

The complaint

Mr S complains that NewDay Ltd (“NewDay”) irresponsibly granted him two credit accounts that he says he couldn’t afford to repay.

What happened

Mr S entered into agreements with NewDay to have access to credit with two separate credit card accounts. The first, an Aqua account, was opened for him in December 2018 with a credit limit of £600. The credit limit was then increased several times, reaching £5,050 in April 2022. The second account, an Amazon credit card, was opened for him in February 2019 with an initial credit limit of £500. This was increased to £1,500 in July 2019.

I understand that the Amazon credit account is now closed with no outstanding balance left on it.

Mr S says that NewDay didn’t complete adequate affordability checks when it opened each of these accounts. He says if it had, it would have seen that they weren’t affordable for him as he didn’t have enough income to make the repayments and was experiencing financial difficulties.

NewDay didn’t agree. It said that it carried out a reasonable and proportionate assessment to check Mr S’s financial circumstances before granting him each of the two accounts.

Our adjudicator recommended that both accounts be partially upheld, from the point when the credit limit on the Aqua card was increased to £2,100 in November 2019. NewDay didn’t agree and said that Mr S appeared to be managing to repay both accounts and was not financially overstretched.

The complaint has therefore been passed 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.

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.

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 S 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 the consumer. 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.

Before granting these two accounts, NewDay needed to look into Mr S's financial situation.

Account openings

At the time of granting the Aqua account in December 2018, Mr S had an annual declared income of around £15,000. This worked out as being a take home pay each month of around £1,150. I've seen that at this point he had around £3,000 in other unsecured lending. The checks NewDay carried out didn't show evidence of him getting into financial difficulty elsewhere, such as having defaults on other lending or having to take out pay day loans. But given that Mr S was already amassing a significant level of borrowing elsewhere, relative to his income, I think it would have been proportionate for NewDay to carry out more checks in order to better understand Mr S's financial situation. This might include finding out more about Mr S's regular living costs and any other non-discretionary spending.

At the time of granting the Amazon account, Mr S stated that he now had a lower annual income, being £13,000. This worked out at just over a £1,000 per month in take home pay. I think again it would have been proportionate for NewDay to carry out better checks in order to have a fuller understanding Mr S's financial situation. I say this especially since there appears to have been a relatively rapid escalation of his level of committed credit elsewhere in a short period of time, having increased to £6,800.

Credit limit increases

In July 2019 NewDay granted credit limit increases on both cards – on the Aqua card up to £1,350 and on the Amazon card up to £1,500. So by then Mr S had total available credit with NewDay of £2,850. Given that I can see from NewDay's credit file information that Mr S by this point already had around £6,600 in other committed debt, I again think NewDay ought to have done more so as to take a proportionate look into his financial circumstances. I can't say exactly what NewDay would have found as Mr S didn't provide our adjudicator with details of his daily expenditure, for example by way of bank statements.

In November 2019, NewDay again increased the credit limit on Mr S's Aqua account, from £1,350 up to £2,100. That means Mr S now had a total available credit with NewDay of £3,600. He also had other external credit of around £8,400 with NewDay. At that time, Mr S owed £1,700 on his Aqua account and £1,500 on his Amazon account. Putting all this

together, Mr S owed just short of £12,000 in unsecured debt at that point. Were Mr S to be able to afford to make sustainable payments of say 5% of what he owed he would have had to find about £600 – more than half his income - from his net salary of around £1,000, to be able to meet those payments. I think that demonstrates that by this point, whilst it's quite likely that Mr S had been starting to struggle with meeting all his credit payments in July 2019, by November 2019 it can definitely be seen from the available information about his financial situation that he was no longer able to pay off the total of what he owed on a sustainable basis.

It follows that I'm in agreement that by November 2019, the level of credit granted by NewDay to Mr S had become unsustainable. And I think that having the use of the total available NewDay credit of £3,600 was very likely not be enough to leave Mr S with sufficient means to meet his essential living costs, committed expenditure and other unsecured debt repayments.

NewDay has pointed out that in November 2019 Mr S was paying off three loans by way of relatively low payments. But I don't consider that alone as being enough to show that NewDay's lending was likely to have been affordable to Mr S in the longer term. He had other non-discretionary costs he still had to meet, such as a monthly insurance payment of £89. I also think that borrowing at a low repayment rate can also be suggestive of Mr S already getting into difficulty with his finances. I also don't think that the fact Mr S was able to make payments above the minimum and didn't incur late fees or other charges with his NewDay credit is in itself enough to demonstrate that Mr S's level of borrowing was likely to have been sustainable.

I therefore agree that by November 2019 NewDay ought to have been aware that Mr S was not in a position to take on and manage this additional credit.

Putting things right – what NewDay needs to do

- Rework Mr S's Aqua and Amazon card accounts to ensure that all interest and charges should be removed for balances over £2,850, being the total of the previous credit limit increase for the two accounts. All late payment and over-limit fees should also be removed; and
- Rework both accounts removing all interest and charges that have been applied.
- If an outstanding balance remains on either of the two accounts once these adjustments have been made, NewDay should contact Mr S to arrange an affordable repayment plan for the account. Once Mr S has repaid the outstanding balance, it should remove any adverse information recorded on Mr S's credit file from 3 November 2019.

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 S, 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 S's credit file from 3 November 2019.

†HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Mr S 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 in respect of the Aqua and Amazon card accounts as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 June 2023.

Michael Goldberg

Ombudsman