

The complaint

Miss L complains that NewDay Ltd irresponsibly lent to her on a credit card.

What happened

In September 2015 Miss L applied for an 'Aqua' credit card account with NewDay, and initially an opening credit limit of £250 was approved. Over the next four years the limit was increased several times, so that by June 2019 it stood at £7,650. In 2020 Miss L twice applied for a payment freeze, and after the second one finished an income and expenditure form was completed. A reduced payment plan was then agreed for six months in 2021.

Miss L later complained that the lending had been unaffordable. She told NewDay that throughout the period her sole source of income was benefits, which didn't increase, though the lending did substantially. She said she applied for other cards with different lenders and made balance transfers to try and stay on top of the borrowing – but eventually used the credit limit again to pay for other debts and living expenses. Miss L believed NewDay ought to have seen a pattern of unsustainable borrowing when it completed its credit checks – as she was up to the limits and only making minimum payments on her other accounts. So it shouldn't have approved any more lending.

NewDay responded to say it thought proportionate checks had been carried out at each limit increase to ensure the lending was affordable. It said an in-depth evaluation was carried out at each stage – which looked at a variety of things, including instances of exceeding the limit, missed or late payments, proportion of credit utilised, and the reported status of external accounts. NewDay added that having a low income wouldn't automatically be a reason to decline borrowing, as people can have temporary decreases in income or be taking steps to increase it.

Miss L wasn't happy with the response, so referred things to our service for review. An investigator here didn't recommend the complaint was upheld. In his opinion, and having reviewed Miss L's bank statements, additional checks wouldn't have identified any issues with affordability. Miss L didn't accept the investigator's view on the complaint, so it was passed to me for a decision on the matter.

I issued a provisional decision which said I intended to uphold Miss L's complaint. I've copied below the part of my provisional findings which set out my rationale:

"We've set out our general approach to complaints about unaffordable/irresponsible lending – including all the relevant rules, guidance, and good industry practice – on our website. So I won't repeat it all here. Bearing in mind that approach, I need to answer the following questions in order to decide what's fair and reasonable in the circumstances of this complaint:

- *Did NewDay complete reasonable and proportionate checks to satisfy itself Miss L would be able to afford to repay any borrowing on the card in a sustainable way?*
- *If not, would proportionate checks have shown Miss L could afford the credit?*

The rules and regulations in place during the life of the credit card account required NewDay to carry out “borrower-focused” affordability assessments before lending, to check Miss L was able to sustainably make any repayments due under the agreement. It wasn’t enough for the lender to only consider the likelihood of it getting its money back, it had to be satisfied Miss L would be able to meet repayments out of her income without undue difficulty. That meant, for instance, without having to borrow elsewhere or renege on existing obligations.

Checks had to be “proportionate” – and what constitutes a proportionate affordability assessment depends on a number of factors, including the amount being lent and a customer’s particular personal circumstances. The lower a customer’s income and the higher the potential amount that could be due under an agreement (particularly when considered as proportion of their income) could be indicators that more thorough checks might be needed before any borrowing was approved.

I’ve reviewed the lending decisions that took place on Miss L’s NewDay account, and I’ve found that the limit increase in December 2017 was unaffordable. The available borrowing on the card was increased at that point by £1,100 to a total of £3,450 – an increase of almost her entire monthly benefits income, to an overall limit of over a fifth of her annual income. When combined with a high interest rate of 49.9% APR, I consider further checks were needed before concluding this lending would likely be affordable – and Miss L would be able to repay it in a sustainable way. That’s because it was looking unlikely on the face of it.

Prior to the previous credit increase in July 2017, Miss L had been up to her limit and making minimum payments. Three months after that increase to a limit of £2,350 Miss L made a balance transfer of £1,700 to another credit card, and then started to build up the borrowing on her NewDay account again. She’d previously cleared the balance with a balance transfer the year before – so I think a pattern was becoming evident. By the time NewDay approved the £3,450 limit the balance was back up to £500, and her credit file would have been showing two other open credit card accounts as well as a catalogue shopping account.

Miss L has detailed her income (through benefits) and her committed expenditure – and going by her bank statements this hasn’t changed much since 2015. This shows she had around £300 left each month to repay any borrowing during the period she had the card. So, bearing that in mind, I don’t find that Miss L would have been able to sustainably afford even the minimum repayments on all her borrowing if the remaining £3,000 available credit with NewDay was utilised. Let alone repay any balances within a reasonable timescale. Prior to that increase, and taking into account her existing lending elsewhere, I consider she’d reached the limit on what she could affordably repay.

Overall, I don’t think proportionate checks were carried out before the December 2017 limit increase. Had they been, I find they would have shown Miss L couldn’t afford that level of lending. As I don’t think NewDay should have increased Miss L’s credit limit above £2,350, I don’t think it’s fair for it to apply any interest or charges on any balances which exceeded that limit. However, I think Miss L has had the benefit of all the money spent on the account so I find she should pay this back – but in a way she can afford.”

Miss L responded to say she accepted my provisional findings and had nothing further to add at that point, but might if NewDay made further submissions. NewDay didn’t respond to the provisional decision by the deadline.

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 reviewed everything again, and given there hasn't been a response from NewDay, I see no reason to depart from the findings I reached in my provisional decision. So, for the reasons set out above, I find that NewDay shouldn't have increased Miss L's credit limit above £2,350 – as the lending after that was unaffordable. That means I don't think it's fair for NewDay to apply any charges or interest on any balances which exceeded the £2,350 limit. Once those have been deducted from any outstanding balance, NewDay should also work with Miss L to determine an affordable way for her to repay the remaining money she spent on the account.

Putting things right

Therefore, NewDay should:

- Rework the account removing all interest, fees, charges, and insurances (not already refunded) that have been applied to balances above £2,350.
- If the rework results in a credit balance, this should be refunded to Miss 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 December 2017 regarding this account from Miss L's credit file.
- If after the rework there is an outstanding balance, NewDay should arrange an affordable repayment plan with Miss L for the remaining amount. Once Miss L has cleared the outstanding balance, any adverse information recorded after December 2017 in relation to the account should be removed from her credit file.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Miss L 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

My final decision is I uphold Miss L's complaint and direct NewDay Ltd to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 3 March 2023.

Ryan Miles
Ombudsman