

The complaint

Mr B is complaining about NewDay Ltd because he says it lent irresponsibly when giving him two credit cards and then going on to increase the credit limits on both.

What happened

In February 2019, following his application, Mr B was given an Aqua credit card with an initial credit limit of £450. The limit was increased to £950 in October 2021 and £1,950 in July 2022.

In October 2021, following another application, Mr B was given a Flow credit card with an initial credit limit of £900. The limit was increased to £1,900 in February 2022 and £2,650 in July 2022.

After the complaint was referred to me, I issued my provisional decision setting out why I didn't believe it should be partly upheld. My reasons were as follows:

Before lending to Mr B, 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 that Mr B 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 Mr B 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 him making payments, it had to consider the impact of the repayments on Mr B.

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.

NewDay has described the information it gathered to assess whether Mr B's credit was affordable before it was approved. This included:

- information contained in his applications, including residential status, employment status and his income;*
- information obtained from credit reference agencies (CRAs), giving details of his existing credit arrangements and any past issues with credit, including missed payments and defaults; and*
- for the credit limit increases, the management of his NewDay accounts.*

NewDay maintains its affordability assessments were proportionate to the credit being given and demonstrated it was affordable. I've set out my thoughts on this below, reviewing each lending decision in chronological order.

Aqua application in December 2019

The application data shows Mr B declared his annual income as £27,000 and the CRA data obtained showed he had existing debt of £6,100 with no recent missed payments, defaults or CCJs. This information appears to show Mr B was managing his finances well enough and in view of the low credit limit being offered, I'm satisfied NewDay's checks were proportionate and that the decision to lend was reasonable.

I'm not proposing to uphold the complaint about this lending decision.

Flow application in October 2021

The application data shows Mr B declared his annual income as £34,000 and the CRA data obtained showed his overall debt was £4,000 with no recent missed payments, defaults or CCJs. This information appears to show Mr B was managing his finances well enough and in view of the relatively low credit limit being offered, I'm satisfied NewDay's checks were proportionate and that the decision to lend was reasonable.

It's worth noting here that CRA data obtained in connection with the first limit increase applied shortly afterwards to the Aqua card gives a different impression of the state of Mr B's finances and I'll come back to this shortly. But from the information provided, it does seem there were significant discrepancies between the information provided by the different CRAs.

I'm not proposing to uphold the complaint about this lending decision.

Aqua credit limit increases in October 2021 and July 2022

After reviewing the information available to NewDay when the first limit increase was offered in October 2021, I think there were factors that should have prompted it to carry out further checks before approving it and I don't agree the affordability assessment was reasonable and proportionate in this case. In my view, a combination of the following factors should have prompted further investigation:

- the TransUnion data showed Mr B's non-mortgage debt was over £14,000, which was high compared to his declared income and significantly higher than reported when the account was opened; and*
- the TransUnion data also showed Mr B had taken at least two payday loans in the previous six months.*

I believe this information suggests Mr B was already heavily indebted and showing signs of 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 B's actual income and expenditure would have been reasonable. So we've obtained copies of his credit report and bank statements for the period preceding the lending to establish what information could reasonably have been discovered.

The credit report shows Mr B was committed to monthly loan repayments of over £560. He also had to make payments to three credit cards in addition to those with NewDay, two of which were essentially maxed out. And a review of his bank statements shows he had three current accounts that were consistently in overdraft with the third maintaining only a minimal positive balance.

If NewDay had seen this information, in addition to what it already knew about his increasing levels of debt and use of payday loans, it's my view that it shouldn't have offered to increase the credit limit.

Moving forward, there's nothing to suggest Mr B's situation had improved by the time of the second limit increase in July 2022. His total debt as reported by TransUnion was similarly high and the data also showed recent use of payday loans. In addition, I note his Aqua card was consistently very close to the limit in the preceding months and while he wasn't missing monthly payments, he wasn't reducing the amount owed either.

Taking everything into account, it's my current view that NewDay shouldn't have increased the limit on the card above £450 and I'm proposing to uphold this aspect of the complaint.

Flow credit limit increases in February and July 2022

After reviewing the information available to NewDay when the first limit increase was offered in February 2022, I think there were factors that should have prompted it to carry out further checks before approving it and I don't agree the affordability assessment was reasonable and proportionate in this case. In my view, a combination of the following factors should have prompted further investigation:

- the TransUnion data showed Mr B's non-mortgage debt was over £16,000, which was high compared to his declared income and significantly higher than reported when the account was opened; and*
- the TransUnion data also showed Mr B had taken at least two payday loans in the previous three months.*
- A review of his usage of the Flow card shows Mr B spent up to the limit very quickly after it was issued and the balance remained at this level. While he wasn't missing monthly payments, he wasn't reducing the amount owed either.*

I believe this information suggests Mr B was already heavily indebted and showing signs of 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 B's actual income and expenditure would have been reasonable. So we've obtained copies of his credit report and bank statements for the period preceding the lending to establish what information could reasonably have been discovered.

A review of his credit report and bank statements show Mr B's position remained much as I've described above for October 2021. If NewDay had seen this information, in addition to what it already knew about his increasing levels of debt, use of payday loans, and the management of his NewDay accounts, it's my view that it shouldn't have offered to increase the credit limit.

Moving forward, and as I've already outlined above, there's nothing to suggest Mr B's situation had improved by the time of the second limit increase in July 2022.

Taking everything into account, it's my current view that NewDay shouldn't have increased the limit on the card above £900 and I'm proposing to uphold this aspect of the complaint.

In summary

In view of the amounts being lent and the information obtained in connection with each of Mr B's original applications, I'm satisfied NewDay carried out proportionate checks and that its decisions to open both accounts were reasonable. But when considering increases to the original limits, I think NewDay should have obtained further information and ultimately concluded it wasn't appropriate to offer further credit. It's for these reasons that I'm currently proposing to partly uphold this complaint.

Both NewDay and Mr B confirmed they had nothing to add in response to my provisional decision.

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.

As neither party has made any further submissions in response to my provisional decision, my findings haven't changed from those I set out previously.

Putting things right

The principal aim of any award I make must be to return Mr B to the position he'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 increased the original limit on either of Mr B's cards, I don't think it's fair for him to pay interest or charges on the additional amounts borrowed. But he has had use of the money that was lent, so I think it's fair he repays the additional amounts borrowed (without the addition of interest or charges).

To put things right, NewDay should take the following steps in respect of the Aqua card:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since the limit increase in October 2021 on balances over £450.

- If the reworking results in a credit balance, this should be paid to Mr B 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 Mr B with a certificate showing how much tax has been deducted if he 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 in excess of £450, NewDay should arrange an affordable payment plan with Mr B for the shortfall.
- Remove any adverse information recorded on Mr B's credit file after October 2021 relating to this credit, once any outstanding balance over £450 has been repaid.

And in respect of the Flow card, NewDay should take the following steps:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since the limit increase in February 2022 on balances over £900.
- If the reworking results in a credit balance, this should be paid to Mr B 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 Mr B with a certificate showing how much tax has been deducted if he 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 in excess of £900, NewDay should arrange an affordable payment plan with Mr B for the shortfall.
- Remove any adverse information recorded on Mr B's credit file after February 2022 relating to this credit, once any outstanding balance over £900 has been repaid.

In both cases, if NewDay no longer owns the debt, it should liaise with whoever does to ensure any payments Mr B 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 to this complaint.

My final decision

For the reasons I've explained, I'm partly upholding Mr B's complaint. Subject to his acceptance, NewDay Ltd should now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 June 2024.

James Biles
Ombudsman