

The complaint

Ms E complains that NewDay Ltd trading as Aqua ("NewDay") was irresponsible when it increased the limit on her credit card on three occasions.

What happened

NewDay opened a credit card account for Ms E in April 2018 in with a credit limit of £450. This type of credit was an open-ended or running account facility. NewDay subsequently increased Ms E's credit limit to: £1,450 in August 2020; £2,950 in December 2020 and £4,450 in April 2021.

Ms E said that her initial credit limit of £450 was manageable. She was offered an increase to £1,450 which she accepted over the phone. Later credit increases were automatically applied. Ms E said she very quickly reached her credit limit on the card and struggled to meet her repayments. She eventually took out a bank loan to clear the balance, and I understand that by July 2022 the account had been closed. Ms E complained to NewDay that it should not have increased her credit limit and requested a refund of all interest payments plus compensation from December 2020 to when she closed the account.

NewDay didn't uphold Ms E's complaint. It said it reviews a customer's account alongside external credit reference agency (CRA) data and if it feels a credit limit increase is suitable, then one will be offered. In this instance letters were sent to Ms E prior to each increase providing her with the option to opt out, which she didn't. NewDay didn't uphold Ms E's complaint.

Ms E brought her complaint to us. Our investigator assessed the complaint and found that NewDay should have gone further in its affordability checks each time it increased her credit limit. They concluded that, had proportionate checks been carried out at the time of the second increase in December 2020, NewDay would have learnt that Ms E wasn't likely to be able to repay further credit without difficulty and wouldn't have increased her limit above £1,450. They recommended that NewDay pays Ms E compensation for this.

NewDay disagreed with our investigator's recommendation and the complaint came to me, as an ombudsman, to review and resolve. On review, I found that NewDay hadn't been irresponsible to lend to Ms E. I sent out a provisional decision on 30 November 2022 explaining why I didn't plan to uphold Ms E's complaint. I allowed some time for both parties to comment on what I'd said or provide any further information they wished me to consider.

I haven't had a response from NewDay, but Ms E responded to explain why she didn't agree with my provisional conclusion and to provide some new information for me to consider when making 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.

Having done so, and having considered what Ms E said and the new information she provided in response to my provisional decision, I am still of the view that her complaint shouldn't be upheld. I appreciate that this will be very disappointing news for Ms E and I am sorry that this isn't the outcome she was hoping for. I'll set out again my reasons for not upholding her complaint in this final decision on the matter and I'll refer to Ms E's recent communication where appropriate.

As I'd said in my provisional decision, I've also had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as NewDay, need to abide by. NewDay will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement or increasing the credit available under an existing agreement, NewDay needed to check that Ms E could afford to repay the credit out of her usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit, for example the amount offered, and Ms E's particular circumstances.

With this in mind, my considerations are did NewDay complete reasonable and proportionate checks when it increased Ms E's credit limit to satisfy itself that she would be able to repay the credit offered within a reasonable period of time? If it didn't do this, what would reasonable and proportionate checks have shown and, ultimately, did NewDay make fair lending decisions?

When NewDay increased Ms E's credit limits it said that it took into account how she'd been managing her account and any other debts she had. It provided the information it relied on, and I've reviewed this. The information shows that Ms E used the credit available to her prior to each increase. She generally made the minimum payment, except for some months in 2020 and towards the end of 2021. Ms E incurred overlimit fees in three months in 2018, ten months in 2019 and five months in 2020. The CRA information NewDay had showed that Ms E's external debt was approximately £1,500 before December 2020, and it increased steadily from then up to about £5,000 in December 2021 and to over £8,000 by June 2022.

Credit limit increases in 2020

In the months before August 2020 Ms E had been making more than the minimum payment and her account balance had decreased to just over £200. The CRA information NewDay obtained showed that Ms E had balances of about £1,000 on other accounts, including revolving credit accounts. It also showed that Ms E had two public records – according to the full credit file she's provided the most recent of these was from June 2018 over two years prior.

Ms E had given her income as £25,000, or about £1,700 a month when she opened the account in 2018. The amount of credit NewDay was now offering wasn't so large relative to her means that it was unlikely she'd be able to repay it within a reasonable period of time. Although Ms E had some adverse information on her credit file it wasn't recent enough to suggest that she was having current difficulties managing her money. Altogether, I've concluded that NewDay wasn't irresponsible when it offered Ms E this credit limit increase on the basis of the information it had.

When NewDay increased the credit limit from £1,450 to £2,950 in December 2020, the account balance was over £1,400. Ms E had been making the minimum payment for several months and had incurred an overlimit fee in September. Given these circumstances, and that the credit increase was significant at over twice Ms E's existing limit, I think NewDay ought to have taken steps to look into Ms E's finances in more detail before offering more credit.

Ms E has provided bank statements for her current account and I've reviewed these to get an understanding of what NewDay might have found out had it carried out proportionate checks. As mentioned, Ms E has also provided a copy of her credit file. To be clear, I'm not suggesting this is what NewDay ought to have done but, in the absence of any other evidence such as payslips, benefit letters or rent or mortgage statements for example, I think this information is a reasonable proxy.

Ms E's statements show that her income was approximately £2,000 from wages and child-related benefits. Regular transactions (for example for what seems to be food, petrol, rent and child-related costs) come to approximately £1,100 and Ms E spent about £200 repaying existing debt including credit card and debt collectors. The remainder was spent on purchases either directly or, for example, with catalogue and buy now pay later companies.

As mentioned, Ms E had two public records. These were county court judgements (CCJs) - one from 2018 of about £960, the other from July 2016 of over £8,000. Ms E's provided a statement of the latter from September 2022 which shows that she'd been paying £80 a month towards this and the balance was £4,322. I've also noted that Ms E's credit file shows a default of around £300 from May 2019, being repaid at £10 a month.

Having given this careful consideration, I've concluded that this information would not have led NewDay to decline further credit for Ms E. It seemed Ms E would have enough left over after meeting her regular living costs and repaying her existing debts that she would be able to meet her credit card repayments and was likely to be able to repay the credit borrowed over a reasonable period of time. While Ms E had incurred two CCJs, these were from several years ago and, as I understand it, were being repaid. I appreciate Ms E had a more recent default but this happened more than a year prior to this credit increase and was also being repaid.

Altogether, I haven't concluded that NewDay was irresponsible to offer Ms E more credit on this occasion.

Ms E said in response to my provisional decision that she had been making only minimum payments until this point and her account balance was increasing so she doesn't think it's fair that NewDay doubled her credit limit. I can understand Ms E's perspective on this point however, I don't think NewDay ought to have *automatically* declined further credit for Ms E on the basis of how she was managing her account or the CRA information it had gathered.

Ms E hadn't been making minimum payments to the extent that NewDay ought have acted in line with the regulations around persistent credit card debt (set out in CONC 6). However, as I've explained, I have concluded that NewDay ought to have looked into Ms E's circumstances in more depth before increasing her credit limit to check that she would be able to repay the credit offered within a reasonable time and without experiencing financial difficulty. But, based on what it was likely to have found out, I've concluded that further checks wouldn't have led NewDay to refuse Ms E a credit increase at that time and so I can't find it was irresponsible to have done so.

Ms E also said in her response to my provisional findings that when she was granted the credit increase in December 2020 (and again in 2021), she wasn't asked if she required it and the 'opt-out' button on the software application didn't work. Ms E explained that at the time of the previous increase from £450 to £1,450 (August 2020) she had to call NewDay to accept the increase because the button that said 'click to accept' didn't work.

I think if Ms E hadn't wanted to accept later increases she could have taken similar action and gotten in touch with NewDay by other means. NewDay provided copies of the letters sent to Ms E regarding the credit card increases which provide information about how to opt out via telephone. I haven't concluded that NewDay got anything wrong regarding how it informed Ms E of the increases or how to accept or decline these.

Credit limit increase in 2021

When NewDay offered Ms E another credit increase in April 2021, her account balance had doubled as had her external debts. Ms E had been making the minimum payment for almost a year. She'd had the account for three years at that point, hadn't made any inroads into the debt and was spending up to her limit. As before, I think NewDay should have looked into Ms E's circumstances further before offering more credit to check that she had the means to repay the credit within a reasonable period of time.

Ms E hadn't provided her bank statements for these months prior to my provisional decision and I didn't have enough information to consider what NewDay might have found out about her circumstances through a proportional check. I'd provisionally concluded that NewDay wasn't irresponsible to offer Ms E further credit in 2021.

Ms E has now provided her bank statements for 2021 and I have reviewed these, alongside all the other information available to me.

Ms E said that at the time of this increase she had more going out than coming in and by increasing her credit limit NewDay would have been aware that she would need to make higher minimum payments. I have borne in mind that not only did NewDay need to check that Ms E would be able to meet her minimum repayments, it needed to check that she would be able to repay the debt within a reasonable period of time and without experiencing financial difficulty.

The bank statements show Ms E's circumstances hadn't changed significantly since late 2020. Her income and outgoings were similar and it seems that she would have enough disposable income to be able to repay the credit within a reasonable period of time while meeting her usual living costs and existing commitments, including payments to her historic debt via debt collectors. I appreciate that Ms E's overall debt had increased - I can see from her bank statements that she was meeting her repayments for this and I haven't seen any adverse information on her credit file from this time. As before, Ms E's bank statements show that she was continuing to spend money on purchases, either directly or through catalogues and buy now pay later companies.

I don't think NewDay would have declined further credit for Ms E at this time, had it seen this information, as it seems she was meeting her regular living costs and her existing commitments. Altogether, I can't say that NewDay was irresponsible to have offered Ms E this credit limit increase.

Ms E told us that she put a lot of pressure on herself to meet her payments for this account in order to make sure it didn't have a negative impact on her credit report. She's said that it made life very difficult for her and she eventually took out a bank loan to clear the balance. I don't doubt what Ms E's told us about her circumstances and I'm sorry to hear things have

been so difficult for her. As I've explained, although I've found that NewDay's checks weren't proportionate for the credit limit increases it offered Ms E in December 2020 and in 2021, I haven't concluded that further checks would or should have led it to decline further credit for her. And so I am not upholding Ms E's complaint.

My final decision

For the reasons I've set out above I am not upholding Ms E's complaint about NewDay Ltd trading as Aqua.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 2 February 2023.

Michelle Boundy
Ombudsman