DRN-4961072

The complaint

Miss D is being represented by solicitors. She's complaining about NewDay Ltd trading as Aqua because she says it lent irresponsibly by providing her with a credit card she couldn't afford and going on to increase the limit.

What happened

In June 2017, Miss D opened a credit card account with NewDay with an initial credit limit of £600. This was increased to £1,800 in March 2018, £3,050 in July 2018, and £3,800 in October 2018.

Our investigator concluded the complaint should be partially upheld. She was satisfied NewDay carried out appropriate checks that showed the credit was affordable before the account was opened and the first credit limit increase was applied in March 2018. But she felt NewDay should have concluded the limit increases in July and October 2018 weren't affordable.

Miss D accepted the investigator's assessment. NewDay didn't and made the following key points:

- Miss D's overall debt was manageable in view of her income.
- Much of her debt was non-revolving credit requiring fixed monthly repayments.
- While her affordability score did drop, it calculated there was still more than a 90% likelihood the increased credit was affordable.
- It was conservative with the amount of each limit increase given.

The complaint has now been referred to me for review.

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've reached the same overall conclusions as the investigator, and for broadly the same reasons. I haven't necessarily commented on every single point raised but concentrated instead on the issues I believe are central to the outcome of the complaint. This is consistent with our established role as an informal alternative to the courts. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Before lending to Miss D, 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 Miss D 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 Miss D 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 her making payments, it had to consider the impact of the repayments on Miss D.

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 Miss D's original application to open an account. This included information contained in her application, including employment status and income, along with information obtained from a credit reference agency (CRA), giving details of her existing credit arrangements and any past issues with credit.

According to NewDay's records, Miss D's application stated her annual income was £40,000, that its credit check showed her overall debt was £12,900, and that she was up to date with all payments on her existing accounts. Subsequent credit checks prior to the first credit limit increase in March 2018 showed Miss D's overall debt hadn't increased and that she still appeared to be up to date with repayments on that debt. On balance, and in view of the amount being lent, I share the investigator's view that NewDay carried out a proportionate affordability assessment on each occasion and was entitled to believe the credit being offered was affordable. Miss D's representative hasn't disputed this conclusion.

By the time of the second limit increase in July 2018, the amount NewDay was lending was becoming more significant and its credit check also showed Miss D's debt had increased to over £23,000 from around £13,000 since the previous increase and was now equivalent to more than half of the income declared in her application. I'm also conscious this limit increase came only four months after the previous one, meaning there'd been very little time to assess how she was managing the higher credit limit. I've carefully considered the points raised by NewDay in response to the investigator's assessment, but it's my view these factors should have led it to conclude additional checks were required to decide whether further credit was affordable and I don't agree the assessment carried out at this time was reasonable and proportionate.

I can't know exactly what further checks NewDay might have carried out at the time, but I think a consideration of Miss D's actual income and expenditure would have been reasonable. So we've obtained copies of her bank statements prior to the lending to establish what information could reasonably have been discovered. These show her account was consistently overdrawn during this period and that she doesn't appear to have been managing her finances particularly well. Miss D has told us separately that she wasn't working full-time when this increase was applied as she was at university and her statements appear to show the income she received was significantly less than recorded in her application.

If NewDay had seen this information, it's my view that it shouldn't have offered to increase the credit limit in July 2018. The information available from NewDay's credit check and Miss D's bank statements indicate her situation hadn't improved by October 2018 and it follows that I don't believe the final limit increase should have been offered either.

In summary, if NewDay had adequately assessed whether the credit repayments were affordable and sustainable, it's my view it shouldn't have applied the credit limit increases in July and October 2018. It's for this reason that that I'm partially upholding this complaint.

Putting things right

The principal aim of any award I make must be to return Miss D to the position she'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 Miss D's credit limit, I don't think it's fair for her to pay interest or charges on the additional amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, NewDay now needs to 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 July 2018 on balances over £1,800.

- If the reworking results in a credit balance, this should be paid to Miss D 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 Miss D with a certificate showing how much tax has been deducted if she 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 £1,800, NewDay should arrange an affordable payment plan with Miss D for the shortfall.

- Remove any adverse information recorded on Miss D's credit file after July 2018 relating to this credit, once any outstanding balance over £1,800 has been repaid.

If NewDay no longer owns the debt, it should liaise with whoever does to ensure any payments Miss D has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above 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.

My final decision

My final decision is that I partly uphold Miss D's complaint. Subject to her acceptance, NewDay Ltd trading as Aqua should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 18 November 2024.

James Biles
Ombudsman