

## The complaint

Ms B is being represented by solicitors. She's complaining about NewDay Ltd trading as Aqua because she says it lent irresponsibly by providing a credit card she couldn't afford.

## What happened

In March 2022, Ms B opened a credit card account with NewDay. The initial credit limit was £600 and this was increased to £1,350 in October 2022 and £1,950 in March 2023.

After the complaint was referred to me, I issued my provisional decision setting out why I didn't believe it should be upheld. My reasons were as follows:

*Before lending to Ms B, 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 Ms B 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?*

*In response to the investigator's assessment, NewDay has provided further explanation about the information it gathered to assess whether the credit was affordable for Ms B before it was approved. This included:*

- *information contained in her application, including residential status, employment status and her income;*
- *information obtained from a credit reference agency (CRA), giving details of her existing credit arrangements and any past issues with credit; and*
- *an expenditure assessment using a combination of modelled data for key expenses, along with actual data from the CRA about the cost of her existing credit arrangements.*

*I'll now consider each of the lending decisions in turn.*

### *Application*

*In making her application, Ms B declared her income was £17,000. In assessing affordability, NewDay says it calculated this equated to a net monthly income of around £1,300, which is broadly consistent with the figures shown on the bank statements she's provided to us.*

*In respect of Ms B's existing commitments, NewDay's credit check showed she had existing debt of £4,700 and no recent history of missed payments or defaults.*

*After considering this information carefully, I don't think there was any indication Ms B was struggling financially at this point. She wasn't heavily indebted compared to her income and seemed to be managing her existing commitments well.*

*NewDay also considered Ms B's key expenditure based on a combination of her existing credit commitments as recorded by the CRA and modelled statistical data to estimate other living expenses. In this way, it determined she had sufficient disposable income to afford the additional credit.*

*The use of modelled statistical data to estimate expenditure is an approach that's recognised by the regulator for assessing credit applications. It was clearly less thorough than an assessment of Ms B's actual expenses by reference to her bank statements for example. But in view of the amount of credit being offered and the information NewDay already had about her income and existing commitments, I think it was a proportionate approach in this case.*

*I've also considered NewDay's lending decision based on the information obtained from what I believe to have been a proportionate affordability assessment. I'm conscious the initial credit limit was low and, in my view, it was entitled to believe the repayments would be affordable for Ms B and that the decision to lend was a reasonable one.*

#### *Credit limit increase in October 2022*

*Before increasing the credit limit, NewDay carried out a further credit check. This showed Ms B's debt had actually decreased from the date the account was opened. It also carried out further income and expenditure assessment, again based partly on modelled statistical data, that it believes showed the additional credit was affordable.*

*NewDay has also provided details of the account history. This shows there was a low balance and that Ms B appears to have been managing the account well.*

*Based on the information it obtained and what this showed, I'm satisfied NewDay carried out a proportionate affordability assessment for the same reasons I've outlined above. And based on the information it did obtain, I'm satisfied it was entitled to believe further credit was affordable and made a reasonable decision to lend.*

#### *Credit limit increase in March 2023*

*By the time of this limit increase, NewDay's credit check showed Ms B's overall debt had increased slightly to around £4,000, although there was no indication of difficulty with her other accounts. But her NewDay account history does show Miss B incurred a late payment fee the month before the increased limit was applied. While a single late payment wasn't necessarily a reason not to lend, I think this, combined with the fact the proposed credit limit was now becoming more significant, should have prompted NewDay to carry out further checks. I don't believe an assessment based partly on modelled statistical data was proportionate on this occasion.*

*I can't know exactly what further checks NewDay might have carried out at the time, but I think a consideration of Ms B's actual income and expenditure would have been reasonable. So we've obtained copies of her bank statements for the period prior to the lending to establish what information could reasonably have been discovered.*

*The bank statements show Ms B's monthly income from employment was over £1,500 – over £200 more than when the account was opened a year earlier. They also show her*

*accounts maintained a positive balance in the months before the increase and she seems to have been managing her finances well enough.*

*On balance, if NewDay had completed a more detailed and proportionate affordability assessment, I don't think it would have discovered any evidence to suggest payments on the increased amount of debt would prove unaffordable and I believe its decision to lend was therefore ultimately a reasonable one.*

*In conclusion*

*It's for these reasons that I'm currently not proposing to uphold Ms B's complaint. I realise this outcome will be disappointing for her, but I'm satisfied it's fair and reasonable in the circumstances.*

*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, for the reasons I've already given, I don't think NewDay lent irresponsibly to Ms B or otherwise treated her 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.*

NewDay accepted my provisional decision and had nothing further to add. Neither Ms B nor her representatives made any further comment.

### **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.

As neither party has made any further submissions in response to my provisional decision, my findings haven't changed from those I set out previously.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 8 October 2024.

James Biles  
**Ombudsman**