

The complaint

Mr C, through a representative, says NewDay Ltd, trading as Aqua, irresponsibly lent to him.

What happened

Mr C applied for a credit card from NewDay in February 2020. It was approved with a limit of £450. He was then given four credit limit increases as set out below:

increase	date	limit, £
1	24/07/2020	£1,200
2	28/12/2020	£2,450
3	23/04/2021	£3,450
4	27/08/2021	£4,700

In May 2023 NewDay then reduced his limit to £1,800. Mr C says he had to take out additional lending to pay for the credit. NewDay didn't ask him any questions to confirm that he would be able to repay the credit in a sustainable way. He already had multiple other borrowings at the time; he was in arrears with other lenders and household bills; and he was struggling to pay essential costs because of his repayments. Also, his income changed between taking out and repaying the credit but NewDay didn't ask.

Mr C is also unhappy with how NewDay handled his complaint, saying the final response letter does not address his complaint points with any evidence-based findings, it is not specific to him.

NewDay says it carried out proportionate checks at each stage that showed the credit would be affordable.

Our investigator upheld Mr C's complaint in part. She said NewDay was not wrong to open the account or give the first limit increase, but increases 2 to 4 should not have been given.

Mr C accepted this assessment but NewDay did not provide a response. So the complaint was passed to me to make a final decision.

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.

Our approach to unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - is set out on our website and I have followed it here. NewDay is required to lend responsibly. It needed to conduct checks to make sure that the credit it offered to Mr C was affordable and sustainable. Such checks need to be proportionate to things like the credit limits it offered Mr C, how much he had to repay (including interest and charges) each month, his borrowing history with it and what it knew about his circumstances. But there is no set list of checks it had to do.

This means to reach my decision I need to consider if NewDay carried out proportionate checks at the time of Mr C's application and each limit increase; if so, did it make fair lending decisions based on the results of its checks; and if not, what better checks would most likely have shown. I also need to think about, bearing in mind the circumstances at the time of each additional advance in credit, whether there was a point at which NewDay ought reasonably to have realised it was increasing Mr C's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit.

I can see as part of NewDay's checks when Mr C applied it considered his income, household income, total level of borrowing held elsewhere and monthly repayment costs – and for the limit increases it also looked at how he was managing both his Aqua account and his other debt elsewhere.

I think these checks were proportionate at application given the stage in the lending relationship and the amount of credit offered, but I'm not satisfied they were for the limit increases. I think NewDay needed to take steps check Mr C's income had not changed significantly as it extended his borrowings. And to understand his fixed outgoings as the limit increased substantially. I cannot see that because he was managing a limit of £450 it could be assumed he could manage higher limits sustainably without better understanding his financial position.

At application Mr C declared an annual income of £19,748 and the credit check showed he had debt of £4,400. There was some adverse historic data but the most recent significant entry was 35 months old so I don't think it ought to have changed NewDay's lending decision. In the round, given the low initial limit I think NewDay made a fair decision when it opened the account.

When it increased Mr C limit for the first time five months later NewDay learnt that Mr C's debt level had increased substantially to £14,961. It also had limited data on how Mr C was managing his account given it had only been open for five months – that said, he had already incurred a late fee and used his card for cash withdrawals. So I think NewDay needed to carry out further checks, specifically to check Mr C's current income and non-discretionary outgoings. In cases like this we look at bank statements for the three months prior to the lending decision. I am not saying NewDay had to do exactly this but it is a reliable was for me to understand what proportionate checks would have most likely shown the lender.

And I think NewDay could fairly have made the same decision had it completed better checks. Mr C's income was higher than at application at on average £1,958, there were none of the typical signs of financial strain such as persistent reliance on an overdraft, returned direct debits, problematic gambling or the use of payday loans. As the investigator said there were transfers in from another account but Mr C has not provided the information requested about this account.

It follows I don't find NewDay was wrong to increase Mr C's limit to £1,200.

Logically, I have then reviewed Mr C's bank statements for the three months prior to the second limit increase. And at this point I think NewDay ought to have realised that further increasing Mr C's debt level created a risk he would not be able to repay it sustainably. It had learnt that his total debt had increased again and was now £15,326 and knew he was now only making minimum payments on this card – yet it was planning to double his credit limit. The statements now show some signs of financial pressure, Mr C was using his overdraft facility more frequently, not just for a few days prior to pay day. More critically, his income had decreased to on average £1,463 a month meaning he would likely already be

spending around half his income on repaying his credit commitments, At this level NewDay ought to have realised that there was a high risk that further extending his indebtedness could cause Mr C financial harm.

It follows I think NewDay was wrong to increase Mr C's limit to £2,450. And it should not have offered any further limit increases unless it had carried out proportionate checks that showed the additional credit would be affordable for Mr C. It has not been able to evidence it did this.

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 below results in fair compensation for Mr C in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Finally, Mr C was also unhappy with how NewDay responded to his complaint in its final response letter, but this is not something I can look at. There is a difference between a complaint about a financial service and a complaint about how a firm has handled a complaint. I can only look at the former. Mr C's concerns about how NewDay responded to his complaint is not a complaint about its provision of or failure to provide a financial service – it's distinctly about complaint handling. And under our rules I cannot consider complaint handling.

Putting things right

As I don't think NewDay should have increased Mr C's credit limit above £1,200, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Mr C has had the benefit of all the money he spent on the account so it is fair he should pay this back. Therefore, NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £1,200 after December 2020.
- If the rework results in a credit balance, this should be refunded to Mr C 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 recorded after December 2020 regarding this account from Mr C's credit file.
- Or, if after the rework the outstanding balance still exceeds £1,200, NewDay should arrange an affordable repayment plan with Mr C for the remaining amount. Once he has cleared the outstanding balance, any adverse information recorded after December 2020 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 C a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

I am upholding Mr C's complaint in part. NewDay Ltd, trading as Aqua, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 November 2024.

Rebecca Connelley
Ombudsman