

The complaint

Miss P says NewDay Ltd, trading as Aqua, irresponsibly lent to her.

What happened

Miss P applied for a credit card in January 2020. It was approved with a limit of £300 and she was given four subsequent credit limit increases by NewDay.

The first increase was in October 2020 to £1,300; the second in February 2021 to £2,300; the third in June 2021 to £3,300 and the final one in April 2022 increased the limit to £3,550.

Miss P says the initial limit was affordable for her and she is not complaining about that lending, but none of the increases were. If NewDay had done proper checks it would have seen she could not afford such substantial increases. She is also unhappy that when she told NewDay she was struggling financially it did nothing to help her.

Our adjudicator upheld Miss P's complaint. He said NewDay ought to have verified Miss P's income and outgoings before increasing her limit four-fold and more. Had it done so it would have seen she would not be able to afford the increased limits from October 2020 onwards. He found that it did agree to a reduced repayment plan and froze interest, but he thought it could have done so a few weeks earlier.

NewDay challenged this assessment. It agreed that if it had done such checks, it would have seen Miss P had a low disposable income. But it argued that as Miss P had historically been able to repay much more than the required minimum payment, she had evidenced the card was affordable for her. Our adjudicator explained Miss P was borrowing informally to allow her to do this, NewDay did not respond to this point. So the complaint was passed to me to make 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.

Our approach to unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - is set out on our website and I have followed it here. NewDay is required to lend responsibly.

It needed to conduct checks to make sure that the credit limit increases it was giving to Miss P were affordable and sustainable. Such checks need to be proportionate to things like the credit limits it offered Miss P, how much she had to repay (including interest and charges) each month, her borrowing history with it and what it knew about her circumstances. But there is no set list of checks it had to do.

This means to reach my decision I need to consider if NewDay carried out proportionate checks at the time of each limit increase; if so, did it make fair lending decisions based on the results of its checks; and if not, what better checks would most likely have shown. I also

need to think about, bearing in mind the circumstances at the time of each additional advance in credit, whether there was a point at which NewDay ought reasonably to have realised it was increasing Miss P's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit.

NewDay offered Miss P a credit limit increase of £1,000 to £1,300 in October 2020. I think this was a significant increase and NewDay needed to be sure Miss P could sustainably repay a balance of £1,300 within a reasonable period of time. NewDay's submission suggests that its decision to increase the credit limit on Miss P's account was largely based on reviewing her spending and payment behaviour on both its card, and external credit. I have some concerns with this approach as it's not clear to me why a borrower who is able to successfully manage a given credit limit can then automatically be deemed, without further checks at the time of the decision, to be able to successfully manage a higher limit. Also, Miss P's account had been open for less than a year.

In the circumstances of this case I don't think solely these types of checks were sufficient. Based on what NewDay learnt when Miss P applied for the card it knew she was on a relatively low income and had defaulted on an account in the previous 12 months. I think it therefore needed to complete better checks to get the assurances it needed that Miss P would be able to sustainably repay a higher balance in a reasonable period of time.

To look at what better checks would most likely have shown NewDay I have reviewed Miss P's bank statements from the months prior to the limit increase. I am not saying it had to do exactly this, but it is one way for me to recreate what a fuller financial review would most likely have shown NewDay. The statements show – as NewDay has more recently seemed to acknowledge – that Miss P did not have enough disposable income to support a credit limit increase, rather at the time her non-discretionary outgoings already exceeded her income.

So had NewDay carried out proportionate checks it would most likely have seen that there was a high risk Miss P was not in a position to be able to repay any new debt sustainably, that is without borrowing to repay, or suffering other financial harm.

It follows I think NewDay was wrong to increase Miss P's limit in October 2020. And logically, I find NewDay cannot argue it was responsible to continue to increase her limit – unless it could evidence that it completed fuller financial checks that demonstrated Miss P's disposable income had increased and so she would be able to manage her repayments sustainably. In the absence of any such information I have again looked at Miss P's bank statements and can see her financial position had not improved. So I find all subsequent limit increases were irresponsible.

NewDay argues Miss P had historically made repayments far in excess of the minimum payment showing the credit it offered was affordable. But I can't see it looked into how she was achieving this to be sure it was sustainable. Miss P has confirmed it was through informal borrowing from family and friends.

It follows I find NewDay was wrong to provide all four credit limit increases to Miss P.

Did NewDay act unfairly or unreasonably towards Miss P in some other way?

Miss P says NewDay did not offer any support when she told it she was struggling financially in November 2021, rather it continued to offer limit increases. NewDay's contact notes show Miss P did contact it at this time to ask for a reduction in her interest rate, but when asked if she was having financial difficulties Miss P said she wasn't, but wanted a more competitive rate or a balance transfer offer.

Miss P raised this complaint in June 2022. NewDay's notes show it again asked if Miss P wanted to review what she could afford to repay but Miss P said she wanted to wait for the outcome of her complaint. However by August 2022 the parties had agreed a reduced repayment plan and interest had been frozen. So from the available evidence I can't see NewDay was made aware of, and ignored, Miss P's financial position in November 2021. I find that once Miss P was willing to engage in discussion about her financial situation NewDay acted fairly, and with forbearance.

Putting things right

As I don't think NewDay should have increased Miss P's credit limit above £300, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Miss P has had the benefit of all the money she spent on the account so I think she should pay this back. Therefore, NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £300.
- If the rework results in a credit balance, this should be refunded to Miss P 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 19 October 2020 regarding this account from Miss P's credit file.
- Or, if after the rework the outstanding balance still exceeds £300, NewDay should arrange an affordable repayment plan with Miss P for the remaining amount. Once Miss P has cleared the outstanding balance, any adverse information recorded after 19 October 2020 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 Miss P 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

I am upholding Miss P's complaint. NewDay Ltd, trading as Aqua, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 5 July 2023.

Rebecca Connelley
Ombudsman