

## **The complaint**

Mrs L says NewDay Ltd, trading as Aqua, irresponsibly lent to her.

## **What happened**

Mrs L took out an Aqua credit card from NewDay in December 2023. She was given a £1,200 credit limit. This was increased to £2,400 in April 2024.

Mrs L says the repayments are unaffordable as she is on a very low income, or no income. NewDay took the income on her application at face value with no checks. It didn't check her expenditure either. Or do any checks when it increased her limit. And NewDay is still adding interest and charges despite her telling it she has no income going forward. This, combined with her physical health issues, has severely impacted her mental health.

NewDay said it completed proportionate checks before opening the account and before increasing the limit. It sent evidence of the support and forbearance it has offered Mrs L.

Our investigator did not find NewDay had lent irresponsibly. She said it should've completed better checks but it could fairly have made the same lending decisions. However she awarded Mrs L £100 compensation for the distress NewDay caused when it did not respond appropriately after Mrs L notified it of her financial difficulties.

Mrs L disagreed with this assessment and asked for an ombudsman's review. She said she did not have the disposable income the investigator has calculated - her end of month credit balances is always under £100. Also her income is no longer from multiple benefits, it is now paid via universal credit and has fallen. Certain costs have not been taken into account. There is also now little prospect of her ever repaying this debt and she would like it to be written-off. She sent in additional medical evidence and confirmation of her current income. More recently, she said how unhappy she is NewDay continues to chase her for repayment.

Mrs L also asked that the compensation be re-considered because of the level of distress and inconvenience caused by NewDay's inadequate checks; the increase in her debt levels; and the poor service, support and communication.

## **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 want to reassure Mrs L that I have carefully considered all her comments. In keeping with our role as an informal dispute resolution service – and as our rules allow – I will focus here on the issues I find to be material to the outcome of Mrs L's complaint. Also, to clarify, I am aware Mrs L complained to NewDay about harassment on 26 July 2024. As this was after the final response letter for this complaint was issued on 10 July 2024, and so was not investigated by the lender as part of this complaint, it would need to be brought as a separate complaint.

Our approach to unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - is set out on our website and I have followed it here. NewDay is required to lend responsibly. It needed to conduct checks to make sure that the credit it was giving to Mrs L was affordable and sustainable. Such checks need to be proportionate to things like the credit limit it offered Mrs L, how much she had to repay (including interest and charges) each month, her borrowing history with it and what it knew about her circumstances. But there is no set list of checks it had to do.

This means to reach my conclusion I need to consider if NewDay carried out proportionate checks at the time of Mrs L's card application and limit increase; if so, did it make fair lending decisions based on the results of its checks; and if not, what better checks would most likely have shown.

#### *Card application and initial limit of £1,200*

When Mrs L applied for the credit card NewDay asked about her gross annual income. It carried out a credit check to understand her credit history and existing credit commitments. NewDay has been unable to share the results of the credit checks, but Mrs L has been able to provide a copy of her credit file which allows me to understand what the lender's checks would most likely have shown. On this basis I am not satisfied NewDay's checks were proportionate for the initial limit it was offering. Mrs L had declared a relatively low monthly income of £1,463 and there were two defaults on her credit file - whilst they were historic, one remained unsettled. So I think it needed sight of her actual income and non-discretionary outgoings before lending.

In cases like this we look at bank statements from the three months prior to lending. I am not saying NewDay had to do exactly this but it is a reliable way for me to understand what better checks would most likely have shown.

These show that NewDay could fairly have made the same lending decision had it completed better checks. Mrs L's average monthly income was much higher than she declared at £2,496 and her fixed costs (including all credit repayments) were £1,048. So she had the disposable income to afford this card. Mrs L challenged this income figure, saying the actuals were lower but I have reviewed the statements she provided for Sept/Oct/Nov 2023 and I agree with investigator's calculation. She also argues she did not have £1,448 of disposable income and her end-of-month credit balances show this. But the lender is only obliged to consider her essential outgoings (housing/living and credit costs), not her discretionary spend. And for the amount of credit involved I think a review of her actual income and fixed outgoings would have been proportionate – a fuller financial review was not appropriate.

It follows I don't find NewDay was wrong to open the account for Mrs L.

#### *Credit limit increase to £2,400*

When NewDay increased Mrs L's limit it has told us it reviewed her account history and her external credit management. But in April 2024 the limit was doubling so I am not persuaded reviewing solely how Mrs L had managed a lower limit to date gave NewDay the required assurances that she could sustainably afford a higher limit. She had only been an account holder for around four months when the decision was made. So NewDay had limited information on her account management.

In the circumstances I think NewDay ought to have verified Mrs L's income and essential outgoings. Again I have used bank statements to see what such checks would most likely have shown the lender. At this stage Mrs L's average monthly income was £2,255 and her

fixed outgoings were £1,542. So again I think it would have been reasonable for NewDay to have increased Mrs L's limit. There was no new significant adverse data on her credit file.

So again even if NewDay had completed better checks I think it could reasonably have made the same lending decision.

It follows I don't find NewDay was wrong to increase Mrs L's limit.

Did NewDay treat Mrs L unfairly in some other way?

Mrs L says it did not offer support when she told it she was struggling financially. Both parties have provided copies of the letters she sent the lender on 14 June 2024. NewDay has sent a copy of system notes from 29 July 2024 and letters it sent on 31 July 2024, 5 September 2024, 20 September 2024 and 3 January 2025. These letters show NewDay has given Mrs L two periods of breathing space and a payment holiday. They also show the lender has repeatedly provided information on what to do if Mrs L was finding it hard to pay. The system notes show Mrs L was sent an income and expenditure form on 29 July 2024. I have seen no evidence that Mrs L completed and returned this form.

So I cannot agree that NewDay has failed to provide any support or forbearance to Mrs L. It is reasonable that it cannot agree a repayment plan without an up-to-date income and expenditure form. I would urge Mrs L to return this as soon as possible. I do agree with the investigator, however, that it seems NewDay's response to Mrs L's notification of her financial difficulties on 14 June 2024 was not timely. This will have caused her distress and inconvenience so I agree that an award of £100 is fair.

Mrs L also asked that the debt be written-off on medical and irresponsible lending grounds. There is nothing in the lending decisions that would allow me to instruct this to be done. Her change in financial circumstances and deteriorating health may mean that it should be considered now. But she needs to discuss this with the lender after providing any information it reasonably requests.

I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think NewDay lent irresponsibly to Mrs L or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

### **Putting things right**

NewDay must pay Mrs L £100 compensation. This should be paid directly to her and not used to offset any outstanding balance.

### **My final decision**

I am not upholding Mrs L's complaint about irresponsibly lending, but have awarded Mrs L compensation to recognise poor service.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 7 February 2025.

Rebecca Connelley  
**Ombudsman**