

The complaint

Mrs D complains that NewDay Ltd trading as Aqua lent to her irresponsibly.

What happened

Mrs D applied for a credit card with NewDay. NewDay approved the application and gave Mrs D a credit card with an initial credit limit of £1,200. The credit limit was increased to £2,450 in April 2022, to £3,700 in August 2022, to £5,050 in December 2022, to £6,800 in July 2023 and to £8,000 in November 2023.

Mrs D complained that NewDay had lent to her irresponsibly. NewDay didn't uphold the complaint. It said its checks had shown that the credit was affordable. Mrs D brought her complaint to this service.

Our investigator said the decision to let Mrs D have the card with the initial credit limit of £1,200 was fair. They also said the 1st, 2nd and 3rd credit limit increases were fair. But they said the 4th and subsequent credit limit increases were unfair because the checks carried out before these increases weren't proportionate and the information that would've been discovered had proportionate checks been carried out showed that Mrs D wasn't able to sustainably repay the additional credit.

Mrs D accepted the investigators view but NewDay didn't reply, so I've been asked 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 complaints about irresponsible and unaffordable lending is set out on our website. I've had this approach in mind when considering this complaint.

Before agreeing to lend, NewDay needed to carry out reasonable and proportionate checks to make sure Mrs D could afford to repay what she was borrowing in a sustainable way. The nature of what's considered reasonable and proportionate will depend on factors such as the amount of credit, the sum repayable and the consumers individual circumstances.

There's no set list of checks that a lender must complete, but lenders are required to consider the factors I've mentioned above when deciding what's reasonable and proportionate.

Account opening

I've looked at the information gathered by NewDay. Mrs D declared income of £31,000 per year. NewDay verified this income and completed an income and expenditure assessment. This showed that Mrs D had existing credit commitments of around £31 per month and disposable income of around £1075 per month.

NewDay also carried out a credit check. This showed no defaults of CCJ's. However, it did show that Mrs D had fallen behind with her mortgage repayments in the six months leading up to the application. I think this ought to have prompted NewDay to carry out further checks, because missing a priority payment such a mortgage could be an indicator of financial difficulty.

Because I don't think the checks were proportionate, I've gone on to look at what proportionate checks would've shown, had they been carried out. I can't be certain of exactly what checks NewDay would've carried out. However, I've looked at Mrs D's bank statements for the three months leading up to the application, as these give a reliable indication of her financial position.

The bank statements show that Mrs D had a healthy credit balance and had sufficient funds to afford the monthly repayment on the card, even if the credit limit was fully utilised.

So, whilst NewDay's checks showed a late mortgage payment, I'm satisfied that Mrs D could afford to sustainably repay the credit.

I therefore think the lending decision was fair.

First, second and third credit limit increases

NewDay has said that it carried out a credit check and an affordability check before increasing the credit limit. It has also provided information which shows that it carried out income verification checks prior to each credit limit increase. This check was carried out as part of the affordability assessment to see whether Mrs D could afford the increased credit limit.

I've looked at the information gathered by NewDay. This shows that Mrs D had external credit commitments of around £2,300 at the time of the first credit limit increase, which had increased to around £4,200 by the time of the second credit limit increase and around £6,700 by the time of the third credit limit increase.

The credit checks showed no adverse information, no defaults and no CCJ's. Mrs D was managing her other credit commitments well with no arrears or late payments.

I haven't seen anything in the information obtained by NewDay which ought to have prompted further checks. And looking at things from an affordability perspective, I think the information gathered shows that Mrs D was able to sustainably repay the credit.

I therefore think the first, second and third credit limit increases were fair.

Fourth credit limit increase

NewDay carried out a credit check and an affordability check before the fourth credit limit increase.

I've looked at the information gathered by NewDay. And I think some of the information ought to have given NewDay cause for concern and warranted further checks. I'll explain why.

The credit check showed that Mrs D had missed payments on her external credit commitments in January 2023, May 2023 and June 2023. It also showed that her external debt had increased from £6,700 to £14,700. This is a significant increase in only seven months.

Mrs D had also been using her card to withdraw cash. I can see from the account history that Mrs D withdrew cash in April 2023 and May 2023 – in total the amount withdrawn was £700 which is a significant sum in a short time.

Both factors ought to have promoted NewDay to carry out further checks. Therefore, it follows that I don't think the checks carried out were proportionate.

I've gone on to consider what proportionate checks would've shown had they been carried out. I've looked at Mrs D's bank statements for the three months leading up to the credit limit increase. These show that Mrs D was overdrawn in April, May and June 2023. In May and June the account was overdrawn by over £2000.

On a credit card with a credit limit of £6,800, I would expect the monthly repayments to be in the region of £340. Mrs D's bank statements show that she didn't have funds available to sustainably repay the credit.

If NewDay had carried out further checks and seen the extent of Mrs D's overdraft it would've seen that Mrs D wasn't able to afford the credit limit increase. I therefore think the lending decision was unfair.

Because I don't think that the fourth credit limit increase was a fair lending decision, it follows that I don't think the fifth credit limit increase was a fair lending decision either, as further increases weren't likely to be sustainable. I haven't seen anything to suggest that Mrs D's financial circumstances improved leading up to the fifth credit limit increase.

I've also considered whether NewDay acted unfairly or unreasonably in some other way, given the facts of Mrs D's complaint., including whether its relationship with Mrs D might be unfair under section 140A of the Consumer Credit Act 1974. However, I'm satisfied that the redress I've directed is fair compensation in the circumstances of this complaint. I'm satisfied based on what I've seen that no further award is appropriate in this case.

Putting things right

I've explained above why I don't think the fourth and fifth credit limit increases were fair lending decisions. I don't think it's fair for NewDay to charge interest, fees and charges on any balances which exceed £5,050. However, because Mrs D has had the benefit of the amount she's spent on the card, I think she should repay this.

To put things right NewDay should:

Rework the account removing all interest, fees and charges (not already refunded) applied to balances over £5,050 after 7 July 2023.

If the rework results in a credit balance, this should be refunded to Mrs D along with 8% simple interest per year calculated from the date of each overpayment to the date of settlement. NewDay should remove all adverse information recorded after 7 July 2023 relating to this account from Mrs D's credit file.

If, after the rework, the outstanding balance exceeds £5,050, NewDay must arrange an affordable repayment plan with Mrs D. Once Mrs D has cleared the balance NewDay should remove all adverse information recorded after 7 July 2023 relating to this account from Mrs D's credit file.

If NewDay has sold the debt to a third party it must either buy it back or liaise with the third party to ensure that the redress is carried out.

HMRC requires NewDay to deduct tax from any award of interest. It must give Mrs D a certificate showing how much tax has been deducted if she asks for one.

My final decision

My final decision is that I uphold the complaint. NewDay Ltd trading as Aqua must take the steps I've set out above.

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

Emma Davy
Ombudsman