. This was increased to £1,900 in August 2021.

He says NewDay should have checked his credit record, it would have seen he had a number of defaults and a County Court Judgment (CCJ). When his limit was increased he was using a high level of his credit and only making the minimum payment. He was already in financial difficulties.

Our adjudicator upheld Mr L's complaint in part. He looked at the initial lending decision and said from the results of NewDay's checks, which were proportionate, the lending seemed affordable – and the adverse data on his credit record was historic. But he thought it should have carried out better checks before increasing Mr L's credit limit. Based on the information he had seen from Mr L's bank statements in the months prior to the increase, he concluded Mr L did not have the disposable income for the increase to be sustainably affordable.

NewDay disagreed and asked for an ombudsman's review. It said Mr L made more than the minimum payments after the increase which is an indication it was affordable. There was no cash spend on his account after the increase. Shortly afterwards, he took out a hire purchase agreement with monthly payments of £272 and this was up-to-date. He did not take out any other credit. If Mr L had such low disposable income how was all this possible. And he had never asked NewDay for financial assistance.

## **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.

Our approach to unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - is set out on our website and I have followed it here. NewDay is required to lend responsibly. It needed to conduct checks to make sure that the credit facilities it was giving to Mr L were affordable and sustainable. Such checks need to be proportionate to things like the amount of credit it offered Mr L, how much he had to repay (including interest and charges) each month, his borrowing history with it and what it knew about him. But there is no set list of checks it had to do.

This means to reach my decision I need to consider if NewDay carried out proportionate checks at the time of the application and the increase; if so, did it make fair lending decisions based on the results of its checks; and if not, what better checks would most likely have shown.

*The card application and initial limit of £900*

When Mr L applied for the credit card NewDay asked about his employment and residential status and for details of his gross annual income. It carried out a credit check to understand his credit history and existing credit commitments. I think these checks were proportionate. NewDay has shared the results of these checks. They show that Mr L declared an annual income of £24,000 and that he had £1,500 of unsecured debt. He had no recently defaulted accounts, no recent adverse public records, no payday loans and no accounts in arrears. He has raised that he had defaults and a CCJ – but the most recent default was 38 months old and the CCJ was over 60 months old. So I think it was fair NewDay didn't reject his application solely because of this historic data. I think, at this stage, it was reasonable for NewDay to conclude the card and its repayments would be sustainably affordable for Mr L.

It follows I don't think NewDay was wrong to give Mr L the card.

#### *The credit limit increase to £1,900*

NewDay has provided the information it based its checks on prior to increasing Mr L's limit. This included how he was using and managing his account and data on his external borrowings from the credit reference agencies. It says it was satisfied from this that the additional credit would be affordable for Mr L.

I'm not satisfied that these checks were proportionate. Mr L had been using his card for less than six months and in the first month had withdrawn nearly 95% of his limit in cash. This can be an indicator of financial instability and so I think NewDay ought to have checked his actual income and outgoings. Mr L sent in his bank statements from the months prior to the limit increase. I am not saying NewDay ought to have asked for copies of these, but it is a way for me to understand his finances at the time, and to see what NewDay would most likely have seen if it had carried out better checks.

Having reviewed the statements I think NewDay ought to have reached a different lending decision had it carried out better checks. Mr L's net monthly income was £1,575 and his essential spend was around £1,535. This is without making an allowance for groceries. So I think it is clear that had NewDay done a better affordability assessment it would have seen Mr L did not have the disposable income needed to take on any more debt.

NewDay argues that it is illogical to say this given Mr L repaid more than the minimum and was accepted for, and kept up-to-date, other credit after the increase. But that does not change my conclusion. It does not know how Mr L made his repayments and I think it was most likely it was not sustainably, or without him suffering some type of financial harm. For example, he may have been borrowing informally, or gambling more frequently than reflected on his bank statements by using cash. Overall, I am not satisfied NewDay had the reassurances it needed prior to increasing Mr L's limit that it would be sustainably affordable for him - and that is what I need to decide here.

It follows I think NewDay was wrong to increase Mr L's credit limit.

#### **Putting things right**

As I don't think NewDay should have increased Mr L's credit limit from £900, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Mr L has had the benefit of all the money he spent on the account so he must pay this back. Therefore, NewDay should:

- Rework the account removing all interest and charges that have been applied to balances above £900

- If the rework results in a credit balance, this should be refunded to Mr L 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 after August 2021 regarding this account from Mr L's credit file.
- Or, if after the rework the outstanding balance still exceeds £900, NewDay should arrange an affordable repayment plan with Mr L for the remaining amount.
- Once Mr L has cleared the outstanding balance, any adverse information recorded after August 2021 in relation to the account should be removed from his credit file.

As 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 it 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 Mr L certificate showing how much tax has been taken off if he 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 am upholding Mr L's complaint in part. NewDay Ltd, trading as Aqua, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 26 December 2022.

Rebecca Connelley  
**Ombudsman**