

The complaint

Mrs C complains that NewDay Ltd trading as Aqua ("NewDay") was irresponsible when it opened a credit card facility for her.

What happened

NewDay opened a credit card account for Mrs C in January 2020 in with a credit limit of £900. This type of credit was an open-ended or running account facility. NewDay subsequently increased Mrs C's credit limit to £950 in June 2021.

Mrs C complained to NewDay that the credit was unaffordable for her. She said she was in a lot of debt at the time and NewDay should have seen this and not opened the account.

NewDay said it acted correctly in providing Mrs C with her account and didn't uphold her complaint. It said that it took into consideration information she provided and her credit file record. She didn't have any adverse information on her credit file and she met the acceptance criteria.

NewDay also said that it reviews a customer's account alongside external credit reference agency (CRA) data and if it feels a credit limit increase or decrease is suitable, then one will be offered. In this instance it increased Mrs C's limit as her account balance was over the agreed credit limit following the end of a payment freeze. It said it increased the limit to avoid any future over-limit fees and reporting over-limit balances to the CRAs.

Mrs C brought her complaint to us. Our investigator assessed the complaint and found that NewDay was irresponsible to have opened the account for Mrs C. They concluded that it was unlikely Mrs C would be able to repay the credit within a reasonable period of time given her existing debts and her income level. They recommended that NewDay pays Mrs C compensation for this.

NewDay disagreed with our investigator's recommendation. It said that Mrs C had access to her partner's income and it took this into consideration in its assessment along with her existing debt levels. NewDay also said that Mrs C had made more than the minimum payment on her account and didn't incur any fees in the first seven months.

The complaint has now come to me to decide.

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.

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, NewDay needed to check that Mrs C 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 to Mrs C's particular circumstances.

With this in mind, my considerations are did NewDay complete reasonable and proportionate checks when it opened the account for Mrs C 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 a fair lending decision?

Mrs C told NewDay her salary was £16,000 (about £1,200 a month net) when she applied for the account and that her partner's monthly income was about £1,600. NewDay recorded that she was employed and her existing debts came to £11,800. NewDay said it used a CRA tool to check what Mrs C said about her income and to estimate her expenses and found no adverse information on her credit file, such as county court judgements, defaults or arrears, though it noted that she had a high level of existing debt.

As NewDay will know, the checks it was required to carry out before lending need to be proportionate to the loan specifics relative to the circumstances of the borrower. More detailed checks might be proportionate where their financial situation is such that the credit may be expected to have a more significant impact. As NewDay noted, Mrs C had high levels of existing debts. It seems likely to me that she would need to spend a sizeable proportion her income repaying these, and it would have been proportionate in this case to look further into her circumstances before lending to her. I appreciate NewDay sense-checked Mrs C's income and estimated her expenses but I can't see that it verified what she was earning or investigated what her expenses were.

Mrs C confirmed her salary at the time and told us that she was in receipt of £140 a month child benefit as she had two dependents. She said she was spending between £400 and £500 a month repaying debt, and her living costs came to about £830 including food, childcare and phone bills. Mrs C provided a copy of her credit file, her payslips and bank statements. Mrs C's bank statements confirm the payment amounts for her existing loans as at least £300, and payments of at least £200 with her credit balances across mail order and credit cards of over £8,500. I can see from her payslips that her income varied and could be as low as £1,040 a month, as in December 2019 for example.

NewDay said in its response to our investigator's view that Mrs C had access to her partner's income and it took this into consideration in its assessment. The statements Mrs C provided were from a joint account. While I can see that there are deposits from others into her bank account there were also other debt repayments, including short term loan repayments, and frequent gambling transactions, for example amounting to over £1,100 in January 2020. Altogether, I don't think further checks would have shown NewDay that Mrs C would be able to meet her repayments for this account without difficulty. I've concluded as our investigator did that it was irresponsible to have opened the account for her.

NewDay also said in its response that Mrs C made more than the minimum payment on her account and didn't incur any fees in the first seven months. Mrs C then continued to repay more than the minimum each month and her external debt balance reduced. The account management information NewDay provided also shows that while Mrs C's debts dipped below £10,000 in one month the general trend was upwards and the last recorded month in mid-2021 showed Mrs C's total debts as over £17,000. And while Mrs C was making more

than the minimum payment she was spending her available credit each month – once her balance went over £900 in August 2020 it remained above this (aside from two months) and she was over her £950 limit for most of the last 15 months of data.

In summary, I think NewDay should have seen that there was a risk that Mrs C would have difficulty meeting her repayments for this credit and further checks would likely have confirmed this. I think it was irresponsible to provide her with this facility and I've set out below what it needs to do now to put things right for her.

Putting things right

As I don't think NewDay ought to have opened the account, I don't think it's fair for it to be able to charge any interest or fees under the credit agreement. But I think Mrs C should pay back the amount she borrowed. Therefore, NewDay should:

- Rework the account removing all interest and charges that have been applied.
- If the rework results in a credit balance, this should be refunded to Mrs C 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 regarding this account from Mrs C's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mrs C for the remaining amount. Once Mrs C has cleared the balance, any adverse information 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 Mrs C 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 the tax.

My final decision

As I've explained above, I am upholding Mrs C's complaint about NewDay Ltd trading as Aqua and it now needs to take the above steps to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 2 March 2023.

Michelle Boundy
Ombudsman