

The complaint

Ms H complains that NewDay Ltd lent to her by approving three cards for her and then increasing the credit limited on the cards over sustained periods of time.

What happened

Ms H was approved for three cards with NewDay and each had different credit limit increases over the years. Here is a brief table to help place all the cards and increases in context with each other. NewDay has consented to us looking at all the lending decisions including the Aqua card initial approval.

| Card | Information from Ms H at time of application | Open date & credit limit | Credit limit increases |
|-----------|--|-----------------------------|--|
| Aqua | Income £61,000 pa External debt £29,800 | 2 October 2017 £450 | April 2018 to £1,450 May 2019 to £2,450 |
| Debenhams | Income £61,000 pa External debt £27,700 | 16 May 2018 £500 | May 2019 to £1,200 Jan 2020 to £2,700 Feb 2021 to £3,700 June 2021 to £5,450 Sept 2022 to £6,200 |
| Fluid | Income £55,000 pa External debt £29,200 | 13 September 2021 £1,500 | Feb 2022 to £2,200 May 2022 to £3,200 |

The Aqua card was closed by Ms H in October 2020.

Ms H complained and received NewDay's final response letter (FRL) in January 2024. It explained that when a new card or credit limits are approved then it carried out checks which consisted of using information provided by the Credit Reference Agencies, customer account behaviour with NewDay, information from other accounts Ms H held with it, as well as the information provided on her application.

As Ms H had complained about not being able to afford the cards then NewDay made the decision to close the two accounts (not already closed) for future spend on 10 January 2024. Ms H says that she ought to be compensated with £300 for the distress and inconvenience due to these multiple credit limit increases and the impact it's had on her.

Ms H referred her complaint to the Financial Ombudsman Service and provided many copy bank account statements. One of our investigator's considered it and noted that from

May 2019, NewDay increased the Aqua and the Debenhams credit limits at the same time. Further increases followed. Our investigator considered that there was a risk that Ms H would not be able to repay the credit. NewDay ought to have verified Ms H's financial circumstances and if it had done, our investigator was of the view that Ms H could not afford the cards. Her view was

- No uphold for Aqua card initial approval
- Debenhams card - partial uphold - NewDay ought not to have increased the credit limit above £2,700
- Full uphold for the Fluid account

The investigator set out the proposed redress.

Both New Day and Ms H accepted this outcome at first. NewDay paid Ms H the redress in April 2024 either in cash for the Fluid card as it was closed, or by crediting the refunded sums to her Debenhams card. That card still has an outstanding balance.

Later Ms H was not content with the redress calculations and said that before refunding her, NewDay ought to have been clear on the amounts. She asked for it all to be looked at again, including the parts our investigator had not upheld and the earlier lending.

Ms H raised a further point about the legislation and case law surrounding s140A Consumer Credit Act 1974 and the concept of 'unfair relationship'.

The unresolved complaint was passed to me to decide. I wrote to NewDay to check that it was content for me to review the earlier lending as well. It consented, so reviewed the Aqua card from its inception. On 15 November 2024 I issued a provisional decision.

As NewDay had accepted the full uphold for the Fluid account and had accepted the partial uphold for the Debenhams account then I did not review those parts. I reviewed the remaining disputed parts of the complaint which were the Aqua card account and whether the approval and first credit limit increases on the Debenhams card account were responsible lending decisions. The rest of the complaint elements were not in dispute.

The provisional decision of 15 November 2024 is duplicated here for ease of reading.

What I had provisionally 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 unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - is set out on our website and I have followed it here.

NewDay is required to lend responsibly. It needed to conduct checks to make sure that the credit it was giving to Ms H was affordable and sustainable. Such checks need to be reasonable and proportionate to things like the credit limit it offered Ms H, how much she had to repay (including interest and charges) each month, her borrowing history with it and what it knew about her circumstances. But there is no set list of checks it had to do.

This means to reach my conclusion I need to consider if NewDay carried out reasonable and proportionate checks at the time of Ms H's applications and when it applied the credit limit increases; if so, did it make fair lending decisions based on the results of its checks; and if not, what better checks would most likely have shown.

Aqua card

In October 2017 when Ms H applied for the card, she informed NewDay that she was earning a gross annual income of £61,000. She was a tenant and having carried out a credit search NewDay discovered that Ms H had no insolvency issues, no arrears, no recent defaults, and her total unsecured debt balance was £28,800.

I am satisfied that NewDay carried out reasonable and proportionate checks and assessed the information it had. I've seen nothing which I think ought to have led NewDay to look more closely at her application. It therefore follows that I think it reached a fair decision to approve the new card with the £450 limit. I plan not to uphold Ms H's complaint about the initial Aqua Card approval and the credit limit. In April 2018 and May 2019 NewDay automatically reviewed Ms H's account and offered her a credit limit increase on each occasion. I have set out those old and new limits in the table at the beginning of this decision. NewDay has explained its checks at these points would have included consideration of Ms H's balance, the card account repayment history, account management and external credit situation. And overall, I consider that NewDay carried out reasonable and proportionate checks when assessing the credit limit increases. I wouldn't expect NewDay to have conducted further checks on Ms H's situation. I plan not to uphold this part of the complaint.

Debenhams card

In May 2018 when Ms H applied for the Debenhams card, she informed NewDay that she was earning a gross annual income of £61,000. And having carried out a credit search it discovered that Ms H had no insolvency issues, no accounts in arrears, no recent defaults and her total unsecured debt balance was £27,700.

NewDay had gathered that she had accommodation costs of £1,500, living expenses each month of £250, and as it knew her overall indebtedness then I think it would have discovered that she likely was repaying towards that. I think it's reasonable for it to have calculated that the £27,700 debt may have been costing her about £831 a month. And I say that because NewDay's records on the Aqua card details (her other account) show that most of Ms H's other debt was on other revolving credit (credit card) accounts. A minimum of 3% each month would have translated to around that figure.

I think her net income was likely around £3,200 after tax on a gross salary of £61,000 and after adding up her accommodation, living costs and likely debt costs then that would have come to around £2,580. So, Ms H would have been able to afford her existing credit commitments and her household costs on these figures. NewDay had noted her partner's net monthly income was £417 and while that was not a great deal it would have assisted towards the living costs and rent to a degree.

NewDay would have known that Ms H had an Aqua card with it since October 2017 and the management of that card had been good and so that likely would have been a factor it considered too.

I am satisfied that NewDay carried out reasonable and proportionate checks and assessed the information it had. I've seen nothing which I think ought to have led NewDay to look more closely at her application. It follows that I think it reached a fair decision to approve the new Debenhams card with the £500 limit. And part of my reason for being persuaded that this was not an irresponsible lending decision is that the credit limit approved was low at £500.

I plan not to uphold this part of Ms H's complaint about the initial Debenhams card approval and the starting credit limit of £500.

May 2019

Within NewDay's own records, I have read that by the time it came to review Ms H's card activity and management for the first credit limit increase in May 2019, this was around the same time it was also looking to increase Ms H's Aqua card limit as well. The Aqua card limit was increased on 15 May 2019. The Debenhams card was increased on 17 May 2019.

And I consider that ought to have precipitated additional scrutiny. And I say that because of the figures I have outlined above for Ms H's income and expenditure and debt costs when she applied for the Debenhams card. It looked affordable but Ms H's ability to absorb further credit costs likely was low.

As NewDay has explained, its checks in May 2019 would have included consideration of Ms H's balance, the card account repayment history for both Aqua and the Debenhams card, the account management for both and her external credit situation. So, I have reviewed all of the information NewDay has given to us. Generally, Ms H had been paying down the Debenhams card with the minimum repayments only for several months leading up to May 2019. The balance on the Debenhams card was about £25 short of the limit so it was close to the maximum. Ms H's overall debt had reduced slightly to around £26,000/£25,700 depending on which set of credit reference agency figures are used.

This proposed credit increase was going to be a £700 increase which on its own may not seem a particularly high one. But when taken with the £1,000 increase NewDay had just offered, and then activated, on the Aqua card then I think that additional checks ought to have been carried out before increasing the Debenhams card limit. I needed to find out what it was that NewDay would have discovered if it had carried out additional checks. I consider that one way it could have done this was to have reviewed Ms H's bank account statements. I have been sent copies and I have looked at those for the three months leading up to the increase date of 17 May 2019.

Having done that, I have not seen any evidence of Ms H being in any financial difficulties such that NewDay would consider that a credit limit increase was irresponsible. And I note that Ms H had several accounts with that bank and having reviewed information we have about that set of bank account management held on a separate complaint file then my view is that Ms H's situation was not one which I would describe as being in financial difficulties in May 2019. So, I consider that the credit limit increase offer made in April 2019 to Ms H and actioned in May 2019 was a fair lending decision. I plan not to uphold this part of the complaint.

January 2020

On 13 January 2020 a further offer to increase the credit limit to £2,700 was made. It was instigated on 14 January 2020. For the same reasons outlined earlier in this decision I have reviewed the account management and the details NewDay had about Ms H in the three months leading up to January 2020.

The balance was comfortably under the £1,200 existing credit limit at the time of the offer. Ms H had been paying significantly more than the minimum repayments expected for several months. NewDay's information about Ms H's external credit indicated that it had further reduced to around £24,500, most of which was credit card debt. And for her external debt there was no indication of any arrears or late payments. Ms H had no late payment markers on this Debenhams card account either. I reviewed the Aqua account management and it was much the same.

So, I do not consider that NewDay needed to do more. I consider that it made a fair lending decision in January 2020, to increase the limit to £2,700. I plan not to uphold the complaint about this part.

The rest of the complaint relates to those parts already accepted by NewDay as being upheld. So, I say no more about them. And the outcome with my decision is the same as that given by our investigator.

Compensation for Ms H

For the Debenhams card account, there has been some confusion about the redress wording and what that means for Ms H and for NewDay.

I set out here what it was that our investigator said in her view leading up to the redress section, and which determines the uphold point. I have substituted the surname for 'Ms H'.

"As I don't think NewDay should have increased Ms H's Debenhams credit limit above £2,700.00, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Ms H has had the benefit of all the money they spent on the account so I think they should pay this back."

There has been a great deal of focus on a date – the 14 January 2020. But that increase was from £1,200 to £2,700 – an increase of £1,500. Whereas our investigator decided that the balance increase to the larger figure over and above £2,700 was wrong. And so that meant that the February 2021 increase ought not to have taken place and so the credit limit ought to have stayed at £2,700 on 17 February 2021 and not been raised beyond £2,700.

And as I have also determined that the decision to increase the limit to £2,700 in January 2020 was a fair lending decision then the uphold point is from 17 February 2021 when NewDay has accepted that the increase carried out on that day (to £3,700) was wrong.

I have read all the correspondence over several weeks from April 2024 and I am confident that what NewDay has done is correct. NewDay has worked the redress as the uphold point being over and above £2,700 after 17 February 2021. I consider that correct. I've seen its email to us dated 25 April 2024.

"As this is an uphold from a credit limit increase, and not from the inception of the account, the proportionate interest calculated is the additional amount of interest paid following the credit limit increase on 17 February 2021."

Since interest would've always been chargeable on the previous credit limit of £2,700, which was not deemed to be unfair, this is why a proportionate amount is being refunded and not a full refund of all interest."

As such, we are refunding £65.98 less than the amount of interest charged each month, and only where the balance exceeded £2,700. This is because £65.98 is the applicable amount of interest that would be charged on a balance of £2,700 (July 2020). Where the balance is less than £2,700, or interest charged is less than £65.98, no refund is applicable for that month."

All fees after 17 February 2021 have been refunded."

I understand from NewDay that the calculated redress was refunded to the respective cards and/or cash to Ms H on 24 April 2024. And a further explanation was forthcoming from NewDay in May 2024

'When the irresponsible lending complaint was upheld and the refund applied to the account, on 24 April 2024, all fees and interest were suspended as the balance remained above £2,700.00. I confirmed this on the system on 30

April 2024. As such, the customer is not being charged interest incorrectly, as they are not currently being charged interest at all.'

As Ms H has asked for me to review the complaint, I have done so and I have issued this decision having reviewed those parts which were still in dispute.

Having clarified the issue surrounding the uphold dates and the redress, then having informed Ms H in this decision the basis on which NewDay was to pay (and has paid) compensation, I am satisfied my redress section set out below is correct. Usually, we at the Financial Ombudsman Service do not check the details of the calculations the respondent subsequently carries out. We'll always explain the principle behind the calculation to consumers so they can understand what's involved. Ms H has received copies of the excel spreadsheets created by NewDay showing calculation of interest – including the April 2024 sum. And I can take it no further.

It's a matter for Ms H to accept or reject this provisional decision.

Ms H says that she considers she is due compensation of £300 for the distress and inconvenience due to these multiple credit limit increases and the impact it's had on her. But the refunded sums credited to her card balance/cash is how credit card redress is carried out. I do not consider that any further compensation is due.

S140A Consumer Credit Act 1974

Ms H has raised this issue. I've considered whether the relationship between Ms H and NewDay might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed should be carried out for Ms H resulted (as it has already been carried out) in fair compensation for her in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

As for the redress, I set out here what I would have expected NewDay to do for the partial uphold of the Debenhams account and the full uphold of the Fluid account. I understand these refunds have already been carried out and so I set it out here for completeness.

For the **Debenhams account**, New Day should (**if it has not already done so**) do as follows:

- Rework the Debenhams card account removing all interest, fees, charges, and insurances (not already refunded) that have been applied to balances above £2,700.00.
- If the rework results in a credit balance, this should be refunded to Ms H along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement – that was to April 2024.
- NewDay should also remove all adverse information recorded after 17 February 2021 regarding this account from Ms H's credit file.
- Or, if after the rework the outstanding balance still exceeds £2,700, NewDay should arrange an affordable repayment plan with Ms H for the remaining amount. Once Ms H has cleared the outstanding balance, any adverse information recorded after 17 February 2021 in relation to the Debenhams account should be removed from her credit file.

For the **Fluid card account**, I have duplicated here exactly what our investigator set out save that I have substituted the surname for 'Ms H'.

There seems not to have been any dispute over this set of redress. **I understand NewDay has already refunded** Ms H for the Fluid card then these paragraphs are inserted here for completeness.

“As I don’t think NewDay ought to have opened the Fluid credit card 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 Ms H should pay back the amounts she has borrowed. 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 Ms H 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 Ms H’s credit file.*
- *Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Ms H for the remaining amount. Once Ms H has cleared the balance, any adverse information in relation to the account should be removed from their credit file.”*

The ‘date of settlement’ was 12 April 2024. And the refund took place on 24 April 2024. **So NewDay need not do more.**

For **both card accounts**:

*HM Revenue & Customs usually requires NewDay to deduct tax from any award of interest. It must give Ms H a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

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 issued my provisional decision, the reply date was set: ‘*before 29 November 2024*’.

I have received no response from NewDay.

On 15 November 2024 Ms H emailed me to say that she was unclear on whether my outcome differed to our investigator’s outcome.

On 18 November 2024 I replied to explain that the outcome was the same as that of our investigator. So, the redress would be the same. I explained as follows:

- Aqua card opening and credit limit increases - I had found the same as the investigator - non-uphold;
- Debenhams card opening– I had found the same as investigator - non-uphold;
- Credit limit increases in May 2019 and January 2020 – I had found the same as investigator - non-uphold;
- Those parts upheld by our investigator and agreed to by NewDay I had not reviewed in the provisional decision as there was no dispute to look at;
- Our investigator had said that for the Debenhams card, it was a partial uphold and NewDay ought not to have increased the credit limit above £2,700. I had said the same in my provisional decision and NewDay had calculated and paid the redress to reflect that.

As the reply date for the provisional decision has passed then I have decided to issue my final decision.

Neither Ms H nor NewDay have sent to me any further submissions or evidence in relation to the complaint over and above what Ms H raised on 15 November 2024 to which I issued a reply. So, I have no reason to depart from the findings and the outcome I reached in the provisional decision. Those findings, the outcome, and the clarification of the redress (duplicated earlier in the provisional decision) are repeated in this final decision.

I do not uphold the complaint about the Aqua card.

I uphold the complaint in part about the Debenhams card.

I uphold the complaint about the Fluid card.

I do not uphold that part of the complaint relating to Ms H's claim for a £300 distress and inconvenience payment.

In relation to S140A Consumer Credit Act 1974, I've considered whether the relationship between Ms H and NewDay might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed should be carried out for Ms H resulted (as it has already been carried out) in fair compensation for her in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

The redress section of the provisional decision, which has been duplicated earlier in this decision, sets out the detail. And it needs to be carried out by New Day Ltd unless it has already done so. My understanding is that NewDay Ltd has done this in April 2024.

My final decision

I uphold the complaint in part and I direct that – unless already carried out by NewDay Ltd - it should do as I have directed in the 'putting things right' section of the decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 30 December 2024.

Rachael Williams
Ombudsman