

## **The complaint**

Mr H, through a representative, says NewDay Ltd, trading as Aqua, irresponsibly lent to him.

## **What happened**

Mr H applied for a credit card in January 2016. It was approved with a limit of £1,200 and he was given four subsequent credit limit increases by NewDay.

The first increase was in August 2016 to £2,300; the second in January 2017 to £3,750; the third in May 2017 to £4,750 and the final one in August 2018 increased the limit to £6,250.

Mr H says the credit was unaffordable for him and NewDay should have seen he was using it for cash advances and everyday expenses. He had to take out other credit to make his repayments so they were not sustainable.

NewDay says it carried out appropriate checks and Mr H met its acceptance criteria. And it reviewed his internal and external account management prior to each limit increase to ensure the additional credit was affordable for Mr H.

Our investigator upheld Mr H's complaint in part saying the final credit limit ought not to have been given. He found proportionate checks would have shown there was a risk more credit would not be sustainably affordable.

Mr H accepted this view. NewDay disagreed and asked for an ombudsman's review. It said the investigator concluded Mr H could not afford the fourth credit limit increase, but Mr H did repay it - he repaid more than the minimum payment and he cleared the balance in full. At no point did he request any repayment assistance.

## **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 card and credit limit increases it was giving to Mr H were affordable and sustainable. Such checks need to be proportionate to things like the credit limits it offered Mr H, how much he had to repay (including interest and charges) each month, his borrowing history with it and what it knew about his 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 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 Mr H's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit.

#### *The initial lending decision and limit of £1,200*

NewDay asked Mr H about his annual income, and his marital, employment and residential status. It completed a credit check to understand his existing debt and his credit history. Based on the results of these checks it concluded Mr H could afford a £1,200 opening credit limit.

I think these checks were proportionate and there was nothing in the information gathered that ought to have concerned NewDay. Mr H declared a gross annual income of £31,100. He had five active credit accounts with a total balance of £1,500. They were all up-to-date and there was no adverse information on his credit file. He was not using payday loans.

So in the round I think NewDay made a fair lending decision in January 2016.

#### *The credit limit increases*

NewDay's submission suggests that its decision to increase the credit limit on Mr H's account was largely based on reviewing his 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. So I don't think solely these types of checks were sufficient.

In cases like this we look at the complainant's bank statements from the months prior to the increases. I am not saying NewDay needed to do this but it is a reliable way for me to understand what better checks would most likely have shown NewDay.

I find for the first, second and third increase NewDay could fairly have made the same lending decision as it did had it completed proportionate checks. The bank statements show the additional credit was affordable for Mr H based on his income and non-discretionary outgoings. And NewDay knew from its credit check that whilst Mr H's use of other credit had increased, it remained low.

Mr H raised that NewDay knew at this stage that he was using his card to withdraw cash but I don't agree it was at a level (£140 in 18 months) that ought to have concerned the lender.

However, by the time of the final limit increase I think Mr H's financial circumstances had substantially changed. Even without better checks NewDay knew Mr H's external unsecured debt had increased from £2,590 to £35,199. And his statements show the total repayments of this debt now took up a substantial proportion of Mr H's income. As the industry knows this can be an indicator of pending financial difficulties. Plus the bank statements show Mr H was persistently reliant on his overdraft facility by this time. So had NewDay done better checks it ought to have realised Mr H would likely be borrowing to repay (via his overdraft facility) this additional credit. It follows I cannot see that it had the assurances it needed that Mr H would most likely be able to sustainably repay this limit increase.

NewDay argues Mr H did repay the credit but that does not change my conclusion – it does not know how he did this and the available evidence suggests it was most likely by borrowing elsewhere.

It follows I find NewDay was wrong to give the final limit increase to Mr H.

### **Putting things right**

As I don't think NewDay should have increased Mr H's credit limit above £4,750, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Mr H has had the benefit of all the money he spent on the account so it is right he repaid the capital.

Therefore, NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £4,750 after 24 August 2018.
- As the rework will result in a credit balance, this should be refunded to Mr H along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement.
- NewDay should also remove any adverse information recorded after 24 August 2018 regarding this account from Mr H's credit file.

\*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mr H a certificate showing how much tax has been taken off if he asks for one.

### **My final decision**

I am upholding Mr H's complaint in part. 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 Mr H to accept or reject my decision before 1 February 2024.

Rebecca Connelley  
**Ombudsman**