

The complaint

Mr J complains that NewDay Ltd, trading as Aqua, irresponsibly lent to him.

What happened

NewDay provided Mr J with a credit card account in April 2020. Initially, his credit limit was set at £450; Mr J's credit limit was then increased twice, to £1,200 in August 2020, and to £2,450 in December 2020.

Broadly, Mr J says NewDay's lending decisions eventually put him into a position where he couldn't afford the repayments each month. More specifically, though, he's questioned the later credit limit increases – pinpointing these in particular as having caused him some issues. So, in December 2023, Mr J complained to NewDay.

NewDay responded, in March 2024, and said it didn't think that it had lent to Mr J irresponsibly. In summary, NewDay explained that it had lent based on information Mr J supplied and what it had gathered from Credit Reference Agency (CRA) checks.

Mr J remained unhappy, so he brought his complaint to this Service for an independent review. An Investigator here reviewed what had happened and, after doing so, concluded that NewDay hadn't lent irresponsibly to Mr J. That's because, based on what he'd seen, he thought the credit was affordable for Mr J. Moreover, the Investigator was comfortable that NewDay had carried out appropriate checks before agreeing to provide credit.

Mr J disagreed, and he asked for an Ombudsman's decision. So, as no agreement has been reached, the complaint has been passed to me to decide.

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.

To begin, I think it's worth clarifying exactly what I've covered in this decision. I say that because, upon reviewing the complaint file, I considered whether Mr J might be raising another issue – alongside irresponsible lending more broadly – around forbearance, and how NewDay should've done more to support him.

I asked Mr J about this but, in his reply, he didn't provide any further detail or an answer to the specific questions asked. In any event, even if he does intend to raise that point, I'm mindful that it's arguably a separate issue which should be dealt with independently. I've not seen that it formed part of Mr J's initial complaint, nor NewDay's final response. So, I've proceeded on the basis of addressing Mr J's concerns about irresponsible lending.

The rules and regulations, which were in place at the time he was provided with the credit, required NewDay to carry out a reasonable and proportionate assessment. That's to

determine whether he could afford to repay what he owed in a sustainable manner. This practice is sometimes referred to as an 'affordability assessment' or 'affordability check'.

The checks had to be borrower focussed; that is, relevant to Mr J. So, NewDay had to think about whether repaying the credit sustainably would cause difficulties, or other adverse consequences, for Mr J. In other words, it wasn't enough for NewDay to just consider the likelihood of it getting the funds back – it had to consider the impact of any repayments on Mr J.

Checks also had to be 'proportionate' to the specific circumstances of the lending. In general, what constitutes a proportionate affordability check will be dependent on a number of factors including – but not limited to – the particular circumstances of the consumer (e.g.: their financial history, current situation and outlook, any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they were seeking. I've kept all of this in mind when thinking about whether NewDay did what it needed to before agreeing to lend to Mr J.

Mr J applied for his NewDay credit card in April 2020. At the time of application, NewDay said it established Mr J's income and carried out credit reference checks. It determined that his income was £36,500, and that he held around £400 in other unsecured debts – all of which were generally being managed well.

Having reviewed the information NewDay gathered, Mr J's credit file did show some defaulted accounts. That said, the last of these seems to have occurred around 20 months prior – so, overall, I don't consider this information, in isolation, to necessarily have been a strong indicator for NewDay to carry out further investigation. From the evidence I have available, nothing which NewDay checked showed any indicators of financial difficulties at the time. Overall then, considering Mr J's circumstances, as well as the relatively modest opening credit limit of £450, I think the checks NewDay carried out here were reasonable and proportionate. So, I don't find that it was wrong to issue Mr J with a £450 credit card.

In August 2020, NewDay increased Mr J's credit limit to £1,200. It carried out credit reference checks and reviewed how Mr J had managed his account so far. In relation to this lending decision, NewDay has said the data it had available demonstrated that Mr J's external position hadn't worsened; his account was being managed well too. Mr J was making the required repayments, sometimes even paying over the minimum payment. He didn't show any of the usual indicators of financial difficulties, such as late payments, missed payments, or overlimit fees. Externally, Mr J's credit balances remained at a consistent amount – and it seems he didn't have arrears elsewhere.

Broadly, with all of that in mind, the account with NewDay was being managed well and nothing new was flagging externally. I think the checks here were proportionate and I don't find that the decision to provide Mr J with a credit limit increase, in August 2020, was unreasonable.

Mr J's final credit limit increase occurred in December 2020, going from £1,200 to £2,450. NewDay has told us it again reviewed Mr J's account behaviour and carried out credit reference checks. Our Investigator felt that was proportionate in the circumstances, and I can understand why, given this increase was shortly after that from August the same year. So, it wouldn't necessarily be unreasonable of NewDay to have considered Mr J's circumstances likely similar to some months before, meaning the information it had gathered then would still be reliable, and not warrant deeper review.

On the other hand, it could be argued that NewDay's checks here weren't enough to be commensurate with a proportionate check. I say that largely because of the amount Mr J's limit was being increased by, only three or four months from his last increase. In any event, I asked Mr J to provide his current account statements so I could ascertain what his position was like at the time. Having done so, much like our Investigator, I think this final increase looks affordable for Mr J.

I say that because, at the time, he again didn't show an indication of financial difficulties; there weren't any late or missed payments, nor were there any overlimit fees or external arrears. Having reviewed Mr J's statements, they show his current account wasn't overdrawn, and that it generally had a positive balance with a reasonable amount of disposable income.

While it's true to say that Mr J was no longer overpaying towards his NewDay credit card, that's not necessarily an indicator of financial struggles – particularly when sat alongside everything I've explained above. So, even if NewDay had done more checks, on the basis of the information I have, I think it likely would've still lent to Mr J.

The key point to remember here, is that it's only fair and reasonable for me to uphold a complaint in circumstances where a lender did something wrong. And while I've no doubt Mr J will see things differently, given what I've explained, I don't think that NewDay could have known that the payments to this credit card were unaffordable at the time of the lending decisions; bearing in mind the information it reviewed, and which has been provided now, doesn't clearly show that this is, or was, the case. So, it's with everything I've set out in mind, that I don't think that NewDay acted unfairly or unreasonably towards Mr J. It follows that I'm not upholding this complaint.

Finally, I'll add that if Mr J is currently experiencing financial difficulties, given what NewDay is now aware of, I want to remind it of its obligations to exercise forbearance moving forward. And I would encourage Mr J to get in touch with NewDay, if he hasn't already, about any difficulties he's facing.

My final decision

My final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 9 December 2024.

Simon Louth
Ombudsman