

The complaint

Mrs K has complained that NewDay Ltd, trading as Aqua ("NewDay"), irresponsibly granted her a credit card account, which she couldn't afford to repay.

What happened

Mrs K took out a credit card with NewDay in July 2019, with a credit limit of £1,200.

Mrs K said she thought NewDay hadn't carried out reasonable and proportionate checks before granting the credit card, and that it made her poor financial situation worse (she said that she then entered a Debt Management Plan in December 2019). She also said she was relying on high-cost credit at the time of the credit card application. So Mrs K thinks that NewDay should refund the interest and charges on the credit card along with interest.

Mrs K complained to NewDay, but it said that it *had* carried out appropriate affordability checks, and told Mrs K that it did not uphold her complaint.

She then brought her complaint to this service. Our investigator looked into it, but didn't think it should be upheld. Mrs K didn't agree and asked for it to be reviewed by an ombudsman.

I issued a provisional decision earlier this month, in which I explained why I disagreed with our investigator's view, and why I was therefore proposing to uphold Mrs K's complaint. Both parties have now responded, and both accepted my conclusions.

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 considering complaints about unaffordable and irresponsible lending is set out on our website, and I've taken this into account here.

I've decided to uphold Mrs K's complaint. I'll explain why.

In summary, before providing credit, lenders need to complete reasonable and proportionate affordability checks. There isn't a set list of checks required of a lender, but it needs to ensure the checks are proportionate when considering things such as the type and amount of credit being provided, the size of the regular repayments, the total cost of the credit and the consumer's circumstances. So I've considered whether NewDay completed reasonable and proportionate checks to satisfy itself that Mrs K would be able to make the repayments on the credit card account in a sustainable way.

I set out my findings in my provisional decision as follows:

"NewDay sent in copies of its computer records of Mrs K's account and this complaint, and information about the checks it had carried out when it granted the card. Mrs K sent in copies of her bank statements for the period leading up to the credit card application."

NewDay said in its final response letter to Mrs K that its records showed she had stated an income before tax of £29,000, and unsecured debt of £10,800. It also said that its credit checks had shown that she had had a default registered nearly four years earlier, the amount being £6,900. Otherwise there were no adverse public records, no accounts in arrears and no payday loans. It went on to say that as Mrs K had met its conditions for acceptance, it granted the card with a credit limit of £1,200.

I've looked at the information NewDay sent to us, and I can see that its checks at the point of application showed a payday loan balance of £565. The salary shown is a six-figure sum, which is clearly an error, so I can't be certain what amount Mrs K stated on the application, or what figure NewDay took into account in its checks. The default and unsecured debt levels were as stated in the final response letter.

We asked NewDay about the salary and payday loan figures (it had earlier said that it used a current account turnover tool to verify the stated income). NewDay said that, with regard to the payday loan figure, there seems to have been a mistake. Its underwriting data showed a payday lending balance of £565, but its later information did not, so it appeared that Mrs K might have settled the payday loans by September 2019. NewDay also said that it did not verify the income figure stated by Mrs K – instead it used information from a credit reference agency to determine income and expenditure to get her disposable income (it said expenditure includes loan payments, mortgage payments, rent (if a mortgage is not present), cost of living (derived from Office for National Statistics information) and credit card payments).

I don't have a copy of Mrs K's credit history, but I've looked at Mrs K's bank statements from March to May 2019. I also have statements for July and August that year, but as they date from after the credit card was granted, I have focused on the earlier statements (although I note that there were payments to a payday loan company in July, and a payday loan taken out in August).

I can see that Mrs K's monthly income after tax averaged around £1,320, although it was higher in March 2019 - it looks as though she received a bonus in that month. This isn't consistent with the gross salary figure that NewDay mentioned. There were other credits to the account, but these seem to have been transfers from individuals – possibly family members.

I can't identify from the statements what Mrs K's housing costs were. But there are direct debits relating to her council tax, utilities, and insurances. I can also see that in May 2019 Mrs K took out a payday loan of £450, and there were payments to the payday loan company in March and April 2019, indicating that Mrs K had had earlier loans of this type. I can identify payments to a personal loan and a credit card on the statements, along with another monthly payment that looks as though it relates to the earlier defaulted account. There are also payments to a catalogue company.

The statements don't show an overdraft, but the balance went down to just a few pounds just before Mrs K got paid each month.

The information NewDay sent in doesn't state the figures it used for Mrs K's housing and living costs, or her disposable income. So I don't have a full picture of how it made its lending decision. However, having looked at all the evidence, I'm not satisfied that it carried out reasonable and proportionate checks. I say this because Mrs K had clearly had more than one payday loan in the months leading up to the credit card application, and these would have been reflected in the credit reference agency information. I think the presence of these loans on Mrs K's credit record should reasonably have prompted NewDay to carry out

more detailed checks before granting the credit card – continued use of such loans could indicate that Mrs K was encountering financial difficulties.

Had NewDay sought further information from Mrs K, it would have been able to verify her actual income and expenditure, and also would have seen that she had had payday loans and was still only in credit by a few pounds at the end of each month.

NewDay told us that it appears that Mrs K's circumstances changed after the credit card account was opened, which it couldn't have foreseen. But based on the information on Mrs K's bank statements, it seems to me that Mrs K was under financial pressure when she applied for the card. I accept that the credit limit NewDay granted was not particularly high, but nonetheless I'm not satisfied from what's on the statements that Mrs K had enough disposable income to be able to make the credit payments sustainably given her pattern of borrowing."

I further said in my provisional decision that, because of all this, I didn't think NewDay had acted fairly in granting the card, and therefore I was proposing to uphold this complaint. I've received no new evidence or information, so I've no reason to change my conclusions. And as I noted above, both parties responded to say they accepted my provisional decision. Therefore I uphold this complaint.

Putting things right

As I don't think NewDay ought to have opened the account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I think Mrs K should be responsible for the amount she borrowed. I understand that the balance has been repaid and the account closed, so NewDay should:

- Rework the account removing all interest, fees, charges, and insurances (which have not already been refunded) that were applied.
- As the account has been settled, the resulting credit balance should be refunded to Mrs K 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 regarding this account from Mrs K's credit file.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. NewDay must give Mrs K a certificate showing how much tax has been taken off if she asks for one.

My final decision

For the reasons I've explained, I've decided to uphold Mrs K's complaint and to require NewDay Ltd to compensate her as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 14 June 2024.

Jan Ferrari
Ombudsman