

The complaint

Mrs S is being represented by solicitors. She's complaining about NewDay Ltd trading as Aqua because she says it lent irresponsibly by providing a credit card she couldn't afford and then going on to increase the credit limit further.

What happened

In July 2020, Mrs S opened a credit card account with NewDay with an initial credit limit of £600. This was later increased to £1,350 in November 2020, £2,350 in January 2022 and £3,350 in April 2022.

Our investigator concluded the complaint should be upheld. He didn't think NewDay should have accepted Mrs S's application, noting its credit check showed an account had defaulted only eight months earlier.

NewDay didn't accept the investigator's assessment and said the application fell within its lending policy because the default was more than six months earlier. It also provided some background to its approach to lending and underwriting strategy.

The complaint has now been referred to me for 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Before lending to Mrs S, NewDay was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider in respect of each lending decision are:

- Did NewDay complete reasonable and proportionate checks to establish Mrs S would be able to repay the credit in a sustainable way?
- If so, was the decision to lend fair and reasonable?
- If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

The rules, regulations and good industry practice in place at the time the credit was approved required NewDay to carry out a proportionate and borrower-focused assessment of whether Mrs S could afford the repayments. This assessment also had to consider

whether the credit could be repaid sustainably. In practice this meant NewDay had to satisfy itself that making payments to the credit wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of her making payments, it had to consider the impact of the repayments on Mrs S.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

The application decision in July 2020

NewDay has described the information it gathered to assess whether Mrs S's credit was affordable before it was approved. This included the information contained in her application, including residential status, employment status and her income, along with information obtained from a credit reference agency (CRA), giving details of her existing credit arrangements and any past issues with credit.

NewDay maintains its affordability assessments were proportionate to the credit being given and demonstrated it was affordable.

After carefully reviewing the information NewDay obtained, I think there were factors that should have prompted it to carry out further checks before approving Mrs S's credit and I don't agree the affordability assessment was reasonable and proportionate in this case. As the investigator noted, Mrs S had a recent default – her credit report shows this was registered by another credit card provider for an amount of £342 in November 2019

I've noted NewDay's comments about its lending policy and I'm not saying it should automatically have declined Mrs S's application because of the default. But I do think it was a potential indicator of recent financial difficulty and that further checks were required to complete a proportionate affordability assessment.

I can't know exactly what further checks NewDay might have carried out at the time, but I think a consideration of Mr S's actual income and expenditure would have been reasonable. So we've obtained copies of her credit report and bank statements for the three months prior to the lending to establish what information could reasonably have been discovered.

A review of the statements shows Mrs S was continually overdrawn throughout the period and that she ended each month within a few pounds of her £2,000 limit – a facility for which she was paying over £30 per month in fees. Her monthly earnings over the period averaged around £1,350 and even after she was paid her account didn't get anywhere near achieving a positive balance. In my view, this suggests Mrs S was already living beyond her means and was unlikely to be able to afford further credit.

If NewDay had seen this information, it's my view that it shouldn't have lent to Mrs S.

Credit limit increases

I've also considered the decisions to offer further credit and reviewed Mrs S's credit report and bank statements for the period before each limit increase. These show her situation and management of her bank account was much the same and I think it follows that offering further credit at a later date wasn't appropriate either.

In summary

In summary, if NewDay had adequately assessed whether the credit repayments were affordable and sustainable, it's my view it shouldn't have lent to Mrs S. It's for this reason that that I'm upholding her complaint.

Putting things right

The principal aim of any award I make must be to return Mrs S to the position she'd now be in but for the errors or inappropriate actions of NewDay. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think NewDay should have lent to Mrs S, I don't think it's fair for her to pay interest or charges on the amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, NewDay now needs to take the following steps:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since the account was opened.
- If the reworking results in a credit balance, this should be paid to Mrs S with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires NewDay to deduct tax from any interest. It must provide Mrs S with a certificate showing how much tax has been deducted if she asks for one. If NewDay intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance, NewDay should arrange an affordable payment plan with Mrs S for the shortfall.
- Remove any adverse information recorded on Mrs S's credit file relating to this credit, once any outstanding balance has been repaid.

If NewDay no longer owns the debt, it should liaise with whoever does to ensure any payments Mrs S has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

I'm satisfied this represents a fair and reasonable settlement of this complaint.

My final decision

For the reasons I've explained, I'm upholding Mrs S's complaint. Subject to her acceptance, NewDay Ltd trading as Aqua should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 18 July 2024.

James Biles
Ombudsman