

The complaint

Mr C complains NewDay Ltd trading as Aqua (“NewDay”) lent to him irresponsibly.

Mr C’s complaint has been brought to our service via a representative, but for ease of reference I’ll refer to him throughout.

What happened

In April 2016 Mr C applied for a credit card with NewDay. He was provided with an initial credit limit of £300. Four months later, in August 2016, the credit limit was reduced to £250. The credit limit was then increased a further five times: in February 2019 to £850, in October 2021 to £1,600, in May 2023 to £2,400, in September 2023 to £3,000 and finally in January 2024 it was increased to £4,000.

In 2024 Mr C complained to NewDay. In summary, he said that the credit card was provided irresponsibly because at the time of lending, he was in a financially vulnerable situation and wasn’t asked to provide proof of income and as usually only able to make the minimum repayments on the account.

NewDay responded in July 2024. They didn’t agree the card was lent irresponsibly. They said they carry out a comprehensive assessment of whether credit is affordable, which includes details of income and expenditure, information from credit reference agencies, how other accounts with NewDay are managed and internal data.

They said in April 2016 Mr C had no payday lending, he wasn’t no adverse external information recorded and there was no record of any previous payment arrangements with NewDay. They confirmed they’d carried out similar assessments for all increases and the information they obtained was broadly the same as it was at the account opening. Mr C didn’t agree with their response, so his complaint was referred to our service in September 2024.

An Investigator here looked into things. They said for the account opening, proportionate checks were carried out. She noted that there was a default that had been recorded on Mr C’s credit file 13 months before, but Mr C had no other credit commitments at the time and based on the credit limit NewDay were providing, Mr C could afford the repayments.

When it came to the first limit increase, the Investigator felt that NewDay should’ve done more to satisfy themselves the credit limit was affordable for Mr C. They said in the 12 months prior to the increase, Mr C had received fees for being over the credit limit for eight months, one late payment fee and a number of cash withdrawals.

The Investigator reviewed Mr C’s bank statements to see what proportionate checks would likely have shown. They said in the months prior to the increase, Mr C was receiving charges for entering an unarranged overdraft and for returned direct debits. They also said his income was inconsistent. The result of this was that the Investigator felt the first limit increase would’ve been unaffordable for Mr C and NewDay shouldn’t have provided it. She also thought the subsequent limits shouldn’t have been provided.

NewDay accepted the Investigator's view. Mr C however, didn't. He felt that the account opening was also unaffordable and so requested that an Ombudsman consider things again. As an agreement couldn't be reached, the complaint has been passed to me to decide.

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.

All parties now accept the opinion that the credit limit increases should be upheld, so I've not addressed this in detail in this decision. However, for completeness, I'm upholding for the same reasons. I'll now move on to the only element of the complaint in dispute, which is whether the account opening limit should have been provided.

The rules and regulations in place at the time NewDay provided Mr C with the credit card and limit increases required them to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an 'affordability assessment' or 'affordability check'.

The checks had to be borrower focused. This means NewDay had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mr C. In other words, it wasn't enough for NewDay to consider the likelihood of them getting the funds back or whether Mr C's circumstances met their lending criteria – they had to consider if Mr C could sustainably repay the lending being provided to him.

Checks also had to be 'proportionate' to the specific circumstances of the lending. In general, what constitutes a proportionate affordability check will be dependent on a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they were seeking. I've kept all of this in mind when thinking about whether NewDay did what was needed before lending to Mr C.

When Mr C applied for a NewDay card in April 2016, NewDay gathered information regarding his financial circumstances. It recorded that Mr C was earning an annual salary of around £40,000 per year and had very low/no existing credit commitments. Mr C had one default at the time of application recorded 13 months prior. This was collated using the information Mr C declared at application, and an external credit check.

I believe the checks NewDay carried out were proportionate, and considering the amount being provided to Mr C, and the information they gathered in these checks, I don't think they acted unfairly when providing Mr C with the credit card. I say this because it was for a modest amount of £300, and although there were some potential indicators of financial difficulty in the past, everything in recent months had been much improved. It wouldn't be a significant cost for Mr C to repay this credit in a reasonable period of time based on his salary and existing credit commitments.

As I said at the start of this decision, all parties are in agreement that the credit limit increases shouldn't have been provided – and I agree with this. So, to put things right, NewDay should do the following:

Putting things right

In most cases where credit has been provided where it shouldn't have been, it would be fair and reasonable for the lender to refund any interest and charges paid by the borrower. And,

the borrower would usually be expected to repay any remaining amount of the money they had been lent. So, I'd expect Mr C to pay back the money he was lent, but not the interest.

With this in mind, NewDay should put things right for Mr C by doing the following:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £250 after February 2019 if they haven't already done so.
- If the rework results in a credit balance on the account, this should be refunded to Mr C along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. And NewDay should remove any adverse information reported to Mr C's credit file about this account after February 2019.
- Or, if after the rework an outstanding balance remains, NewDay should arrange an affordable repayment plan with Mr C for the remaining amount. Once Mr C has cleared the outstanding balance, any adverse information recorded after February 2019 in relation to the account should be removed from his credit file.

*HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Mr C a certificate showing how much tax it has taken off is he asks for one.

I've 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 C 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

My final decision is that I uphold this complaint, and direct NewDay Ltd trading as Aqua, to settle things in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 24 April 2025.

Meg Raymond
Ombudsman