

The complaint

Mr W complains that NewDay Ltd trading as Aqua was irresponsible when it offered him credit and later increased his credit limit.

Mr W bought his complaint via a representative but I will refer to him throughout for simplicity.

What happened

NewDay opened a credit card account for Mr W in November 2018 with a credit limit of £900. This type of credit was an open-ended or running account facility. NewDay subsequently increased Mr W's limit to £1,650 in February 2019 and again to £2,400 in July.

Mr W complained to NewDay in early 2023 that the credit was unaffordable for him. He said he had multiple other debts at the time and NewDay was irresponsible to open the account for him and then increase his credit limits.

NewDay said that it provided Mr W with the account and the additional credit increases correctly and in line with its lending policy. It conducted an assessment before opening the account based on information from Mr W and the credit reference agencies and monitored how he used the account. NewDay didn't agree it had been irresponsible to lend to Mr W and didn't uphold his complaint.

Mr W brought his complaint to us. Our investigator assessed the complaint and found that NewDay wasn't irresponsible to have opened the account for him or to have increased his credit limit twice.

Mr W disagreed with our investigator's recommendation and the complaint has now come to me to decide.

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.

I've also had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as NewDay, need to abide by. NewDay will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement, NewDay needed to check that Mr W could afford to repay the credit out of his usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit, for example the amount offered, and to Mr W's particular circumstances.

Ultimately, NewDay needed to treat Mr W fairly and take full account of his interests when making its lending decisions. It would not be lending fairly if “it targeted customers with regulated credit agreements which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.”

With this in mind, my considerations are did NewDay complete reasonable and proportionate checks when it first opened the account for Mr W and on each occasion it increased his credit limit to satisfy itself that he would be able to repay the credit offered within a reasonable period of time? If it didn't do this, what would reasonable and proportionate checks have shown and, ultimately, did NewDay make fair lending decisions?

NewDay provided the information it relied on which included Mr W's application form, information from the credit reference agencies and a summary history of the account showing monthly balances, payments and fees. Mr W provided bank statements for the account his income was paid into around the time of the account opening and credit limit increases. He also provided some statements from a second current account.

Mr W told NewDay his annual salary was £30,000 when he applied for the account. NewDay recorded that Mr W had £17,700 of existing debt, including loans of around £14,500, and that there was no adverse information on his credit file, such as county court judgements, defaults or arrears. It seems from the information I've seen that Mr W was managing his existing accounts with no obvious signs of difficulty.

The regulations at the time stated that it wasn't generally sufficient for a lender to rely solely on a customer's statement of current income in a creditworthiness assessment. That said, Mr W's bank statements show that his income was about what he'd said in his application, and so further consideration of this figure wouldn't have revealed an inconsistency.

Altogether, considering what NewDay knew about Mr W's circumstances and the amount of credit it offered, I think NewDay's checks were reasonable and proportionate and it wasn't irresponsible to open an account for him.

NewDay said it considered how Mr W had been managing his account and his other debts before increasing his credit limit in February 2019. The information NewDay relied on from the credit reference agencies didn't reveal any adverse information or an increase in Mr W's debts. He'd used most of the credit on his account and taken at least £250 out in cash. Withdrawing cash on a credit card can be a sign of financial difficulty given that this is usually an expensive way to borrow, but I can't say that this alone should have been enough for NewDay to have declined further credit for Mr W at that time or prompted it to carry out further checks before doing so.

By July 2019, NewDay could see that Mr W's debts had increased – he now owed around £16,500 in loans and £3,500 in revolving credit including this account. He'd taken another £190 in cash in total over three withdrawals and been charged one late fee and two overlimit fees. I think it would have been a reasonable and proportionate response of NewDay to have looked into Mr W's circumstances further before increasing his credit limit a second time so it could reasonably assess whether he'd be able to repay additional credit without difficulty.

I've reviewed Mr W's bank statements from the time. To be clear, I'm not suggesting this is the information NewDay should have used in its assessment but it's the information I have and I think it's reasonable for me to rely on these to consider what a proportionate check might have revealed.

The statements show that Mr W's income was usually just under £1,900 altogether and his

debt repayments around £550. His debts included two loans from a high street bank, a hire purchase agreement with a motor finance company and payments to another credit card. I don't have any information about Mr W's debts other than what I've seen on the bank statements – Mr W hasn't provided a copy of his credit file, for example.

Mr W was also spending around £300 on identifiable bills and usually transferred around £900 into his other current account. I haven't been provided with statements for this other account from the time. The closest I've seen is a statement from January 2019, around five months earlier. This shows Mr W used his other account for living costs, such as food and petrol, amounting to about £340 and other everyday spending. He also transferred money back to his main account when needed.

I don't think NewDay would have declined to offer Mr W a credit increase in July 2019 even if it had carried out further checks before doing so. Such checks would likely have shown that Mr W would be able to meet his repayments without difficulty for the increased level of credit NewDay was now offering.

Agreeing a higher credit limit for Mr W potentially committed him to spending a third of his income repaying debt, which is a sizeable amount, and I have considered whether NewDay treated him fairly by agreeing further credit for him at that time. Mr W was managing to meet his debt repayments and other expenses – as mentioned, the credit file information NewDay relied on contained no adverse information and I didn't see any other indicators of financial difficulty such as returned payments or unarranged overdraft fees on his bank statements. I appreciate that Mr W had exceeded his limit on his NewDay account and withdrawn cash a few times by that point. However, given his wider financial circumstances, I can't say that NewDay treated Mr W unfairly when it increased his credit limit on this occasion solely because of his account management.

Mr W said in response to our investigator's view that he was making payments to other lenders, that the money leaving his account exceeded the money entering it and that the balance on his bank account was constantly decreasing. I did consider that Mr W had other debts but concluded that NewDay wasn't irresponsible to increase his credit limit simply because of this. And, as I've explained, Mr W regularly transferred large amounts out of his main account which was then used to pay for living costs and other spending, and transferred amounts back in when needed. It seems to me that this was how Mr W managed his money, and I can't say this was a reason to decline further credit for him.

In summary, I've concluded that NewDay wasn't irresponsible to open an account for Mr W or increase his limit later on. I appreciate that this will be disappointing for Mr W but I am not upholding his complaint.

My final decision

As I've explained above, I am not upholding Mr W's complaint about NewDay Ltd trading as Aqua and don't require it to pay him compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 February 2024.

Michelle Boundy
Ombudsman