

The complaint

Mr D, through a representative, says NewDay Ltd, trading as Aqua, irresponsibly lent to him.

What happened

Mr D took out a credit card from NewDay on 3 February 2021. He was given a credit limit of £600. This was increased four times over the next two years. Mr D said he should not have been given the card – he was using payday loans leading up to and whilst holding the credit. He had to use his overdraft to make his credit card payments.

NewDay upheld Mr D's complaint about the second, third and fourth credit limit increases. Unhappy with this response he brought a complaint about the account opening and the first increase (to £1,600 on 11 July 2021) to this service.

NewDay said it completed adequate checks that showed the initial limit and first increase were affordable for Mr D.

Our investigator upheld Mr D's complaint in part. He said it was reasonable to open the account for Mr D with a £600 limit, but NewDay should not have increased his limit in July 2021.

Mr D accepted this assessment. NewDay did not respond so the complaint was passed to me to make a final 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 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 offered to Mr D was affordable and sustainable. Such checks need to be proportionate to things like the credit limits it offered Mr D, how much he had to repay (including interest and charges) each month, his borrowing history with it and what it knew about his circumstances. But there is no set list of checks it had to do.

This means to reach my decision I need to consider if NewDay carried out proportionate checks at the time of Mr D's application and the first 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. I also need to think about, bearing in mind the circumstances at the time of each additional advance in credit, whether there was a point at which NewDay ought reasonably to have realised it was increasing Mr D's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit.

I can see as part of NewDay's checks when Mr D applied it considered his income,

housing and living costs and his existing credit commitments to calculate his disposable income. It carried out a credit check to understand his repayment history. For the limit increase it looked at how he was managing both his Aqua account as well as his debt elsewhere. And it refreshed the income and expenditure analysis.

I think these checks were proportionate given the stage in the lending relationship and the amount of credit offered. And I think NewDay made a fair lending decision at application, but not when it increased the limit. I'll explain why.

When Mr D applied he declared an income of £32,000. NewDay's checks, based on data from the credit reference agencies and internal models, showed he would have £566 disposable income each month after deducting all his non-discretionary costs. There was no adverse data on his credit file – such as CCJs, defaults or recent arrears – and he was not over-indebted. So I think it was fair for NewDay to open the account and allocate a £600 limit.

NewDay then increased Mr D's limit by £1,000 in July 2021. I don't think this was responsible based on how Mr D was managing the account. When it offered Mr D the increase (15 June 2021) it had four months of payment history. Mr D had incurred late fees and over limit fees in both April and May. So there were early indications that he was struggling to manage the £600 limit he had. In this context I think it was wrong for NewDay to then offer an increase of around 2.5 times the existing limit. It did not have the assurances it needed that Mr D would be able to sustainably repay this new limit, rather it had evidence he wasn't able to consistently repay the lower limit of £600.

It follows I find NewDay was wrong to increase Mr D's credit limit in July 2021.

Mr D also said he was unhappy with how NewDay handled his complaint, including the time it took. But this is not something I can look at. There is a difference between a complaint about a financial service and a complaint about how a firm has handled a complaint. I can only look at the former. Mr D's concerns about how NewDay responded to his complaint is not a complaint about its provision of or failure to provide a financial service – it's distinctly about complaint handling. And under our rules I cannot consider complaint handling.

With regards his dissatisfaction about the time taken, the rules NewDay must follow set out that it has to respond to complaints within eight weeks. Mr D told us he complained to the lender on 19 June 2024. It issued its final response letter on 15 July 2024 so I cannot agree that there was an issue with its timeliness.

Putting things right

As NewDay should not have increased Mr D's credit limit above £600, I don't think it's fair for it to have applied interest or charges to any balances which exceeded that limit. It is reasonable Mr D repays the capital he borrowed as he had the benefit of that money.

So NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £600 after July 2021.
- If this rework will result in a credit balance, this should be refunded to Mr D along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement.
- If this rework leaves an outstanding capital balance NewDay should agree a repayment plan with Mr D.

- Remove any adverse information recorded after 11 July 2021 regarding the account from Mr D's credit file once any outstanding capital balance has been repaid.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mr D a certificate showing how much tax has been taken off if he asks for one.

I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mr D 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.

My final decision

I am upholding Mr D's complaint in part in relation to the limit increase in July 2021. NewDay Ltd, trading as Aqua, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 March 2025.

Rebecca Connelley
Ombudsman