

The complaint

In summary, Miss T complains that NewDay Ltd (trading as Aqua Classic), provided her with a credit card and credit limit increases that she wasn't able to afford. She is also unhappy with it not responding to her complaint. I will refer to NewDay throughout the decision.

What happened

In November 2018, Miss T applied for a credit card with NewDay. The application was approved and a credit limit of £300 was provided. NewDay explained to this service that the underwriting data it used didn't highlight any affordability concerns.

In April 2019, NewDay increased the credit limit to £1,050 and it increased it again at the end of July 2019 to £1,800. In August 2021 it increased the credit limit to £3,300.

NewDay has said that there were no signs of any financial difficulties prior to the credit limit increases. It went on to explain that the creditworthiness and affordability assessment it carried out showed no evidence of missed payments and signs of over indebtedness.

Miss T's concerns were looked into by one of our investigators. They explained why they thought the initial lending provided and first limit increase provided to Miss T was affordable. They went on to explain why they didn't think the second and final limit increase should have been provided to Miss T.

NewDay didn't respond to our investigator's opinion, so the case has been passed to me to review.

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 approach to considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've considered this approach when deciding Miss T's complaint.

Having done so, I've decided to uphold Miss T's complaint in part. I'll explain why.

There are several questions that I've thought about when deciding if NewDay treated Miss T fairly and reasonably when it provided her with the credit card.

- 1) Did NewDay complete reasonable and proportionate checks to satisfy itself that Miss T would be able to repay her credit card in a sustainable way?
- 2) If NewDay didn't complete reasonable and proportionate checks, what would reasonable and proportionate checks have shown at the time?
- 3) Ultimately, did NewDay make a fair lending decision?

4) Did NewDay act unfairly or unreasonably in some other way?

Did NewDay complete reasonable and proportionate checks to satisfy itself that Miss T would be able to repay her credit card in a sustainable way?

The rules that NewDay had to follow, required it to carry out checks that would enable it to reasonably assess, whether Miss T could afford to repay the credit card she wanted to take out. This is often referred to as an “*affordability assessment*”.

The rules don’t set out what specific checks NewDay needed to carry out, but it did set out that those checks needed to be proportionate to the circumstances of the application. I think what this meant in practice, was that the scope and extent of NewDay’s checks needed to reflect the nature of the lending, bearing in mind things such as the amount of credit, the interest rate, and any indications of customer vulnerability. This isn’t an exhaustive list.

The checks NewDay needed to carry out as part of its affordability assessment, had to be “*borrower focussed*”. What I mean by this, is that the checks needed to consider whether the credit provided, and the monthly repayments, would cause Miss T any difficulties or have any adverse consequences for her.

And as a result of the above, I think reasonable and proportionate checks needed to be more thorough if Miss T had a low income. This would reflect that it could be more difficult for her to make the card repayments with a low income. It would also need to be more thorough the higher the amounts she had to repay, as it would be more difficult to make higher monthly repayments on a given income.

With these principles in mind, I’ve thought about whether NewDay completed reasonable and proportionate checks to satisfy itself that Miss T would be able to repay her credit card in a sustainable way.

In summary then, the circumstances of the initial credit card application were as follows:

- Miss T was applying for a credit card which had an initial APR of 34.9%.
- Miss T was recorded by NewDay as having a gross annual income of approximately £25,699 when the credit card was taken out.
- Miss T was offered an initial credit limit of £300.
- The credit report obtained by NewDay in respect of Miss T as part of its underwriting process, showed no evidence of accounts in arrears. It recorded total unsecured credit balances of £11,400.

The credit limit of £300 that NewDay approved was in my opinion, a relatively low credit limit. So, I wouldn’t necessarily have expected NewDay to have carried out extensive checks given the information it had about Miss T’s financial circumstances. And from the evidence I’ve been provided with, I can see that it did carry out checks to verify information about Miss T’s financial circumstances. The credit search it carried out indicates that she had no accounts in arrears or any defaults. And I think taking into account Miss T’s financial circumstances and the relatively low amount of credit it was offering her, the checks that NewDay carried out when the account was opened, were reasonable and proportionate in the context of the credit it was proposing to provide to Miss T.

First credit limit increase

NewDay increased Miss T's credit limit to £1,050 in April 2019. I think given the short period of time that had elapsed since the card was taken out, it's not unreasonable to assume that Miss T's income was unlikely to have changed. NewDay has provided credit file information from the time the increase was provided. This doesn't appear to show any evidence of missed payments or other adverse information. And Miss T's overall level of borrowing was around the same level as when the account was opened. She appeared to be managing her account, making regular payment with no missed payments with the credit limit not being exceeded.

Taking into account Miss T's financial circumstances and the checks that NewDay carried out when it increased her credit limit, I think these were reasonable and proportionate in the context of the increased lending it was providing to Miss T.

Second credit limit increase

At the end of July 2019 NewDay increased Miss T's credit limit again by £750 to £1,800 a few months after the first limit increase. NewDay has provided credit file information from the time the limit increase was provided. This doesn't appear to show any evidence of missed payments or other adverse information. And Miss T's overall level of borrowing was still around the same level as when the second credit limit increase was provided.

The increased credit limit of a further £750 to £1,800 that NewDay approved, provided Miss T in my opinion, with a significant credit limit. Although the unsecured borrowing remained around the same level, Miss T's revolving credit had increased from £500 when the account was first taken out to £1,150. I think given the level of the increased limit and taking into the account the statement balance was close to the existing limit and had been for a number of months since the first limit increase had been provided, the checks carried out by NewDay weren't reasonable or proportionate in relation to this credit limit increase, and the overall level of credit being provided to Miss T.

Miss T has provided copies of her bank statements for the three-month period prior to this lending decision, which I think give an indication of the information about her financial circumstances that reasonable and proportionate checks might have shown. These show that Miss T's account was in the main, in overdraft in the months leading up to the credit limit increase.

So, I think if NewDay had carried out reasonable and proportionate checks, it would have realised that Miss T's circumstances were such that she couldn't reasonably afford the additional credit it was providing to her. The statements in my opinion clearly show that Miss T wasn't managing her finances in a sustainable way. And the provision of further credit would I believe, only exacerbate what was a clearly difficult financial situation for her.

Third credit limit increase

NewDay increased Miss T's credit limit again to £3,300 in August 2021. NewDay has provided credit file information from the time the limit increase was provided. This doesn't appear to show any evidence of missed payments or other adverse information. And Miss T's overall level of borrowing was still around the same level as when the second credit limit increase was provided.

However, the increased credit limit from £1,800 to £3,300 that NewDay approved, was in my opinion, a significant credit limit increase. I think given the level of the increased limit and taking into the account the statement balance was close to the existing limit and had been for a number of months since the second credit limit increase had been provided, the checks carried out by NewDay weren't reasonable or proportionate in relation to this credit limit increase.

Miss T has also provided copies of her bank statements for the three-month period prior to this lending decision, which I think give an indication of the information about her financial circumstances that reasonable and proportionate checks might have shown. These show that Miss T's account was again in the main, in overdraft in the three months leading up to the credit limit increase. And her financial circumstances don't appear to have fundamentally changed since the second credit limit increase in 2019. So, I think if NewDay had carried out reasonable and proportionate checks it would have realised that Miss T's circumstances were such that she couldn't reasonably afford the additional credit it was providing to her.

Did NewDay make a fair lending decision?

For the reasons I've outlined above, I think that in the particular circumstances of Miss T's case, NewDay shouldn't have provided her with the second and third credit limit increases that it did.

NewDay accepts it didn't respond to Miss T's complaint as a result of errors on its part. I think the £50 compensation it has offered is fair and reasonable to compensate Miss T for the inconvenience this has caused her.

Putting things right

What NewDay should do to put things right

In most cases where credit has been provided where it shouldn't have been, it would be fair and reasonable for the lender to refund any interest and charges paid by the borrower. And the borrower would usually be expected to pay any remaining amount of the money they had been lent. So, I would expect Miss T to pay back the money she was lent, but not the interest or any charges or fees.

With this in mind, NewDay should put things right for Miss T by doing the following:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances over £1,050.
- If the rework results in a credit balance on the account, this should be refunded to Miss T along with 8% simple interest a year* calculated from the date of each overpayment to the date of settlement. And NewDay should remove any adverse information reported to Miss T's credit file about this account after 31 July 2019.
- Or, if after the rework an outstanding balance remains, NewDay should arrange an affordable repayment plan with Miss T for the remaining amount. Once Miss T has cleared the outstanding balance, any adverse information recorded after 31 July 2019 in relation to the account should be removed from her credit file.

*HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Miss T a certificate showing how much tax it has taken off if she asks for one.

NewDay should (if it hasn't already done so) pay Miss T £50 for the inconvenience caused by its delays in responding to her complaint.

My final decision

My decision is to uphold Miss T's complaint in part. NewDay Limited (trading as Aqua Classic), needs to calculate and pay Miss T compensation if she has suffered a loss, using the methodology set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 9 November 2023.

Simon Dibble
Ombudsman