

## The complaint

Mr S complains that NewDay Ltd trading as Aquacard (NDay) lent to him irresponsibly.

## What happened

In June 2022, Mr S applied for a new credit card from Aqua. This was agreed and his limit was then increased as shown:

Limit increase number	Date	Limit
	June 2022 (new account)	£1,200
1	September 2022	£2,700
2	March 2023	£3,000
3	June 2023	£4,500

The account was paid off in June 2023 and closed.

*Mr S complained.* He said NDay increased his limits without the necessary checks. This meant he needed to borrow more and more money to pay bills and support his family. He entered a spiral of debt – which seems endless. He said he is suffering financially and his mental health has also been affected. Mr S provided his credit report dated August 2024.

*NDay said* they'd carried out the necessary and proportionate checks and didn't uphold Mr S' complaint. This included information provided by Mr S and from credit reference agencies (CRAs); and how Mr S managed his account with NDay. NDay's checks showed he had no active pay day loans, was not on a payment plan with other lenders, and hadn't been over the limit or incurred late payment fees on his other debts, or on his NDay account. These checks were carried out at each increase in limit.

*Mr S brought his complaint to us.* Our investigator said the issue of the card and the first limit increase were provided responsibly by NDay. But she said NDay should've carried out more checks and asked for more information from Mr S for limit increase number two. At that time, Mr S' monthly estimated disposable income (EDI) had reduced to £121.12. She said this was low and so NDay should have got more information before increasing the limit at that stage. This would have included looking at Mr S' bank statements. She said NDay should refund interest and fees on the borrowing over £2,700 with effect from March 2023.

Mr S accepted this outcome, but NDay didn't. The firm said they didn't need to ask for bank statements – they'd checked Mr S' conduct of account with NDay, and his credit records with other lenders. This showed the new limit (in March 2023) was affordable. NDay noted that after the limit increase in March 2023, Mr S continued to manage his account well - up until

he paid it off in June 2023.

As NDay didn't agree, Mr S' complaint has come to me.

*I reached a provisional decision which didn't uphold Mr S' complaint:*

All lenders have an obligation to lend money responsibly. We have to check whether NDay acted in line within the Financial Conduct Authority (FCA) rules on creditworthiness assessment as set out in its handbook, (CONC) section 5.2. These say that a firm must undertake a reasonable assessment of creditworthiness, considering both the risk to it of the customer not making the repayments, as well as the risk to the customer of not being able to make repayments. We look at:

- Whether the lender completed reasonable and proportionate checks to satisfy itself that the borrower would be able to repay any credit in a sustainable way?
- If reasonable and proportionate checks were completed, did the lender make a fair lending decision bearing in mind the information gathered and what the lender knew about the borrower's circumstances?
- And a reasonable and proportionate check would usually need to be *more* thorough:
  - the lower a customer's income, and the higher amount to be repaid.
  - the greater the number of loans and frequency of loans.
  - the longer the term of the loans

It's important to note that the checks must be proportionate to the amount being lent – so the higher the amount, the greater the checks must be, and the lower the amount, then fewer checks can be made.

If lender carries out the necessary and proportionate checks, and the results are satisfactory, then firms don't have to ask for more information such as bank statements.

I looked at the checks NDay carried out with this guidance in mind.

*New account – June 2022: £1,200:*

I can see that Mr S said he earned £24,000 per annum; and he had other debts with other lenders of £394. NDay worked out that after paying his other lenders, housing costs and cost of living, Mr S had an estimated disposable income (EDI) of £570 each month – that's how much money he had left over. So, based on that, I agree that NDay did sufficient and proportionate checks and agreed to issue the card.

*Limit increase – September 2022: £2,700:*

At this time, NDay could see that Mr S' debts had increased to £3,700 – including the credit card with NDay. NDay checked Mr S's circumstances again and found he was paying his other lenders on time – there were no arrears or late payments, or over limit fees being charged. Mr S was making all the payments to his NDay card on time and had not incurred any overlimit fees on his account. His EDI was worked out at £600 per month – so that looked satisfactory - and I agree NDay carried out the necessary checks.

*Limit increase – March 2023: £3,000:*

This is the important increase in the context of my provisional decision. NDay carried out the same checks as before. The firm could see that Mr S' debts with other lenders (and including

NDay) had increased to £5,300. So he was borrowing more. And – his EDI had reduced to £121 per month. But - this included his new payments to NDay. I agree that EDI of £121 was fairly tight.

But equally, NDay could also see Mr S was making all the payments to his other lenders on time: there were with no late payments or over limit occurrences – which could've shown Mr S was struggling.

And Mr S was also making the necessary payments to his NDay credit card. And there were no other concerning things - such as drawing cash out of his NDay account or going over his limit. NDay worked out that Mr S could afford to borrow a further £1,450 – and the firm increased his limit by less than that – by £300. So, on balance, I think NDay carried out the necessary and proportionate checks when increasing Mr S' limit in March 2023.

*Limit increase – June 2023: £4,500:*

I can see that by this time, Mr S' total debts had reduced a little - to £5,100. And NDay's checks showed his EDI had improved to £1,600. He had continued to make payments to all his lenders, including NDay. So, I am satisfied NDay carried out sufficient checks at this stage also.

I looked at Mr S' credit report. This confirmed the information about Mr S' other debts that NDay had seen. There were two defaults in 2019 – for £2,731 and £565. But these were three years before NDay first gave Mr S the new credit card – so they were acceptable.

Mr S' credit report does show that it was later that he started to borrow a lot more money. New credit agreements were taken out in June 2023 (£5,000); August 2023 (£16,400); November 2023 (£3,700); and April 2024 (£5,515). So – it appears that Mr S' financial situation got worse after he closed his NDay account. In all fairness I can't expect NDay to have anticipated that when lending to him before that time – the firm can only make an assessment based in the information they have at the time.

Based on my assessment of Mr S' complaint I'm satisfied that NDay carried out the necessary and proportionate checks; and my provisional decision is that I don't uphold this complaint.

*Responses to the provisional decision:*

NDay agreed. Mr S (or his advisors) didn't respond. (**continued**)

### **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 NDay agreed, and Mr S (or his advisors) didn't respond – my final decision is unchanged from the provisional decision.

**My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 January 2025.

Martin Lord  
**Ombudsman**