

## **The complaint**

Miss D complains that NewDay Ltd, trading as Aquacard, irresponsibly provided her with a credit card account she couldn't afford. She's also unhappy with the four credit limit increases (CLIs) it subsequently applied to the account.

## **What happened**

In March 2020 NewDay opened a credit card account for Miss D. The credit limit was set at £900 and was increased on four occasions, taking the credit limit to £5,900 by March 2024.

In April 2024, Miss D complained to NewDay that it shouldn't have given her the credit card or the subsequent CLIs. She said if NewDay had completed appropriate affordability checks at the relevant times it would have seen that the credit was unaffordable for her.

NewDay didn't uphold the complaint. It said it had carried out appropriate checks which showed Miss D could afford the credit limits it had provided her with.

Unhappy with NewDay's response, Miss D complained to this service. Our investigator recommended that Miss D's complaint should be upheld. They said the credit was likely to be unaffordable for her from the start and asked it to put things right for her.

NewDay didn't agree with the investigator's findings. It said the account was approved with a low credit limit and the fact that Miss D was making more than her contractual minimum payments each month demonstrated that she could repay the credit in a sustainable way.

Because the investigator couldn't resolve the case informally, it was passed to me to review afresh.

## **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 uphold the complaint. I'll explain why.

Prior to each lending decision, NewDay was required to ensure it carried out affordability checks. That's irrespective of whether, as NewDay argues, its lending criteria were met. There isn't a set list of checks it needed to complete but it needed to ensure those checks were proportionate in the circumstances. What's considered proportionate will vary taking account of things such as (but not limited to) the amount of credit, the cost, and the borrower's circumstances.

From Miss D's application, NewDay was aware she had a gross annual income of £11,000 in 2020, with a net monthly income of £825. NewDay's records showed her expenditure in relation to housing, day-to-day living expenses and existing credit commitments left her with an estimated disposable income of around £40 a month.

Given the information NewDay gathered about Miss D's financial situation, I'm persuaded it had carried out sufficient checks on which to base its lending decision. But I still need to consider whether that lending decision was responsible in the light of the information it held.

Having done so, I'm not persuaded that NewDay's lending decision was responsible in the circumstances. That's because the credit limit NewDay was offering Miss D was relatively high in relation to her low income. Her debt-to-income ratio was already appreciable at over 40% – and that was before taking account of this additional credit. Her declared payments towards her monthly credit commitments already constituted more than a quarter of her income. And, as I say, her disposable income was very low at around £40.

Given all of this, I think NewDay became aware that providing Miss D with £900 worth of credit was likely to be unaffordable for her and might cause her financial difficulty. So, I don't believe NewDay made a responsible lending decision when it offered her the account in 2020, despite carrying out the checks that it did and its lending criteria.

It follows, by extension, that NewDay ought not to have increased its lending to Miss D after 2020 as it did.

I've thought carefully about NewDay's comments, especially those made in response to the investigator's assessment. But they don't change my mind about the outcome of the complaint. For example, NewDay says Miss D managed the account well and that this demonstrates it was affordable for her in the first place. However, my focus in considering the lending decision's been on what information was available at the point of sale and on her situation at that time. It wouldn't be fair for me to base my assessment on how the account was managed in hindsight.

I've also considered whether NewDay acted unfairly or unreasonably in any other way. That includes whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I've directed here results in fair compensation for Miss D in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

### **Putting things right**

NewDay should put things right for Miss D from the start of the credit card account, albeit she's had the benefit of the money borrowed and so may need to repay the principal amounts. So, NewDay should:

- Rework Miss D's credit card account so that all the interest, fees and charges applied to it from the start are removed.
- If an outstanding balance remains on the account once these adjustments have been made, NewDay should contact Miss D to arrange a suitable repayment plan for this.
- If no outstanding balance remains, any relevant adverse information should be removed from the credit file.

And

- If the refund means there's no remaining balance on the account, any extra should be treated as overpayments and returned to Miss D.

And

- Pay interest of 8% simple a year on any overpayments from the date they were made

(if they were) to the date of settlement†.

† HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Miss D a certificate showing how much tax it's taken off if she asks for one.

### **My final decision**

For the reasons given, I uphold this complaint. I require NewDay Ltd, trading as Aquacard, to put things right for Miss D as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 5 September 2024.

Nimish Patel  
**Ombudsman**