

The complaint

Mrs S complains that NewDay Ltd trading as Aqua, irresponsibly increased the credit limit for a credit card she held with it and that she subsequently found the repayments unaffordable.

What happened

In August 2006, Mrs S opened a credit card account with NewDay which had a credit limit of £350. Between 2007 and 2017, NewDay increased the credit limit for Mrs S's account on seven occasions.

Unfortunately, due to a health condition, Mrs S's financial circumstances changed and, in 2013, she says she had to reduce the number of hours she could work and then later had to stop work entirely. Mrs S says that had NewDay undertaken proportionate and reasonable checks before increasing the credit limit on her card it would have seen that these credit increases were unaffordable for her, and that she was becoming increasingly reliant on credit.

In June 2018, Mrs S exceeded the credit limit of her account and struggled with repayments resulting in a default. Her account was later sold to a third-party company following a default. In March 2020, Mrs S complained to NewDay about the credit increases in light of her financial situation. NewDay didn't uphold her complaint. It said Mrs S hadn't informed it of any changes to her circumstances, nor had she declined any of the credit increases which she could have opted out of. NewDay said that before considering a credit increase it had looked at the management of Mrs S's account, together with information recorded on her credit file. NewDay said it was satisfied that the credit increases had been appropriately offered to Mrs S.

Mrs S was unhappy at the response from NewDay and complained to this service. She said that had NewDay undertaken proper checks it would have noted that she always ran her account close to each of the credit limits, made minimum payments, late payments and that there was a default on her credit file.

Although there were seven increases to the credit limit of Mrs S's account since she'd taken it out in 2006, it was agreed with both parties that this service would consider the three increases applied from April 2016 onwards.

Our investigator didn't recommend that Mrs S's complaint should be upheld. He said, looking at the information assessed by NewDay prior to each of its offers to increase the credit limit in April and September 2016 and January 2017, that he thought these decisions had been fair.

Our investigator said that he thought NewDay had carried out the level of checks he would expect a lender to do when making lending decisions of this nature. These checks hadn't shown any clear signs of financial difficulty. He also said that it wasn't until around June 2018 that there had been signs Mrs S was struggling financially. It was in June that she had exceeded the card's limit and had at least one other credit account in arrears and this was around 18 months after the final credit increase. Our investigator said he thought it hadn't been unfair or irresponsible of NewDay to have applied the three credit limit increases that it

had to Mrs S's account.

Mrs S disagreed with our investigator's view. She said NewDay hadn't looked at her credit file properly as, if it had, it would have seen she was overcommitted and had a default. Mrs S also said she hadn't received any of the letters informing her of the increase and so wasn't aware she could have opted out.

As the parties were unable to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website. I'd had this approach in mind when considering what was fair and reasonable in the circumstances of this complaint.

In summary, before providing credit, lenders need to complete reasonable and proportionate affordability checks. There isn't a set list of checks a lender is required to carry out, it just needs to ensure the checks are proportionate when considering things like: the type and amount of credit being provided, the size of the regular repayments, the total cost of the credit and the consumer's circumstances.

Did NewDay complete reasonable and proportionate checks to satisfy itself that Mrs S would be able to repay the agreement in a sustainable way?

I'd seen that Mrs S said that her financial circumstances had changed over time because her health had impacted on her ability to work, thereby reducing her income. She said she had become overcommitted and reliant on credit and, had NewDay carried out proportionate and reasonable checks in April and September 2016 and January 2017, then it would have seen that these credit increases were not sustainably affordable for her.

March 2016 increase

In March 2016 NewDay increased the credit limit on Mrs S's account from £1,900 to £2,850. When deciding this increase NewDay said it took into account Mrs S's management of her credit card account and her credit file. It said there was no adverse information in Miss S's credit record, and she had made regular payments towards her account, paying over the contractual minimum amount required each month.

I hadn't seen that Mrs S had informed NewDay of the changes to her health and the impact this had had on her financial situation. So, I thought it was reasonable to say it wasn't aware that anything had altered in Mrs S's financial circumstances.

Looking at the information available as to how Mrs S had managed her account, I'd seen that she had run her account close to the credit limit. However, Mrs S had more often than not made payments that were above the contractual minimum. There also appeared to have been one missed payment in the preceding six months prior to this rise, though this hadn't attracted a late payment fee and the next month's payment was larger to cover that missing payment. There had been no other credit accounts showing any arrears/missed payments. So, I didn't think there was clear evidence Mrs S had been struggling to make payments or becoming over committed to credit.

But, this credit increase of £950 had been a third more than Mrs S's previous limit and I thought it was reasonable to have considered it to have been a significant jump in the amount of credit available to her. In light of the size of the increase and, notwithstanding the lack of adverse information on her account and credit record, I thought it would have been proportionate of NewDay to have sought further information about Mrs S's income and

expenses to verify whether this increase had been affordable for her.

However, a failure to carry out proportionate checks doesn't automatically mean that the increase in credit was unfair and unaffordable. I had to consider what further checks would have revealed and if the information would have altered NewDay's decision to increase the credit limit.

Mrs S hadn't been able to provide me with copies of her bank statements or of her credit record at that time, and I also hadn't seen evidence as to what her income or outgoings were. This was unfortunate because it meant I didn't have sufficient information to be able to say what NewDay would have discovered had it carried out proportionate checks. And I thought it would be unfair for me to say that this credit increase would not have been sustainably affordable for Mrs S in the absence of this evidence. I couldn't fairly rule out that the evidence would have shown that this credit increase was sustainably affordable for Mrs S.

September 2016 increase

In September 2016, NewDay had increased the credit card's limit to £3,750. NewDay again said that before deciding this increase of £900, it had considered Mrs S's management of the card account and had also referred to the information contained in her credit file.

However, this was an increase only five months after the one in March 2016, and it was clear from Mrs S's management of the account that she had quickly used the additional credit that had been made available to her in August 2016. Mrs S again ran the account close to the credit card's limit.

It also appeared that in July 2016, Mrs S had used the cash advance facility and in the following month had missed a payment, although no late fee had been applied. Also, looking at her outstanding credit on other accounts, this had grown substantially from March 2013 when it was around £9,500 to about £13,000. So, I thought there were indications that Mrs S was becoming increasingly indebted. But I accepted there were no late or missed payments on any other credit accounts.

In light of my view about the rise in March 2016, I thought that when raising the credit limit to £3,750 on Mrs S's account, NewDay should have again conducted further enquiries as to her income and outgoings. It hadn't been proportionate or reasonable to solely rely on information as to how Mrs S had managed her account and what appeared on her credit file, since this evidence had shown an increasing reliance on debt.

I'd seen that Mrs S hadn't cleared the balance of the card since she'd had it, and it had been always running close to the credit limit. However, I accepted this didn't necessarily mean this was a sign she was financially struggling since she had made regular monthly payments above the contractual minimum. As set out above, a failure to carry out proportionate checks didn't automatically mean that the increase in credit was unfair and unaffordable. I again needed to consider what would have been revealed had further enquiries been made.

But, as explained earlier, Mrs S hadn't provided sufficient evidence about her financial position at that time for me to be able to say this credit increase had been unsustainable for her. And I thought that even though there was evidence that the amount of credit available to her had increased, I hadn't seen any defaults or missed payments recorded on her credit file.

So, I couldn't reasonably say that, had NewDay sought further information about Mrs S's finances, it would have been satisfied that this increase wasn't, at that time, sustainably

affordable for her.

January 2017 increase

In January 2017 NewDay had increased the card limit to £4,900. This was a further increase of £1,150 only four months after the card had been increased to £3,750.

As I thought NewDay hadn't carried out proportionate checks for either of the two previous credit increases in April and September 2016, I also thought that it should have done more than rely only on information as to how Mrs S had managed her account and about her credit file. I'd seen that before this increase, Mrs S had again missed a payment in November 2016 incurring a £12 late payment fee and had exceeded the credit limit in December 2016.

Looking at the available evidence I'd seen that Mrs S's overall outstanding credit was increasing. In April 2016 her total credit balance was £9,400 but, by December 2016, this had increased to £14,844.

But I still needed to consider what information NewDay would have seen had it asked for it from Mrs S. And, although I thought there was evidence of Mrs S becoming increasingly indebted, I didn't think I could reasonably say an increase in her overall credit balance and one late payment fee was sufficient to say that the increase to £4,900 hadn't been sustainably affordable. This was because I simply didn't have enough information about her income and outgoings to say what her financial circumstances were at that time.

Did the lender act unfairly or unreasonably in some other way?

While I accepted it would have been proportionate and reasonable for NewDay to have carried out further investigations before increasing Mrs S's credit limit in April and September 2016 and January 2017, I hadn't seen any evidence that it had acted unfairly or unreasonably while handling Mrs S's account.

Mrs S had missed payments from April 2018 and a default notice had been sent out in August 2018. Her account was later defaulted and sold to a third-party in January 2020. This had been in line with the credit card's terms and conditions.

Mrs S had failed to notify NewDay of the change in her financial circumstances or tell it she had been struggling financially. I hadn't seen that NewDay had acted unfairly in the way it had handled her account when she stopped making the contractual payments.

So, for the reasons set out above, I wasn't intending to uphold Mrs S's complaint. Although I thought NewDay should have carried out further proportionate and reasonable checks on Mrs S's income and outgoings before increasing her credit limit on the three occasions from April 2016, I didn't have sufficient information as to what those checks would have revealed. I therefore couldn't reasonably say NewDay would have seen that these increases were sustainably unaffordable for Mrs S.

NewDay has agreed with my provisional view. Mrs S hasn't asked me to look at any parts of my provisional decision again.

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.

Although neither party has asked me to look again at my decision, I have reviewed the evidence and the conclusions I reached. I haven't changed my view. I'm still satisfied that although it would have been fair and proportionate for NewDay to have asked Mrs S further questions about her income and outgoings, I don't have sufficient information to say what those enquiries would have revealed. And that's important as failure to carry out these checks doesn't necessarily mean that a credit rise was unfair. Due to the lack of information about Mrs S's financial circumstances, I can't fairly say that NewDay would have seen that the three increases it made to Mrs S's credit limit from April 2016 were sustainably unaffordable for her.

For the reasons set out above I'm not upholding Mrs S's complaint

My final decision

For the reasons given above I'm not upholding Mrs S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 28 December 2022.

Jocelyn Griffith
Ombudsman