

## The complaint

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

## What happened

Mrs B opened a credit card account with NewDay in 2022. The credit limit was initially set at £1,200 and this was increased to £2,450 in May 2022, £3,450 in September 2022 and £4,300 in March 2023.

After considering Mrs B's complaint, NewDay said the decisions to offer the card initially and increase the credit limit in May and September 2022 were reasonable. But it did accept that it shouldn't have increased the limit again in March 2023. To put things right it calculated a proportionate refund of interest and charges and credited this to Mrs B's account to reduce the outstanding balance.

## My provisional decision

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 Mrs 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 Mrs 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?*

*NewDay has described the information it gathered to assess whether Mrs B's credit was affordable before her initial application 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.*

*By the time it came to considering whether to increase the credit limit, NewDay was also able to review how Mrs B had managed her credit card account up to that point.*

*I've considered the merits of each lending decision in turn.*

#### *Application in January 2022*

*In making her application, Mrs B declared her annual income was £45,000. In respect of her existing commitments, NewDay's credit check showed she had debt of £18,900 and was up to date with payments on these accounts. But it also showed she had three outstanding defaults with a total value of £800 and the most recent registered 11 months previously.*

*After carefully reviewing the information NewDay obtained, I think there were factors that should have prompted it to carry out further checks before approving Mrs B's application. In particular, I'm conscious her outstanding debt was high and the fact she'd had an account default only 11 months earlier indicated she may have had recent financial difficulty. In the circumstances, I don't agree an affordability assessment based mainly on modelled statistical data, rather than her actual circumstances, was reasonable and proportionate in this case.*

*To be clear, and this is where my assessment differs from that of our investigator, I don't think it follows that NewDay shouldn't have lent at all because of the existence of a relatively low-value default nearly a year before the application. But I do think this should have prompted it to carry out a more thorough affordability assessment.*

#### *Credit limit increases in May and September 2022*

*As above, I think further checks were required to complete a proportionate assessment on each occasion. In particular, I'm conscious the amount of credit was becoming more significant on each occasion and that each decision to lend closely followed the previous one, meaning there had been little time for NewDay to assess how Mrs B was managing her account with the previously agreed limit. I also note that by May 2022, NewDay's credit check showed her overall debt had increased from £18,900 to £24,100, which is a significant jump in a short period of time.*

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

*NewDay has already accepted this increase shouldn't have been granted and appears to have taken appropriate steps to put things right, so I don't propose to comment further on this point at this stage.*

#### *What would further checks have discovered?*

*I can't know exactly what further checks NewDay might have carried out at the time of the initial application and first two credit limit increases, but I think a consideration of Mrs B's actual income and expenditure would have been reasonable. To establish what information could reasonably have been discovered, and therefore allow me to assess whether the lending was appropriate, our investigator asked her representative to obtain copies of her credit file and bank statements for the period from October 2021 to September 2022.*

*The investigator initially requested this information on 27 August 2024 and chased Mrs B's representative on 13 September. As yet, no further information has been provided. We can't keep complaints open indefinitely and it's my view that sufficient time has been allowed for Mrs B's representative to provide additional information on her behalf and that it's right that I now progress the complaint towards a final decision.*

*Without the further information requested from Mrs B's representative, I don't have sufficient evidence to demonstrate the credit provided by NewDay was unaffordable and I'm therefore not in a position to conclude it shouldn't have been granted.*

*It's for these reasons that I'm currently not proposing to uphold Mrs B's complaint. But I am willing to reconsider this outcome if her representative provides the additional information we've requested by 14 October.*

*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 I can reasonably conclude NewDay lent irresponsibly to Mrs 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.*

### **The responses to my provisional decision**

NewDay accepted my provisional decision and made no further comment. Despite a reminder from the investigator, Mrs B's representative didn't provide a response or any further information.

### **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 Mrs B to accept or reject my decision before 13 November 2024.

James Biles  
**Ombudsman**