

The complaint

Mrs F complains that NewDay Ltd shouldn't have accepted her credit card applications and increased the credit limit on her credit card accounts as the lending was both unaffordable and irresponsible.

What happened

Mrs F is represented in this complaint. However, for the sake of simplicity in this decision I have referred to all the submissions from Mrs F's representative as being made by Mrs F. Mrs F applied and was accepted for an Aqua credit card with NewDay in January 2013. Over the course of the next three years she was offered several credit limit increases. In January 2017 Mrs F applied for and was accepted for a NewDay Marbles credit card account.

NewDay's lending:

	Date	Limit
Aqua account opening	January 2013	£250
1 st increase	April 2013	£600
2 nd increase	October 2013	£1,000
3 rd increase	March 2014	£1,400
4 th increase	May 2015	£2,250
5 th increase	October 2015	£2,900
6 th increase	April 2016	£3,800
Marbles account opening	January 2017	£600

In July 2021 Mrs F complained to NewDay. She said she was provided with credit she could not afford nor was it sustainable given her financial circumstances. In its final response NewDay said that as the Aqua account and first four credit limit increases were more than six years ago, under the FCA's guidelines it would not reasonably be expected to consider these due to the time that has elapsed.

In respect of the fifth and sixth increase on the Aqua account NewDay said it was satisfied each credit limit increase from October 2015 was provided correctly and in line with its lending policy. It said adequate checks had been completed to ensure these credit limit increases were affordable. It went on to say that it was satisfied that the new Marbles account was provided in line with its responsible lending policy and that Mrs F met its acceptance criteria.

Mrs F didn't agree and brought her complaint to this service. Our investigator thought that NewDay shouldn't have approved the credit limit increases in October 2015 and April 2016. Nor should it have approved the new Marbles credit card account. She recommended NewDay should take some action to remedy the situation.

NewDay did not agree with the investigator's view and asked for a decision from an ombudsman. It said that the approach it takes to reviewing accounts for credit limit increases includes an assessment of affordability. It said this assessment includes data on income and

expenditure and other information held by credit reference agencies. NewDay said Mrs F was managing her account appropriately and in line with the terms and conditions of her credit agreement.

I issued a provisional decision on 18 January 2023. I said:

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance, and good industry practice - on our website and I've taken that into account when I have considered Mrs F's complaint.

NewDay has said that Aqua account opening and first four credit increases occurred more than six years ago and are therefore outside of the remit of our organisation. Prior to her view our investigator reached out to Mrs F through her representative for more information to enable her to determine if we had the power to investigate the initial amount provided and the first four credit limit increases. I have also reached out to Mrs F's representative. I asked for confirmation that Mrs F agreed for me to look at only the lending decisions from October 2015 onwards. Or alternatively I asked Mrs F to provide information relating to when she first became reasonably aware that she could bring a complaint or if there were any exceptional circumstances which may have occurred which may have prevented her from bringing her complaint to this service sooner. No further information was provided and NewDay hasn't given us permission to look at these aspects of the complaint. So, I shall only be looking at the merits of the two last increases on Mrs F's Aqua credit account and the Marbles account opening.

Aqua lending increases

	<i>Date</i>	<i>Limit</i>
<i>5th increase</i>	<i>October 2015</i>	<i>£2,900</i>
<i>6th increase</i>	<i>April 2016</i>	<i>£3,800</i>

In October 2015 Aqua proactively raised Mrs F's credit limit from £2,250 to £2,900. Although I'm not looking at the account opening, or the earlier credit limit increases it's relevant that in January 2013 Mrs F's account was opened with a credit limit of £250 and by May 2015 the limit was £2,250. This is a ninefold increase.

It's important to note that the checks must be proportionate to the amount being lent – so the higher the amount, the greater the checks likely should be, and the lower the amount, then fewer checks can possibly be made. As Mrs F's lending increased so I would expect NewDay's affordability checks to be deeper.

From the affordability data used by NewDay to assess Mrs F's credit limit increase proposals between June 2013 and October 2015 I can see Mrs F exceeded her credit limit eight times.

NewDay said the over limit fees are incurred when a customer exceeds their credit limit due to spending or incurred fees/interest. It said its policy excludes customers for increase offers where an over limit fee has been incurred for three consecutive months. The same stance applies in terms of late fees. It said consecutive fees did not occur on Mrs F's account and so the increases went ahead in line with its policy.

NewDay went on to say it would be unreasonable to assume that the customer is experiencing financial difficulties purely due to over limit fees. It said it also considers

other factors when assessing the credit limit, for example regular payments were received albeit occasionally late. It said there was nothing concerning to suggest that the increases offered were unaffordable at that time. It said there was only one instance where Mrs F incurred a late payment charge in October 2015.

I accept that a customer going over their credit limit occasionally is not in and of itself evidence that the lending is necessarily unaffordable. But I believe repeated occasions going over the limit, when the limit is increasing significantly, whether consecutive or not, is a signal that more detailed checks may be required to justify further lending. Mrs F had four credit limit increases prior to October 2015 and after each she exceeded the limit. Mrs F exceeded her limit the month following her increase in May 2015. She consistently brought her balance to the limit, utilising over 90% of the limits. Her debt was increasing and her repayments towards her credit cards didn't appear to be reducing her balances in any significant way. Although Mrs F only incurred one late payment charge it did occur in the very month a £750 increase in credit was offered.

Looking at Mrs F's credit file I can see she had three other credit card accounts. The last of these opened the month before the Aqua October credit limit increase.

I'm persuaded that further checks prior to the increase in October 2015, especially an updated and verified income and expenditure assessment were needed. I say this because Mrs F's credit situation had changed significantly since the account opening.

It follows then that the credit increase by a further £900 to £3,800 also warranted further affordability checks. This credit limit occurred only six months after the previous increase and Mrs F had spent up to and over the credit limit of £2,900 within four months. I can see from the external credit reference agency data provided by NewDay as evidence of its risk and affordability check that in March 2016 Mrs F's reported level of debt increased sharply from zero to £15,000 for one credit reference agency. NewDay told this service it had only been using one credit agency previous to this and from March 2016 it was using a second agency. So, I'm satisfied NewDay was aware that Mrs F's overall indebtedness was much higher than previously reported.

What would proportionate checks have shown?

Prior to the October 2015 credit increase onwards I think it would have been proportionate for NewDay to have verified Mrs F's income and asked about expenditure before lending. Mrs F has said her credit history showed that she was missing payments and had defaulted on several accounts. She said her financial struggles started in 2012. She said the missed payments painted a picture of someone whose finances were getting significantly worse during the duration of the credit and that it was unfair for her to be offered a financial product for which payments are unsustainable, thereby putting her in a position of stress and further financial difficulty.

We have not received any evidence e.g. bank statements showing income and expenditure, about Mrs F's financial circumstances prior to the lending decisions in October 2015 and April 2016. I'm not disputing Mrs F when she says she was in financial difficulty. But without evidence of this I'm unable to understand what, if anything, NewDay might have found out if it completed reasonable and proportionate checks nor whether it made a fair lending decision. As I'm not persuaded that NewDay acted unfairly, subject to any further information I might receive from Mrs F or NewDay I don't think it needs to do anything to put things right.

Marbles account opening

	<i>Date</i>	<i>Limit</i>
<i>Marbles account opening</i>	<i>January 2017</i>	<i>£600</i>

Again, NewDay's own affordability data shows that at the point of this new card application Mrs F's balance on her Aqua card had just exceeded its limit of £3,800 and she was only making minimum payments and not paying down the debt. Her unsecured loan total by now, again according to the data available to NewDay exceeded £11,000.

NewDay said it did not obtain evidence of income and expenditure and it wasn't required to do so as it isn't standard industry practice. It said it uses another method to estimate a customer's nondiscretionary expenses. NewDay said there were no concerns in terms of the affordability of the account. I don't agree there were no concerns. NewDay's own data indicated that Mrs F was maximising her credit by reaching her limit quickly and making only minimum payments. And while income and expenditure checks might not be warranted with a modest credit limit, the £600 offered should have been seen in the context of Mrs F's existing credit limit and usage on her Aqua card. I'm persuaded this was enough to warrant deeper checks.

What would proportionate checks have shown?

As I mentioned above, I'm not disputing Mrs F when she says she was in financial difficulty. But I haven't seen any evidence e.g. bank statements showing income and expenditure, about Mrs F's financial circumstances prior to the lending decision in January 2017. Without evidence of this I'm unable to understand what, if anything, NewDay might have found out if it completed reasonable and proportionate checks nor whether it made a fair lending decision.

NewDay has confirmed no statements were generated on this account as it was never utilised by Mrs F. As I'm not persuaded that NewDay acted unfairly, nor did Mrs F utilise the credit, subject to any further information I might receive from Mrs F or NewDay I don't think it needs to do anything to put things right.

Neither party responded to my provisional 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.

As neither party has provided any further information or evidence following my provisional decision I see no reason to depart from its conclusions.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 20 March 2023.

Maxine Sutton

Ombudsman