

The complaint

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

What happened

Miss M applied for a credit card from NewDay in October 2017. It was approved with a limit of £600. She was given six subsequent credit limit increases, and one decrease, as set out below:

limit change	date	new limit
1	Apr-18	£1,600
2	Aug-18	£3,000
3	Dec-18	£4,000
4	Jul-19	£2,000
5	Feb-20	£3,750
6	Mar-21	£5,000
7	Jul-21	£6,500

Miss M says NewDay raised her credit limit from £600 to £6,500 without ever asking about her financial situation. She wants her balance to be cleared, or a refund of all interest she has paid since 2018. She says she hasn't been able to pay off her debt due to the high unlawful interest rate.

NewDay says all its lending decisions were based on reasonable and proportionate checks to ensure the credit was affordable for Miss M.

Our investigator upheld Miss M's complaint in part. She said the limit increases in March and July 2021 should not have been given as NewDay could see from the checks it carried out then that Miss M would most likely be unable to repay any further credit sustainably. She set out what NewDay should do to put things right.

NewDay accepted this assessment. Miss M didn't, saying it would still leave her with a balance of around £2,000 to repay. She said as she had already paid about £10,000 to NewDay she would not accept this. She believes the increases were irresponsible from August 2018 onwards. She wants her outstanding balance to be written off. As the parties have not reached an agreement 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 it offered to Miss M was affordable and sustainable. Such checks need to be proportionate to things like the credit limits it offered Miss M, 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 Miss M's application and 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 M's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit.

I can see as part of NewDay's checks when Miss M applied it considered her income, housing costs, total level of borrowing held elsewhere and monthly repayment costs – and for the limit increases it also looked at how she was managing both her Aqua account and her other debt elsewhere. I think these checks were proportionate at the start, but I'm not wholly satisfied they were for all the limit increases. I think NewDay needed to check her income and housing costs had not changed significantly as it extended Miss M's borrowings.

We asked Miss M to confirm her income and housing costs at the time of the increases to get a proxy for what NewDay would most likely have learnt had it completed better checks. Miss M has confirmed her income did not change significantly over the relevant period, nor did her housing costs until she started paying a mortgage prior to the fifth change to her limit. This means based on the available evidence, I can't conclude better checks ought to have changed NewDay's lending decisions. But I do think for the last two increases it failed to make fair lending decisions even based on the information it did have. I'll explain why.

The limit increases in March and July 2021

NewDay's checks showed that Miss M had recently taken out a mortgage and was no longer living with her parents. So it could reasonably have assumed her overall living costs had increased, not just her direct housing costs. Her unsecured borrowing had also increased substantially to around £36,000. This was the most critical factor as it meant Miss M would already be spending a significant percentage of her income each month on her credit commitments, such that there was a high risk that extending them further would mean Miss M would either need to borrow to repay or suffer some other financial harm.

NewDay has not submitted any evidence to show that Miss M's financial position had improved before the July 2021 increase so repaying this would most likely also be unsustainable for Miss M.

It follows I think New Day was wrong to increase Miss M's limit at these times.

The initial application and limit increases between April 2018 and February 2020

Miss M argues the lending was irresponsible from August 2018 onwards, but I have considered all of NewDay's earlier lending decisions. Based on the information NewDay gathered - and what it would most likely have learnt had it verified Miss M's income and housing costs at the time of these limit increases - I can't see there were any signs that the lending would not be affordable for Miss M. And she was managing her account well, often paying more than the minimum whilst her external debt was reducing at the same time.

It follows I don't think NewDay was wrong to approve Miss M's application or to increase her limit at these times.

Did NewDay treat Miss M unfairly or unreasonably in some other way?

Miss M is also unhappy with the interest rate she was charged. I accept the interest rate was higher than other credit cards, but Miss M had to actively engage in the application process for her card, so I think it's likely that she was aware of what she was agreeing to pay. And it would have been shown on her credit agreement and her monthly statements. I haven't seen anything which makes me think that NewDay treated Miss M unfairly or breached industry practice regarding interest charges.

Miss M also raised that NewDay could not provide a copy of her agreement with a wet signature. I note she applied online. If she has concerns about the enforceability of the agreement, that would be for the courts to decide. This service can't declare an agreement to be unenforceable, but I have seen nothing to suggest NewDay is requesting repayment of a debt that is not Miss M's.

Putting things right

As Miss M has had the benefit of the money lent to her it is fair she should repay the capital borrowed, but she has also paid interest and charges on two limit increases that should not have been given.

So NewDay should:

1. Refund all the interest and charges Miss M has paid on balances above £3,750 from 29 March 2021 onwards.
2. If the borrowing is still in place, you should reduce the outstanding capital balance by the amount calculated at step 1.
3. If, after step 2, there remains an outstanding capital balance, you should ensure that it isn't subject to any historic or future interest and/or charges. But if step 2 leads to a positive balance, the amount in question should be given back to Miss M and 8% simple interest* should be added to the surplus.
4. Once Miss M has cleared any outstanding capital balance, any adverse information recorded after 29 March 2021 in relation to the account should be removed from her credit file.

I note Miss M has requested that the debt on her account be written off, but that is not our approach in irresponsible lending cases such as these - and I have found no exceptional circumstances that would lead me to take a different approach here.

*HM Revenue & Customs may require NewDay to take off tax from this interest. If it does, NewDay must give Miss M a certificate showing how much tax it's 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 M'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 M to accept or reject my decision before 4 July 2023.

Rebecca Connelley
Ombudsman