

The complaint

Mr T complains that NewDay Ltd trading as Aqua was irresponsible in its lending to him. He wants all interest, fees and charges refunded along with interest. He also wants compensation for the distress and inconvenience he has been caused by how his complaint has been handled.

Mr T is represented by a third party but for ease of reference I have referred to Mr T throughout this decision.

What happened

NewDay provided Mr T with an Aqua credit card account in August 2018. The initial credit limit was £900, and this was raised on five occasions. The final credit limit was set in November 2022 at £8,000. Mr T says that he has struggled to make the required payments on the account.

NewDay issued a final response to Mr T's complaint dated in May 2024. It said that before lending it carries out comprehensive affordability assessments and explained that it typically provides customers with smaller initial credit limits that are increased over time as a customer demonstrates they can afford and maintain the repayments.

Regarding Mr T's account, NewDay said that before the credit card was provided in August 2018, it considered the income and other information Mr T provided in his application alongside information available from sources such as the credit reference agencies. It said similar assessments were undertaken when Mr T's credit limit was increased. It didn't accept that the lending was provided irresponsibly.

Mr T referred his complaint to this service.

Our investigator thought that NewDay carried out reasonable checks before the credit card was provided and as these suggested the lending was affordable, she didn't think NewDay was wrong to provide the account with an initial credit limit of £900. She thought the checks undertaken before the first three credit limit increases were broadly proportionate and as these additional lending appeared affordable, she didn't uphold this complaint in regard to these limit increases.

Before the fourth credit limit increase, our investigator noted that there had been a significant increase in the amount of unsecured debt Mr T had and his monthly credit commitments. Given this she thought that NewDay should have verified Mr T's income before the credit limit increase was applied. However, she found that had this happened it would not have shown the additional lending to be unaffordable.

Before the fifth credit limit increase, our investigator noted that Mr T had exceeded his limit in October and November 2022 and had missed a payment on an external account. She thought that this, combined with Mr T's high level of unsecured debt, meant that NewDay should have verified Mr T's income and obtained details of his monthly expenditure to ensure the additional lending would be affordable. She found it likely that had this happened,

the additional lending would have been found to be unaffordable and unsustainable for Mr T.

Our investigator noted Mr T's request for compensation for the way his complaint had been managed. She said that NewDay received Mr T's complaint on 24 April 2024 and provided its final response on 9 May 2024 which was within the regulated timeframe. She didn't find anything to suggest Mr T's complaint had been mismanaged.

Mr T accepted our investigator's view. NewDay didn't confirm if the view was accepted. As a resolution hasn't been agreed, this complaint has been passed to me, an ombudsman to issue a 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 general approach to complaints about unaffordable or irresponsible lending – including the key rules, guidance and good industry practice – is set out on our website.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But while it is down to the firm to decide what specific checks it wishes to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments, and the total cost of the credit.

Account opening – August 2018

Mr T's account was opened with an initial credit limit of £900. As part of Mr T's application, he declared an annual income of £35,000 which gave a net monthly income of around £2,036. His monthly credit commitments were recorded as £381 and his housing cost as £349. Based on estimates for his other living costs, Mr T was recorded as having monthly disposable income of around £854.

A credit check was undertaken which showed Mr T had one historic default (recorded 60 months prior to the search), no county court judgments or bankruptcies. He didn't have any payday loans and only one recent missed payment.

Considering the size of the credit limit compared to Mr T's declared income and noting the level of his other credit commitments, I think the checks carried out were reasonable. As these didn't raise any major concerns about how Mr T was managing his current commitments and they suggested the lending was affordable I do not find that NewDay was wrong to provide Mr T with the credit card account.

First limit increase to £2,150 – January 2019

Based on the evidence provided, Mr T didn't use his credit card straight away and when he did use the card, he kept within the credit limit. While he did incur a late fee in the period to January 2019, I do not find that his account management raised any major concerns. The credit check data didn't show any recent signs of financial difficulties and I do not find the information available suggested the increase to be unaffordable. Therefore, I do not find that NewDay was wrong to provide the first credit limit increase.

Second limit increase to £3,650 – May 2019

Between January and May 2019, Mr T didn't incur any overlimit, cash or late payment fees and his outstanding balance was comfortably within the credit limit. So, I don't think that Mr T's account management raised any concerns. The credit reference agency data didn't show any substantial increase in Mr T's debts or raise any other concerns. As the additional lending appeared affordable, I do not find that NewDay was wrong to provide the credit limit increase.

Third limit increase to £5,650 – November 2021

Between May 2019 and November 2021, Mr T's account management didn't raise any major concerns. He had made use of the increased limit but then cleared his balance around May 2021 before starting spending again on the account around August 2021. While this was a substantial credit limit increase, I do not find that based on the data provided I have enough to say that the checks weren't proportionate or that the additional lending shouldn't have been provided.

Fourth limit increase to £7,150 – July 2022

By the time of the fourth credit limit increase, Mr T's unsecured debt had increased substantially to over £45,000. While no mortgage payment was recorded, Mr T's other monthly credit payments had increased. So, while he was still generally managing his account well, I think that Mr T's income should have been verified before the credit limit was applied to ensure that the estimated disposable income NewDay had calculated was reasonable and that the additional lending was affordable.

I have looked through the bank account information that Mr T has provided, and this shows that his net monthly income in the months leading up to the fourth credit limit increase was less than NewDay had assessed, at around £3,350 rather than around £4,700. However, considering this against Mr T's expenses based on NewDay's figures, I do not find that I have enough to say that the additional lending should have been considered unaffordable.

Fifth limit increase to £8,000 – November 2022

The credit data available to NewDay before the fifth credit limit increase was applied showed that Mr T's unsecured debts had increased further to around £50,000 and his payment for his monthly credit commitments had also increased. Given this was the fifth credit limit increase, noting the amount of credit being provided and that Mr T appeared to be becoming increasingly reliant on borrowing, I think that NewDay should have carried out further checks to ensure it had a clear understanding of Mr T's income and expenses to assess whether the additional lending was affordable for him.

Had further checks taken place, NewDay would have likely identified that Mr T's monthly income was around £4,100. The credit search information showed Mr T was paying around £1,500 a month towards his existing credit commitments. Additional to this Mr T was paying rent and other housing costs such as council tax, utilities, insurances and communication contracts as well as his general living costs. On average in the months leading up to the fifth credit limit increase Mr T was paying around £4,500 in expenses. While there were transfers into Mr T's account these weren't regular and noting the variance in Mr T's income and the level of his expenses, including existing credit commitments, I do not find that NewDay should have considered the additional lending as sustainably affordable for Mr T. Therefore, I am upholding this complaint in regard to the fifth credit limit increase.

I've also considered whether NewDay acted unfairly or unreasonably in some other way, given what Mr T has complained about – including whether NewDay's relationship with Mr T 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 T 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.

Putting things right

As I don't think NewDay should have increased Mr T's credit limit above £7,150, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Mr T has had the benefit of all the money he spent on the account so I think 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 £7,150 after 17 November 2022.
- If the rework results in a credit balance, this should be refunded to Mr T 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 17 November 2022 regarding this account from Mr T's credit file.
- Or, if after the rework the outstanding balance still exceeds £7,150, NewDay should arrange an affordable repayment plan with Mr T for the remaining amount. Once Mr T has cleared the outstanding balance, any adverse information recorded after 17 November 2022 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 T a certificate showing how much tax has been taken off if he asks for one.

My final decision

My final decision is that NewDay Ltd trading as Aqua should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 30 December 2024.

Jane Archer
Ombudsman