

The complaint

Mr A complains that NewDay Ltd trading as Aqua was irresponsible when it offered him two credit card accounts.

Mr A has brought his complaint to us via a representative but I'll refer to him throughout for simplicity.

What happened

NewDay opened a credit card account for Mr A in March 2022 with a credit limit of £450. Mr A didn't meet his repayments and the account was transferred to a third party debt collector in 2023. The account was fully repaid and closed by June 2023.

NewDay opened a second credit card account for Mr A in January 2024 with a credit limit of £450. I understand that NewDay has suspended new transactions on this account.

Mr A complained to NewDay in early 2024 that it had been irresponsible to lend to him. He said that it hadn't carried out appropriate checks before opening an account for him and it should have seen that he was borrowing from several lenders at that time and repaying some of his debt through third-party collectors.

NewDay didn't uphold Mr A's complaint. It said it completed all of the necessary checks to make sure both credit card accounts would be affordable for him before approving his applications.

Mr A was unhappy with this response and referred his complaint to us. Our investigator assessed the complaint but didn't recommend that it be upheld. They found that NewDay had carried out appropriate checks before opening each account for Mr A, and that it hadn't acted irresponsibly or treated him unfairly by providing him with credit on either occasion.

Mr A didn't agree with this recommendation and asked for his complaint to come to an ombudsman to decide and it came to me. I issued a provisional decision on 6 July 2024 explaining why I thought Mr A's complaint should be upheld in part, and I allowed time for comments or new information from either party. I haven't heard from NewDay. Mr A responded to say that he didn't agree entirely with my provisional conclusions.

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 reviewed the matter again, and considered what Mr A said in response to my provisional decision, I remain of the view that his complaint should be upheld in part only. I'll set out my reasons why again in this final decision and address Mr A's comments where appropriate.

I said the following in my provisional decision:

“When making my decision I’ve had regard to the regulator’s rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as NewDay, need to abide by. NewDay will be aware of these, and our approach to this type of lending is set out on our website, so I won’t refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement or significantly increasing the credit limit, NewDay needed to check that Mr A could afford to repay the credit out of his usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit, for example the amount offered, and to Mr A’s particular circumstances.

The overarching requirement was that NewDay needed to pay due regard to Mr A’s interests and treat him fairly. CONC 2.2.2G gave an example of contravening this as ‘targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.’

With this in mind, my main considerations are did NewDay complete reasonable and proportionate checks when it opened the accounts for Mr A to satisfy itself that he would be able to repay the credit offered within a reasonable period of time? If it didn’t do this, what would reasonable and proportionate checks have shown? Did the checks reveal anything of concern and, ultimately, did NewDay make fair lending decisions? Did NewDay act unfairly or unreasonably in any other way, including whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974?

NewDay said that Mr A gave his income as £14,544 (in other words, around £1,130 net a month) when he applied for an account in March 2022. NewDay provided a summary of the information it found on Mr A’s credit file which included that Mr A held four active accounts with unsecured borrowing of £1,800 and two defaulted accounts amounting to £500. The last default had occurred over three years prior to his application and he had no current arrears. NewDay hasn’t provided a copy of the actual credit file it reviewed but I see no reason not to rely on the summary information it provided as a true reflection of what it used in its assessment.

Mr A said that he had defaulted on two accounts within the previous year, and had gone over his credit limit and incurred numerous late payments on some accounts. He provided a recent copy of his credit file which shows that default markers were reported on two accounts in June 2021 for amounts of £188 and £300. While there were late payments reported on three home credit accounts throughout 2021, all of these had been settled in early 2022.

I don’t know why the information NewDay saw differed from Mr A’s credit report regarding the two recent defaults. It may be that the information was provided by different credit reference agencies. From NewDay’s perspective, it had considered how much Mr A was paying towards his existing debts and how he was managing these. Altogether, I think NewDay gathered sufficient information here to carry out a reasonable assessment and there wasn’t anything in the information it gathered which I think should have prompted it to either decline to lend to Mr A or to ask for more information about his circumstances, given the level of credit it was offering.

I appreciate that this will be very disappointing for Mr A but it follows that I don’t think NewDay lent irresponsibly to him or otherwise treated him unfairly in relation to this matter. I

haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

When Mr A applied for a second account some six months later, he gave his income as £19,440 (or around £1,448 net a month). NewDay's summary credit file information included that Mr A now held six active accounts with unsecured borrowing of £2,200 and no new defaults. NewDay said that Mr A met its acceptance criteria and it offered him a new account with a credit limit of £450.

I appreciate that the information NewDay gathered for Mr A's application in January 2024 didn't show any obvious signs of financial difficulty. However, NewDay had an obligation to monitor Mr A's repayment record and any other relevant information it held as per CONC 6.7.3A-R. So it would, or should, have been aware of how Mr A had managed his first account before offering him further credit. NewDay confirmed in its final response to Mr A that it considered an applicant's account behaviour when making its lending decisions.

NewDay provided statements for both credit card accounts. With his first account taken out in March 2022, Mr A had used the credit up to its limit within a month on supermarket and fuel purchases and a cash withdrawal. His August 2022 statement shows he'd spent over his limit and was charged over limit fees of £12 and needed to pay £39 to bring his account up to date. In September, the requested payment was £54. Mr A's October statement showed he was over his limit by £53 and he now needed to pay £119 to bring things back on track. This escalated and by January 2023 NewDay had suspended Mr A's account. The account was transferred to a third party debt collector, and was fully repaid and closed by June 2023.

CONC 5.2A.25G states that potential indicators that the level of affordability risk arising out of an agreement may be high include circumstances where there is a high likelihood that the customer will not make repayments under the agreement by their due dates. I think the information NewDay held about Mr A's recent account management showed that there was a high risk he would miss his repayments for this second account, and I haven't seen any evidence that NewDay took this into consideration when agreeing further credit for him. I've concluded that NewDay didn't treat Mr A fairly and with due regard to his interests when it opened a second account for him under these circumstances.

The statements for Mr A's second account show that by April 2024 Mr A had borrowed just up to his limit with spending mostly on supermarket and fuel purchases. NewDay told Mr A in its final response to his complaint that it had suspended transactions on the account to help ensure that it didn't cause him any further financial difficulty."

Mr A said in response to my provisional decision that he disagreed with my conclusions regarding his first account opened in March 2022. He said that there were recent defaults, missed and late payments recorded on his credit file which showed he was struggling with his finances prior to the opening of this account and that NewDay should have taken this information into account. Mr A also said that just because Newday didn't record this information doesn't mean it was not available on the credit check it carried out and the outstanding amount it did record was close to that of the amount shown as defaulted in the 12 months prior. Mr A asked whether NewDay's information included the account providers.

As I'd said in my provisional decision, the information NewDay provided about its assessment for Mr A's March 2022 account included that there were two accounts with defaulted balances amounting to around £500 and that the latest default was three years prior. The credit file Mr A provided shows two default markers amounting to this value from 2018 and I suspect these are the defaulted accounts NewDay noted. As I said above, the more recent adverse information Mr A has highlighted related to accounts which had been closed prior to his application.

Altogether, I'm satisfied that NewDay provided the information it relied on in its assessment and, as I set out above, I think it gathered sufficient information to carry out a reasonable assessment. I remain of the view that NewDay didn't treat Mr A irresponsibly or unfairly when it opened an account for him in 2022, but that it should have declined to lend to him in 2024.

Putting things right

I've concluded that NewDay didn't make a fair lending decision when it opened a second account for Mr A in January 2024, and so I don't think he should have to pay any interest, fees or charges associated with the account or have his credit file adversely impacted. However, I do think it's fair that Mr A repays the money he spent as he's had the use of it. I'm satisfied the redress I have directed below results in fair compensation for Mr A in all the circumstances of his complaint and that no additional award would be appropriate.

In summary, NewDay should:

- Rework Mr A's 2024 account removing all interest, charges or insurance premiums (that haven't already been repaid) that have been applied from the beginning; and
- If the rework results in a credit balance, this should be refunded to Mr A 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 Mr A's credit file; or
- If after the rework, there is still an outstanding capital balance, NewDay should arrange an affordable repayment plan with Mr A for this remaining amount. Once Mr A has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

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

My final decision

For the reasons I've explained above, I am partly upholding Mr A's complaint about NewDay Ltd trading as Aqua and it now needs to put things right for him as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 7 September 2024.

Michelle Boundy
Ombudsman