

The complaint

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

What happened

In December 2017 Mr A applied for a credit card with NewDay. NewDay approved the application and gave Mr A a credit card with an initial credit limit of £900. The credit limit was increased to £2,400 in June 2018, to £3,800 in October 2018 and to £5,300 in August 2019.

Mr A complained that NewDay had lent to him irresponsibly.

NewDay didn't agree. It said it had carried out proportionate checks before lending to Mr A. Mr A remained unhappy and brought his complaint to this service.

NewDay gave consent to this service looking at all the lending decisions, including those which took place more than 6 years ago.

Our investigator upheld the complaint. He said that although he was satisfied that NewDay had carried out proportionate checks before giving Mr A the card, he didn't think the lending decision was fair because the information gathered showed that Mr A had been in financial difficulties not long before the lending decision was made.

NewDay didn't respond to the investigators opinion, 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.

We've set out our approach to complaints about irresponsible and unaffordable lending 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 Mr A was able to sustainably repay what was being lent to him. There's no set list of checks that a lender must carry out, but lenders are required to have regard to things like the amount being lent, the amount repayable and the consumers individual circumstances. This service would expect to see some or all of the following checks: income and expenditure, credit checks and verification of income.

Account opening

I've looked at the checks that NewDay carried out. NewDay obtained information about Mr A's income and expenditure from his application form. It verified Mr A's income and used information from the ONS to calculate Mr A's disposable income.

NewDay also completed a credit check and gathered information from credit reference agencies including Mr A's credit history, existing credit commitments and monthly payment towards debt.

Based on what I've seen, I'm satisfied that the checks carried out by NewDay were reasonable and proportionate.

I've gone on to consider whether the lending decision was fair. In order to do this, I've looked at the information which NewDay gathered from the checks.

In his application, Mr A declared gross income of £35,000 per year. NewDay calculated this as £2,036.30 net per month.

The credit check showed that Mr A had no defaults or county court judgments. Nor did he have any short-term high interest loans or payday loans. However, in relation to Mr A's mortgage, he had a status 1 in the six months leading up to the credit card application. I think NewDay should've investigated this further, as this was a priority debt which hadn't been paid. The entry ought to have alerted NewDay to the possibility that Mr A was experiencing financial difficulties.

I've also looked at the information NewDay gathered when it carried out its affordability check. NewDay carried out an income and expenditure assessment and used data from the ONS to calculate Mr A's outgoings. NewDay calculated Mr A's living costs at £451.89, his housing costs at £277 and his existing credit commitments at £982. Based on these figures, NewDay calculated Mr A's monthly disposable income at £325.41.

The information shows that Mr A's existing credit commitments were very high in comparison to his income. In the information supplied to this service by NewDay, it stated that Mr A's debt to income ratio was 138.03%. This service would consider that to be high, and an indicator of additional borrowing not being sustainably affordable.

I've considered all of the information gathered by NewDay. Because Mr A had incurred mortgage arrears in the six months leading up to the lending decision, and because of Mr A's significant other credit commitments and debt to income ratio, I'm not persuaded that the information showed that Mr A was able to sustainably afford the credit.

The information gathered from the checks points towards Mr A already being in a challenging financial situation, with the risk that further borrowing would make that situation worse. The information doesn't show that Mr A was likely to be able to sustainably repay any further borrowing.

Taking everything into account, I'm not persuaded that the lending decision was fair at the account opening stage.

I haven't seen anything in the information to suggest that Mr A's financial situation had improved at the time of the further credit limit increases. So, I don't think any of the credit limit increase lending decisions were fair either.

I've also considered whether NewDay acted unfairly or unreasonably in some other way given the nature of Mr A's complaint, including whether the relationship between NewDay and Mr A might have been unfair under Section 140A of the Consumer Credit Act 1974. However, because I am upholding Mr A's complaint for the reasons I've explained above, I don't need to make a finding on this, and I'm satisfied that the redress I have directed results in fair compensation in the circumstances of Mr A's complaint.

Putting things right

I've explained why I don't think the lending decision was fair. I don't think it's fair for NewDay to charge and interest or charges under the agreement. However, Mr A has had the benefit of the money he's spent on the card so I think he should repay this.

NewDay must:

Rework the account removing all interest fees and charges (not already refunded)

If the rework results in a credit balance, this must be refunded to Mr A along with 8% simple interest from the date of each overpayment to the date of settlement. NewDay must remove all adverse information relating to the account from Mr A's credit file.

If the rework leaves an outstanding balance, NewDay must arrange an affordable repayment plan with Mr A. Once Mr A has cleared the balance, NewDay must remove all adverse information relating to the account from Mr A's credit file.

HMRC require NewDay to deduct tax from an award of interest. NewDay must give Mr A a certificate showing how much tax has been deducted if he 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 Mr A to accept or reject my decision before 18 December 2024.

Emma Davy
Ombudsman