

The complaint

Ms T's complaint is about a credit card issued to her by NewDay Ltd trading as Aquacard in 2014. Ms T says NewDay acted irresponsibly when it gave her a credit card, and then later increased her credit limit. To resolve the complaint Ms T would like NewDay to refund all interest and any late payment charges.

What happened

I don't need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Ms T being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision.

In June 2014 Ms T opened a credit card account with NewDay. It had a limit of £250. The limit was subsequently increased, as follows:

- 21 October 2014 £750
- 20 February 2015 £1,000
- 2 June 2015 £1,800
- 27 March 2020 £2,800
- 28 March 2020 £3,800
- 22 August 2023 £5,300.

Ms T exceeded her credit limit once before the first increase; there were no excesses before the second and third increases, but Ms T made cash advances soon after the facility opened (£240) and again just after the first increase (£470).

The account statements provided show that the account was regularly over limit between July 2015 and February 2020.

In June 2024 Ms T complained to NewDay that the bank had acted irresponsibly in offering her the credit card and then raising her credit limit

The essence of Ms T's complaint was that at the time she took out the card, she was struggling to pay essential bills, had multiple other debts, and that NewDay asked her no questions about how she would repay the debt. The same applied to the limit increases which Ms T says happened with her circumstances being reassessed. Each time her limit was raised, she used it to its maximum and can now only afford the minimum payment.

NewDay didn't uphold the complaint, saying in its final response letter that it had assessed Ms T's financial circumstances before issuing the card, and confirmed she had never missed payment to existing creditors, wasn't in any payment arrangements and never defaulted on a credit commitment. As far as the limit increases are concerned, NewDay said it had conducted similar checks. NewDay confirmed it wouldn't be making any refund of interest to Ms T.

Dissatisfied with the bank's response, Ms T referred her complaint to the Financial Ombudsman Service. An Investigator looked at what had happened. She concluded that the initial granting of the facility was fairly assessed, and there wasn't enough to suggest otherwise in respect of the first three increases in the limit. But from the fourth increase onwards, the investigator found that whilst NewDay had gathered relevant and appropriate information, the decisions to increase the limit weren't fairly reached. She considered whether NewDay's treatment of Ms T in any other way might have resulted in an unfair relationship under s140A of the Consumer Credit Act 1974 (CCA), but didn't find anything.

To put things right, the investigator recommended NewDay rework Miss T's account as if the increase from 27 March 2020 had not been made, and the limit had stayed at £1,800.

NewDay asked for the case to be reviewed by an ombudsman. Whilst acknowledging the limit excesses that happened before 27 March 2020, it said the account had been well-managed since. The Investigator countered by pointing out that NewDay's assessment of Miss T's current account turnover had failed to spot that she had been permanently reliant on her overdraft since 2019.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Before entering into a credit agreement, and then when considering increasing her credit limit, NewDay needed to check that Ms T could afford to repay the credit out of her usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit, for example the amount offered, and to Ms T's particular circumstances. In addition NewDay needed to have proper regard to the outcome of its risk assessment in relation to affordability. The overarching requirement was that NewDay needed to pay due regard to Ms T's interests and treat her fairly.

With all this in mind, I have to consider whether NewDay carried out reasonable and proportionate checks when it opened the account for Ms T to satisfy itself that she would be able to repay the credit offered within a reasonable period of time. If it didn't do this, what would reasonable and proportionate checks have shown? Was there anything of concern in the checks NewDay carried out, and did it make fair lending decisions? Did NewDay treat Ms T unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A Consumer Credit Act 1974 (s.140A CCA)?

At the time of the application Ms T told NewDay that she was in full employment on a salary of £13,000. A credit check showed no CCJs, and she was neither in an Individual Voluntary Arrangement with her creditors, nor had she been declared bankrupt. After taking

account of Ms T's household expenses, she had disposable income of about £450 per month.

It seems to me that NewDay carried out a proportionate check when it opened the account. It considered what Ms T said on her application form and checked her credit file. I've reviewed the information NewDay gathered and I haven't seen anything which suggests that Ms T would have any difficulty meeting her repayments for the level of credit offered out of his stated income. I also don't think there was anything in the information NewDay had gathered about Ms T's circumstances that should have led it automatically to decline her application, or prompted it to complete further checks before entering into the agreement.

Bearing in mind there wasn't anything in the information provided by Ms T that was inconsistent or difficult to explain, I don't think that it was unreasonable for NewDay to rely on what Ms T provided about her income and expenditure during his application. In the circumstances, the information obtained suggested that Ms T could repay a balance of £250 within a reasonable period of time. The checks NewDay carried out were reasonable and proportionate.

Altogether, considering the information about Ms T's income from the application form, what NewDay saw on Ms T's credit file, and the amount of credit it was offering, I can't say that NewDay made an irresponsible or unfair lending decision when it opened the account for Ms T.

As far as the limit increases in 2014 and 2015 are concerned, it's not clear from the available evidence whether or not NewDay carried out proportionate checks before applying them. At the same time, other than one occurrence of the account going over limit before the first increase, there's nothing to suggest that the decisions to increase the limit were unfair.

In the circumstances, therefore, I'm not persuaded that NewDay acted irresponsibly or unreasonably when it offered Ms T the facility, or when it increased the credit limit on the first three occasions.

In contrast, I'm not persuaded the increase in March 2020, or those that followed, were fair. First of all, the conduct of the credit card account itself was problematic between 2015 and 2020, with the balance often being over limit. That there were fewer incidences of the account exceeding its limit after March 2020 isn't helpful to NewDay's case. I don't think it can plausibly justify a decision by pointing to events that happened after the decision was made. In any event, even if the conduct of the credit card account itself showed fewer problems after March 2020, there's Ms T's wider financial situation to consider.

NewDay may have conducted a credit check and affordability assessment, but if the latter included an analysis of Ms T's current account turnover, then it's hard for me to conclude that it was thorough enough, or that NewDay properly understood what the account behaviour showed. We have current account statements showing that from December 2019 onwards, Ms T's current was to all intents and purposes, permanently overdrawn.

The current account may have been within its agreed limit, but the usage of the overdraft was hardcore, to the extent that most months the account balance did not return to credit on payday. The pattern may have been going on before December 2019 but that is the earliest statement we have. In any event, that's a minimum of four months before the fourth limit increase.

In all the circumstances, therefore, I'm not persuaded that NewDay acted responsibly or reasonably when it applied the fourth credit limit increase in March 2020, or those that followed.

Notwithstanding the conclusions I've reached, and largely for completeness, I don't find the lending relationship between NewDay and Ms T to have been unfair to Ms T under s.140A CCA for reasons beyond those I've already identified.

My final decision

My final decision is that I uphold this complaint. In full and final settlement, I direct NewDay Ltd trading as Aquacard to re-work the credit card to remove all interest, fees, charges and insurance (where not already refunded) that have been applied to balances over £1,800 after 27 March 2020.

If the re-work results in a credit balance, NewDay Ltd trading as Aquacard must refund the resulting sum to Ms T along with interest at 8% simple per annum*, calculated from date of each overpayment to the eventual date of settlement, and remove all adverse information recorded after 27 March 2020 from Ms T's credit file.

Alternatively, if the re-worked outstanding balance still exceeds £1,800, NewDay Ltd trading as Aquacard must arrange an affordable repayment plan with Ms T for the remaining amount. Once Ms T has cleared the outstanding balance, all adverse information recorded after 27 March 2020 from Ms T's credit file must be removed.

*In the event NewDay Ltd trading as Aquacard considers it should deduct basic rate income tax from the interest elements of this award, it should also provide Ms T with the relevant tax certificate.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 15 April 2025.

Jeff Parrington
Ombudsman