

The complaint

Mr S complains that NewDay Ltd trading as Aqua was irresponsible in its lending to him. He wants all interest and charges applied to his accounts refunded along with compensatory interest and any adverse information removed from his credit file.

Mr S is represented by a third party but for ease of reference I have referred to Mr S throughout this decision.

What happened

Mr S was provided with an Aqua credit card with a £300 credit limit in February 2017. He was then provided with a second Aqua credit card with a credit limit of £450 in March 2019. The credit limit on Mr S's second Aqua credit card was increased on five occasions with the final credit limit being £5,300. Mr S says that at the time of the lending his credit file showed that he was experiencing financial difficulty and had other outstanding debts. He said that NewDay didn't undertake adequate checks to ensure he could afford to repay the debt.

NewDay issued a final response letter dated 27 December 2023. It explained that before providing credit it considered information provided by the applicant and credit reference agencies. It said that when Mr S applied for the first credit card, he said he was employed full time with an annual income of £13,000 and unsecured debts of £15,200. It said he did have a historic default recorded on his credit file with a value of £200 but no accounts in arrears. It said Mr S met its lending criteria and a credit limit of £300 was provided. Regarding the second credit card provided in March 2019, NewDay said the Mr S declared an annual income of £27,000 and he had unsecured debts of £12,300. It said his credit file showed no defaults or accounts in arrears and so a credit limit of £450 was provided. NewDay didn't think it had done anything wrong in the provision of the two credit card accounts.

NewDay noted that the credit limit on Mr S's second credit card had been increased on five occasions and said that before each increase Mr S was contacted with the option to opt out of the increase. It said it reviewed the data available at the time of the increases and confirmed the increases occurred in line with its policy. However, based on the information provided by Mr S about his circumstances it agreed to uphold his complaint from the credit limit increase in October 2019. Based on this it refunded charges and proportionate interest from that date. This refund was used to reduce the outstanding balance on the account, and NewDay said that once the outstanding balance had been paid any adverse information would be removed from Mr S's credit file from October 2019.

Mr S wasn't satisfied with NewDay's response and referred his complaint to this service.

Our investigator noted Mr S's debts compared to his income at the time the first credit card was provided and didn't think it reasonable that Mr S's indebtedness would be increased further. Therefore, she upheld this complaint in regard to the first credit card.

Regarding the second credit card our investigator considered whether the initial provision of the credit card and first credit limit increase should have been provided. NewDay had

already upheld the complaint from the second credit limit increase. Having done so our investigator thought the checks carried out were proportionate and based on these she didn't think NewDay was wrong to provide the credit card and first credit limit increase.

NewDay didn't agree with our investigator's view. It said that Mr S's debts at the time of the first credit card was provided consisted of £319 of unsecured debt and £13,980 of secured debt. It said that Mr S paid more than the required payments on the account for its lifetime and said the lending was affordable for Mr S.

Our investigator responded to NewDay's comment saying the data it had originally provided showed Mr S had unsecured debts of £15,200 at the time the first credit card was provided and based on this she didn't accept the lending should have been provided.

As a resolution hasn't been agreed, this complaint has been referred to me, an ombudsman, to issue a 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.

Our general approach to complaints about unaffordable or irresponsible lending – including the key rules, guidance and good industry practice – is set out on our website.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But while it is down to the firm to decide what specific checks it wishes to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments, and the total cost of the credit.

Mr S was provided with two credit cards by NewDay. The first in February 2017 and the second in March 2019. There were no credit limit increases applied to the first credit card and five limit increases applied to the second. As NewDay upheld this complaint from the second credit limit increase (October 2019) on the second credit card and provided redress in line with what we would expect in these cases, I haven't considered the second to fifth credit limit increases. So this decision relates to the provision of both credit cards and the first credit limit increase applied to the second credit card.

Credit card provided in February 2017

Before the credit card was provided in February 2017, NewDay gathered information about Mr S's employment, income and his residential status. A credit check was also carried out. Mr S was recorded as being employed with a gross annual income of £13,000 and being a tenant. His total unsecured debt was recorded as £15,200. The credit check showed a historic default (from 50 months prior to the application) but no public records or current arrears.

NewDay has said Mr S's debt was mainly secured debt with only a small amount (£319) of unsecured debt. NewDay hasn't provided any further evidence in regard to Mr S's debts at the time but based on the account data this showed that in September 2017, Mr S had a revolving debt balance of £319 and non-revolving debt balances of around £13,553. I have looked at the credit report provided and while this may not show all the details given the timing, it shows Mr S had a hire purchase agreement which would likely have accounted for the majority of his debt at the time.

While the credit limit NewDay provided was relatively moderate (£300) given Mr S had debts recorded above his annual income (and noting that NewDay recorded him to have high indebtedness), I think this should have raised concerns about providing Mr S with additional credit at this time.

Given the outcome from NewDay's initial checks, I think further checks would have been needed to ensure any additional borrowing would be sustainably affordable for Mr S. NewDay wasn't required to request copies of Mr S's bank statements, but I have looked through the statements Mr S has provided to understand what would likely have been identified had further checks taken place.

Mr S's bank statements show that he was receiving income from different sources and the amounts varied, but his total monthly income was lower than the amount that would be expected based on his declared annual income. Against this Mr S was making monthly repayments of around £229 for his hire purchase agreement and there will have been payments to make towards the revolving debt balance. Mr S also had to make payment towards his general living costs. Having looked at Mr S's financial situation at the time, and noting his relatively low income compared to the debt NewDay had identified, I do not find in this case that NewDay should have considered the provision of a credit card as affordable for Mr S.

So, while noting the relatively low credit limit provided, I do not think in this case that NewDay should have provided Mr S with the credit card in 2017 and so I uphold this part of his complaint.

Credit card provided in March 2019

As this was Mr S's second credit card from NewDay, NewDay had information about how Mr S managed his previous account. Mr S's account management information for the first credit card shows that the account was only active for around eight months (account closed in September 2017). During that period Mr S exceeded his credit limit on one occasion but other than that he made his monthly payments, and these were often more than the minimum required. Therefore, I do not think his previous account management raised any concerns that would mean future lending shouldn't be provided.

Before the credit card was provided in March 2019, NewDay gathered information about Mr S's employment, income and his residential status. A credit check was also carried out. Mr S was recorded as being employed with a gross annual income of £27,000 and a tenant. His total unsecured debt was recorded as £12,300. His credit checks didn't show any adverse information with no defaults, accounts in arrears or public records. Given the credit check didn't raise concerns and noting the size of the credit limit compared to Mr S's income, I think the checks were proportionate. As these didn't raise concerns about the lending being unaffordable I do not find I can say that NewDay did anything wrong by providing this credit card with an initial credit limit of £450.

Credit limit increase in July 2019

Mr S's credit limit was increase from £450 to £1,200 in July 2019. Prior to this increase, Mr S was operating near his credit limit and had incurred an over limit charge in May 2019. He was making payments each month towards his balance and his debts (consisting of a revolving balance of around £1,470 and non-revolving balance of around £10,460) remained reasonably constant. Therefore, having looked at the information available to NewDay I do not find this raised concerns and based on the increased credit limit compared to Mr S's income, I find the checks were proportionate and didn't suggest the lending was

unaffordable. Given this I do not find I can say that NewDay did anything wrong by providing the first credit limit increase in July 2019.

Putting things right

As I don't think NewDay ought to have opened the account in February 2017, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. I note the account was closed and there was no outstanding balance at that time. Therefore, NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied.
- If the rework results in a credit balance, this should be refunded to Mr S 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 regarding this account from Mr S's credit file.

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

My final decision

My final decision is that NewDay Ltd trading as Aqua should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 August 2024.

Jane Archer
Ombudsman