DRN-5127011

The complaint

Miss B complains that NewDay Ltd was irresponsible to open three credit accounts for her and to later increase the credit limits.

Miss B has brought her complaint via a representative but I will refer to her throughout for simplicity.

What happened

NewDay Ltd opened three credit accounts for Miss B. The first was in January 2020 under the Aqua brand, and had a credit limit of £900. Two others were opened in March 2021 under the AO Finance and Marbles brand, with credit limits of £700 and £450 respectively.

NewDay increased the credit limit on the Aqua and Marbles accounts four times, and increased the limit on the AO Finance account twice. By the end of 2021, Miss B had a combined credit limit of £6,100. By January 2023 this had risen to £7,650.

Miss B complained to NewDay in March 2024 that it didn't carry out proportionate checks before lending to her, and should have seen that she was dependent on credit when she applied for the accounts. Miss B said that NewDay was irresponsible to lend to her under these circumstances.

NewDay said in response that it carried out an assessment before it opened each account and before each subsequent credit limit increase to check that the credit would be affordable for Miss B. It said it was confident that the credit had been provided responsibly and didn't uphold her complaint.

Miss B referred her complaint to us. Our investigator found that NewDay wasn't irresponsible to have opened these accounts. However, they also found that NewDay's checks weren't proportionate on three occasions. They concluded that NewDay should not have increased Miss B's credit limit on her AO Finance account above £1,400 agreed in September 2021, or increased her limit on her Marbles account above £2,200 agreed in November 2021. They recommended that Miss B's complaint be upheld in part.

Neither NewDay nor Miss B agreed with this recommendation. NewDay said that its checks were proportionate and that none of the increases were less than 85% affordable for Miss B. Miss B said that when NewDay opened her AO Finance and Marbles accounts around March 2021, she had existing debts of over £14,500 and was dependent on credit. In addition, she was borrowing from multiple lenders and making cash withdrawals on her revolving credit accounts. Miss B said that NewDay should have seen this and not opened these accounts for her.

The complaint was passed to me to decide. I sent out a provisional decision on 17 October 2024 to explain why I thought Miss B's complaint should be upheld in part, and to share the information I'd relied on with both parties. I allowed time for comments or new information from either party but haven't received responses. This is my final decision on the matter and will be legally binding on both parties should Miss B accept it.

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.

I've also had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as NewDay, need to abide by. NewDay will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise and refer to them where appropriate.

Before entering into these credit agreements or significantly increasing the credit limit, NewDay needed to check that Miss B could afford to meet her repayments out of her usual means within a reasonable period of time, without having to borrow further, without failing to make any other payment she had a contractual or statutory obligation to make, and without the repayments having a significant impact on her financial situation.

The checks carried out needed to be proportionate to the nature of the credit (the amount offered, for example) and to Miss B's particular circumstances. Generally, more in depth checks might be proportionate the higher the credit amount or the longer the lending relationship, and NewDay needed to have proper regard to the outcome of its assessments in respect of affordability risk.

The overarching requirement was that NewDay needed to pay due regard to Miss B's interests and treat her fairly. CONC 2.2.2G(1) gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my main considerations are did NewDay complete reasonable and proportionate checks when assessing Miss B's applications and increasing her credit limits to satisfy itself that she would be able to make her repayments without experiencing adverse consequences? If not, what would reasonable and proportionate checks have shown? Was there anything of concern in the checks NewDay did carry out and did it make fair lending decisions? Did NewDay treat Miss B unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974?

NewDay provided the information it relied when making its lending decisions, which included what Miss B said about her income, its estimations of her expenditure and information from the credit reference agencies (CRAs). NewDay said that it either used CRA information about an applicant's current account turnover to check their income level and estimate their disposable income (EDI), or it used its internal models to sense-check their income level against similar customer data and calculate an affordability score or likelihood.

I've summarised some of the information NewDay provided about these accounts in the table below. This shows the credit limit increases for each account, the income figure and EDI or affordability score NewDay relied on in its assessments, and information about Miss B's debts that it gathered from CRAs throughout the lending history.

Account name	Significant dates	Credit limit	Net monthly income	Monthly expenses	Existing unsecured debt	Existing debt payments	EDI (£) / Affordability score (%)
Aqua	09/01/2020	£900	£1,721	£950	-	£198	£540

	25/05/2020	£1,200	£2,056	£969	£10,435	£729	£395
	17/08/2020	£1,700	£2,043	£969	£10,098	£596	£478
	09/06/2021	£2,000	£2,241	£989	£15,157	£741	£511
	27/12/2021	£2,500	£2,191	£984	£21,736	£1,080	£127
AO Finance	24/03/2021	£700	£1,973	£983	£15,255	£701	£255
	17/09/2021	£1,400	£3,319	£1,098	£15,466	£686	£1,535
	02/05/2022	£1,850	-	-	£23,527	£1,319	87%
Marbles	31/03/2021	£450	£1,973	£983	£15,255	£791	£164
	08/07/2021	£1,200	£2,271	£992	£11,181	£744	£535
	12/11/2021	£2,200	£2,290	£994	£21,391	£1,075	£221
	12/09/2022	£2,800	-	-	£22,859	£1,324	87%
	11/01/2023	£3,300	-	-	£21,984	£1,436	85%

The Aqua account opened in January 2020

Miss B said her net monthly income was £1,721 when she applied for this account. NewDay checked this figure (by looking at a CRA report based on her current account turnover). It estimated that Miss B's expenses came to £950 and that she spent £198 repaying her existing credit commitments. NewDay didn't record a figure for Miss B's total debts but the first record it has is a figure of £5,038 in March 2020 so I've assumed that her debts were at a similar level in January.

The CRA summary NewDay provided didn't show any negative information such as bankruptcy or county court judgements. Its CRA data from March 2020 shows one default that was 14 months old, which suggests that in January it had been a year since a default marker had been recorded on Miss B's credit file.

Altogether, given what NewDay's assessment found and the amount of credit it was offering, I think its checks were reasonable and proportionate here and it didn't lend responsibly or treat Miss B unfairly when it opened this account for her.

I didn't make a finding about whether or not NewDay got something wrong when it increased the credit limit on this account to £1,200 and then £1,700 in May and August of 2020 respectively. This is because Miss B's spending on the account didn't rise above the original credit limit of £900 until later in 2020 and so it's not likely that NewDay got something wrong by offering her credit which led to an adverse impact on her finances. As I'll explain later, I don't think NewDay should have increased Miss B's credit limit on this account beyond £1,700 in June 2021.

The AO Finance and Marbles accounts opened in March 2021

These accounts were opened around the same time. Miss B said her net monthly income was £1,973 when she applied for them. I understand that NewDay checked this figure by looking at a CRA report based on Miss B's current account turnover.

For the AO Finance assessment, NewDay estimated that Miss B's expenses came to £983 and that she spent £701 repaying her existing credit commitments. NewDay estimated that Miss B would have £255 left over to meet her repayments for this account.

NewDay relied on similar information about Miss B's income and expenses when it opened the Marbles account a few days later, with Miss B having higher debt repayments of £791 and an estimated disposable income of £164.

NewDay didn't record a figure for Miss B's total debts for these assessments, but I can see from the information it held in relation to her existing Aqua account that she had over £15,000 of debt altogether around this time. It also seems that Miss B had one public record shown on her credit file since January 2021 but no new defaults.

Since opening the Aqua account some 14 months earlier, Miss B's debts had risen from around £5,000 to over £15,000. NewDay estimated that she was spending 36% to 40% of her declared income meeting her repayments for this.

Given these circumstances, and that NewDay was now offering Miss B a total credit limit of £2,400 (£1,700 with her exiting Aqua account and an additional £700 with her new AO Finance account) rising to a total of £2,850 (with the additional £450 on the Marbles account), I think it would have been reasonable and proportionate for NewDay to have confirmed Miss B's income and expenditure to assess whether she would be able to meet her repayments for the AO account, and similarly the Marbles account, without difficulty.

I appreciate that NewDay sense-checked what Miss B had said about her income by looking at her account turnover. I haven't seen the information it relied on but I think at this point a more rigorous check would have been appropriate, including verifying Miss B's actual income.

Miss B has provided statements for her current account and I've reviewed these. To be clear, I'm not suggesting this is the information NewDay should have relied on, rather that it is the information I have and I think it's reasonable for me to rely on it when considering what a proportionate check in March 2021 might have revealed.

Miss B's net monthly income for the months December 2020, January and February 2021 was, on average, £1,800. Her income varied and was as low as £1,696 and £1,628 in the months of February and March 2021.

There are cash deposits into Miss B's account, and deposits from an online payments system and an online market place. Miss B told us that these were gambling-related deposits as she used this payment system to gamble and she sold items to fund her gambling. The amount and frequency of these deposits vary, and I haven't considered them as a regular source of income Miss B could rely on to meet her living costs and financial commitments.

There are few identifiable costs on the bank statements. There is a regular payment of £570 to an estate agent, which I've assumed was Miss B's rent payment, and costs of £125 towards bills. Miss B transferred, on average, £700 a month to an account in her name in the preceding three months, some of which may have been to cover other essential bills or costs such as food or travel, for example. Miss B's debt repayments were at least as much as NewDay estimated (£701 to £791) and in some months she paid far more towards her revolving credit accounts.

Even without going into Miss B's finances in more depth, I think it's unlikely, given her level of regular income, that she would have been able to meet her repayments for these new accounts while meeting her repayments for her existing debt and other usual expenses.

I think NewDay would have learnt this had it carried out proportionate checks, and would not have opened either of these accounts for Miss B. I've concluded that NewDay was irresponsible to have entered into these agreements.

<u>The credit limit increases on Miss B's Aqua account in June and December 2021</u>

For the same reasons I've set out above, I don't think NewDay's checks were proportionate for the credit limit increases it offered Miss B on her Aqua account later on in 2021. Mrs B's bank statements show that her circumstances hadn't changed - her income was on average £1,726 in March to May of 2021, and £1,701 in September 2021 (the latest statement date). And as before, given her financial circumstances, I think it's unlikely that Miss B would have been able to meet her repayments for further credit while meeting her repayments for her existing debt and other expenses.

I think NewDay would have learnt this had it carried out proportionate checks, and would not have offered Miss B these credit limit increases. I've concluded that it was irresponsible to have done so.

By December 2021 Miss B had over £21,000 of debt. I think by then NewDay should have seen from its assessments that Miss B was overindebted and wasn't managing to make inroads into her existing debt. Offering her further credit was likely to increase and prolong her indebtedness, and I've concluded that NewDay didn't treat Miss B fairly and with regard to her interests when it offered her credit from this point onwards.

In summary

I've concluded that NewDay was irresponsible to have opened the AO Finance and Marbles accounts for Miss B, and to have increased her credit limit on her Aqua account above £1,700 agreed in August 2020. I've set out below what NewDay should do now to put things right for Miss B.

I did also consider whether NewDay treated Miss B unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. And I'm satisfied the redress I have directed below results in fair compensation for Miss B in the circumstances of this complaint and that no additional award would be appropriate in this case.

Putting things right

I think it's fair that Miss B repays the capital she borrowed using her Aqua, AO Finance and Marbles accounts as she's had the use of this, but she shouldn't have to pay any interest, fees or charges associated with these accounts or have her credit file negatively impacted.

In order to put things right for Miss B, NewDay should:

- Rework her AO Finance and Marble accounts removing all interest, charges or insurance premiums (that haven't already been repaid) that have been applied from the beginning;
- If the rework results in a credit balance on either account, it should be refunded to Miss B 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 regarding the account from Miss B's credit file.
- Or, if after the rework, there remains an outstanding balance on either account, NewDay should arrange an affordable repayment plan with Miss B for the remaining amount. Once Miss B has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

NewDay should also:

- Rework Miss B's Aqua account removing all interest, charges or insurance premiums (that haven't already been repaid) that have been applied to balances above the credit limit of £1,700 from 09/06/2021;

- If the rework results in a credit balance, this should be refunded to Miss B 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 regarding this account from Miss B's credit file.
- Or, if after the rework, there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Miss B for the remaining amount. Once Miss B has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

If NewDay has sold any of these account balances to a third party debt collector, it will need to either buy the debt back or work with the third party to bring about the above steps.

** HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Miss B a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons I've explained above, I am partly upholding Miss B's complaint about NewDay Ltd and it now needs to put things right as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 3 December 2024.

Michelle Boundy
Ombudsman