

## The complaint

Mr H, who is represented by a third party, complains that NewDay Ltd (“NewDay”), trading as Aqua, irresponsibly granted him a credit card that he couldn’t afford to repay.

## What happened

Mr H entered into an agreement with NewDay to have access to credit with an Aqua credit card account. The account was opened in June 2018 with a credit limit of £1,200. There followed five credit limit increases: in October 2018 to £2,200, in June 2019 to £3,950, in August 2020 to £4,950, in August 2021 to £5,700 and finally in March 2022 to £6,700.

The account was closed in May 2022 at Mr H’s request.

Mr H says NewDay didn’t complete adequate affordability checks when it opened the account. He also says if it had, it would have seen that it wasn’t affordable for him as he was already struggling financially and having the card worsened his financial position.

Our adjudicator said that NewDay shouldn’t have increased Mr H’s credit limit in August 2021 as by that point it’s likely that the account was no longer affordable for him.

As NewDay disagrees with our adjudicator’s finding, the complaint has come to me for a 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.

NewDay needed to take reasonable steps to ensure that it didn’t lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr H could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer’s income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that NewDay should fairly and reasonably have done more to establish that any lending was sustainable for Mr H. These factors include:

- the *lower* a consumer’s income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the frequency of borrowing, and the longer the period of time

during which a customer has been indebted (reflecting the risk that prolonged indebtedness may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

#### *Account opening*

The credit check NewDay completed looked into Mr H's financial circumstances, using information obtained from credit reference agencies. New Day also relied on information Mr H gave in his application. Mr H said he had an annual income of around £22,000, which works out to a net income of around £1,500 per month. I've seen that NewDay says it verified Mr H's income. The checks also showed he had around £13,000 in outstanding unsecured credit. There was no evidence of Mr H having any recent defaults, payment arrangements or arrears elsewhere. However, just because it looks as if NewDay carried out proportionate checks, it doesn't automatically mean it made a fair lending decision. So, I've thought about what the evidence and information showed.

I've reviewed the information and evidence NewDay gathered. Having done so I'm satisfied that the opening checks showed that the agreement was likely to be affordable to Mr H. I say this because, given the available information about Mr H's income and debt, it was likely that the initial opening credit limit of £1,200 would be affordable for him. I therefore don't think New Day acted unfairly when approving the finance application.

#### *First credit limit increase – October 2018*

Mr H has provided us with bank statements that show his income and expenditure leading up to the first credit limit increase. I see that Mr H was receiving around £1,500 per month in net income and, alongside his regular outgoings, had other credit payments of around £400. Mr H tended to make monthly repayments that were above the minimum required. I've noted though that by this point he had incurred two late payment fees and another fee for going over his credit limit.

I therefore agree with our adjudicator that had NewDay taken further steps to check on Mr H's financial situation, on balance it wouldn't have been unfair to increase Mr H's credit limit given that overall he was managing his account reasonably well.

#### *Second and third credit limit increases – June 2019 and August 2020*

In June 2019 and August 2020 Mr H's credit limit was increased first to £3,950 and then to £4,950.

For these increases, the bank statements provided by Mr H show he was receiving a slightly higher income whilst his level of committed expenditure appears to have reduced, to around £700. At the point of the third limit increase, it looks like Mr H's committed monthly expenditure had gone down, to around £1,000. His monthly credit commitments appeared to be around £175 by then. He had though incurred three more overlimit fees before the second credit limit increase, but didn't incur any further fees prior to the third increase. But he was also still continuing to make payments well above the minimum required. So I again agree that Mr H still appears to have been managing his account reasonably well.

#### *Fourth credit limit increase – August 2021*

In August 2021 NewDay increased Mr H's credit limit to £5,700. Again, I think it would have been proportionate for NewDay to have checked Mr H's income and to have taken steps to find out more about his committed expenditure and living costs. Had it done so, it's likely NewDay would have seen that Mr H had recently taken out further borrowing elsewhere that had increased his total credit, aside from NewDay, from £3,500 to around £12,500. So whilst Mr H's income had increased only slightly, to £2,000, his statements show his committed expenditure for living costs and credit was around £1,700 per month. He was now making credit payments of around £530 each month. So, whilst Mr H appeared to be managing his NewDay account relatively well and was continuing to make payments above the minimum, I agree there was a concern by now about Mr H's total level of credit repayments. Taking into account the increased NewDay credit limit, he would now be looking at making payments towards credit that totalling around 35% of his monthly income.

This additional borrowing is something I would have expected NewDay to be aware of. I think there was a real risk that with the very substantial increase in Mr H's overall level of financial commitment, his financial situation was likely to be at risk of deteriorating with a level of debt that had or would soon become unsustainable.

Taking all of these issues into account, it follows that I agree with our adjudicator that NewDay ought not to have increased Mr H's credit limit after it gave him his fourth credit limit increase in August 2021.

### **Putting things right – what NewDay needs to do**

NewDay shouldn't have increased Mr H's credit limit from £4,950 to £5,700 in August 2021. NewDay therefore needs to do the following:

- Rework Mr H's account to ensure that all interest and charges should be removed from the account for balances over £4,950, being the previous credit limit increase. All late payment and over limit fees should also be removed; and
- If an outstanding balance remains on the account once these adjustments have been made, NewDay should contact Mr H to arrange an affordable repayment plan for the account. Once Mr H has repaid the outstanding balance, it should remove any adverse information recorded on Mr H's credit file from 27 August 2021 onwards.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr H, along with 8% simple interest per year on the overpayments from the date they were made (if they were) until the date of settlement. NewDay should also remove any adverse information from Mr H's credit file from 27 August 2021.

†HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Mr H a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

I therefore partially uphold this complaint and require NewDay Ltd to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 July 2023.

Michael Goldberg  
**Ombudsman**