

## **The complaint**

Mrs L's complaint relates to a credit card she has with NewDay Ltd trading as Aquacard. She has said that she considers NewDay was irresponsible when it accepted her application, and later increased her credit limit on several occasions, as none were affordable for her.

Mrs L is represented in her complaint, but for ease I will refer to all comments as hers.

## **What happened**

Mrs L's credit card account with NewDay started on 3 January 2014. She was granted a credit limit of £250.

NewDay increased the credit limit on Mrs L's account as follows:

April 2014	£500
September 2014	£600
August 2016	£1,350
July 2019	£2,850

Mrs L complained on 14 May 2024. NewDay responded in a letter of 21 June 2024. It didn't uphold the complaint as it didn't think it had made any errors when deciding to lend to Mrs L.

Mrs L was not satisfied with NewDay's response and asked us to consider her complaint. One of our Investigators did so and upheld it in part.

NewDay did not respond to the Investigator's conclusions, despite being reminded on two occasions that it needed to do so. As such, it was decided the complaint should be referred to an Ombudsman for review.

Mrs L didn't comment on the Investigator's conclusions, but I am satisfied that she received them and the notification that the complaint had been referred to an Ombudsman, as she checked in about the progress of the 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.

I would firstly comment that just because a consumer has historically had financial difficulties it does not mean that they should never again be offered credit. If that consumer has been able to stabilise their finances and can afford the credit, then it would be inappropriate for a lender to refuse an application simply because there had been a problem in the past.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without

having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case. What is proportionate will vary with each lending decision and considers things such as (but not limited to): the amount of credit, the size of the repayments, the cost of the credit, the purpose the credit was taken out for and the consumer's circumstances.

If I determine the checks NewDay completed were proportionate, I then need to decide if it made a fair lending decision. I also need to consider whether NewDay treated Mrs L fairly overall.

Before agreeing to provide Mrs L with a credit card NewDay asked her for information about her circumstances, including her income. It also obtained a credit report in order to establish what her then current credit commitments were and how she had been managing those commitments. Having completed these checks, NewDay decided that Mrs L could afford a card with a credit limit of £250. I think these checks were proportionate given the credit offered and Mrs L's circumstances.

Before increasing the credit limit on Mrs L's account NewDay again completed checks. In the case of the first three increases, it completed a credit check and reviewed how Mrs L had been managing her account. In the case of the last increase, NewDay also completed an income and expenditure exercise and a check on her current account. Overall, I am satisfied the checks completed were proportionate at the relevant times.

When the first three credit limits were set in 2014, Mrs L had a disposable income that would have given her the capacity to take on all three of those credit limits – the highest being £600. There was no sign in her management of her existing credit or the management of the NewDay account when the second and third credit limits were set, that indicated Mrs L was in any financial difficulties. She maintained the NewDay account within its credit limit and made all payments due in full and on time. There is nothing in the contemporaneous evidence that indicates the credit limits up to £600 were unaffordable and I am not persuaded that NewDay's lending decisions in 2014 were irresponsible.

However, from October 2014 Mrs L's situation seems to have changed. After this Mrs L was almost constantly over the credit limit and was also late making payments at times, and this situation continued until NewDay increased her credit limit in August 2016. So, in August 2016 NewDay would have been aware that Mrs L was having some financial difficulties and wasn't able to effectively manage the existing credit NewDay had made available to her. In those circumstances I can only conclude that NewDay should have known that if it granted additional credit it would likely only make Mrs L's situation worse.

As such, I am satisfied that NewDay acted irresponsibly in increasing Mrs L's credit limit in August 2016 and it should not have done so. In relation to the final credit limit increase, had NewDay not increased the credit limit in August 2016, I am satisfied it would not have considered or granted an increase to £2,850.

In reaching my conclusions, I have also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, for the reasons I have already given, I don't think NewDay lent irresponsibly to Mrs L in 2014 or otherwise treated her unfairly in relation to granting of credit up to £600. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome regarding this part of the complaint.

## **Putting things right**

To put things right for Mrs L, NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £600 since 15 August 2016.
- If the rework results in a credit balance, this should be refunded to Mrs L along with \*interest from the date of each overpayment to the date of settlement. NewDay should remove any negative information about the credit card from Mrs L's credit file recorded after 15 August 2016.
- If the rework results in an outstanding balance of more than £600, NewDay should work with Mrs L to agree a suitable repayment plan. Once the balance above £600 has been cleared, NewDay should remove any negative information about the credit card from Mrs L's credit file recorded after 15 August 2016.

\*Interest is at a rate of 8% simple per year and paid on the amount specified and from/to the dates stated. If NewDay considers that it's required by HM Revenue & Customs to deduct income tax from any interest due to Mrs L, it should tell her how much it's taken off. It should also give Mrs L a certificate showing this if she asks for one, for use with HM Revenue & Customs.

## **My final decision**

My final decision is that I uphold this complaint. In full and final settlement of the complaint I order NewDay Ltd trading as Aquacard to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs L to accept or reject my decision before 10 April 2025.

Derry Baxter  
**Ombudsman**