

## **The complaint**

Miss S complains that NewDay Ltd, trading as Aqua, irresponsibly provided her with credit.

Miss S is supported in bringing this complaint by a representative. But for ease, I'll refer to all submissions and actions as being those of Miss S herself.

## **What happened**

NewDay provided Miss S with a credit card in August 2018. The initial credit limit was £900. The credit limit was increased to £1,900 in November 2018.

In summary, Miss S says she was in a financially vulnerable situation when she was provided with the credit. She says she wasn't asked to provide proof of income or expenditure when the lending decisions were made, and she was only able to make minimum monthly repayments. She also says she had arrangements with debt management agencies when she applied for the account, amongst other points.

NewDay responded to the complaint and, in summary, said its checks revealed that the lending was affordable, and the credit was provided responsibly. Miss S remained unhappy and brought her complaint to this service.

One of our Investigators thought the card shouldn't have been provided from the outset, as NewDay's own checks suggested that Miss S would struggle to repay it.

Miss S didn't dispute this position, but NewDay did. In summary, it said it applied conservatism around some of the figures in its calculations. NewDay said had it not done this, the figures would have shown the lending was affordable. Our Investigator reiterated his previous position, but also said he thought the new figure NewDay reached still showed the lending was unaffordable.

As an agreement couldn't be reached, the case has come 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.

The rules and regulations in place at the time NewDay provided Miss S with credit required it to carry out a reasonable and proportionate assessment of whether she could afford to repay what she 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 Miss S. In other words, it wasn't enough for NewDay to consider the likelihood of it getting the funds back – it had to consider the impact of any repayments on Miss S.

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 it needed to before lending to Miss S.

The opening limit of £900 was provided in August 2018. As part of its submissions, NewDay says it uses various sources, including its internal and external affordability checks, data from the Credit Reference Agencies and the consumer's declared costs to calculate affordability before deciding whether to lend.

With this in mind, NewDay recorded Miss S's gross annual income as £12,000, which was equated to a net monthly income of £900. NewDay then considered Miss S's expenditure, including credit commitments, living costs and housing costs. Overall, it calculated that Miss S had an *Effective Disposable Income* ("EDI") of £5.50. I've understood this to be a monthly figure. NewDay also recorded that Miss S had a debt-to-income ratio of close to 30%, and the most recent default on her credit file was recorded 21 months before she opened the account. It also showed no recent arrears on her existing accounts.

In the circumstances of this particular case, I think NewDay gathered enough information to show that the card was likely to be unaffordable for Miss S. I say this because I don't think the EDI figure outlined above would have left Miss S with enough money available for unexpected expenses each month.

NewDay said it assumes a higher level of repayment towards credit in its calculations, rather than just the required amount to meet contractual minimum payments. It also says it was conservative around its estimation of Miss S's monthly income and had it not done this, it would have resulted in a higher income figure and therefore an EDI of £97.46. NewDay says this would have been enough for Miss S to cover the minimum repayments on the card.

I've thought carefully about NewDay's point here. However, I'm conscious that NewDay's own calculations from the time showed a much lower EDI figure, which is ultimately what it decided to base its lending decision on as opposed to the new figure provided in its submissions to this service and not on the original application. For the reasons already outlined, I don't think this would have left Miss S with enough money each month. Even if I did think it was reasonable to rely on the new figure, I'm not persuaded that the new EDI would have left Miss S with much money for unexpected expenses either.

I note NewDay's point that Miss S didn't run into trouble with the account until the following year, and she initially maintained payments higher than the minimum monthly repayment. However, I think NewDay gathered enough information at the outset to suggest the account shouldn't have been provided in the first place. It follows that I don't think NewDay should have opened this account for Miss S.

Given that I think the account shouldn't have been opened, I think it's reasonable to argue that the increase on the facility also shouldn't have been provided, without needing to make a finding on whether the checks carried out were reasonable and proportionate. I say this because I think if matters had happened as they should have done in August 2018, the account wouldn't have been opened. And, I'm not persuaded that Miss S would have been able to add to the credit which ought not to have been provided in the first place. I've also considered that NewDay's own checks completed only a few months earlier demonstrated that Miss S was unlikely to be able to make sustainable repayments towards the facility, so I don't think it's likely her financial position would have changed much when it increased her

limit. Therefore, for all these reasons, I don't think the increase should have been provided either.

As NewDay provided Miss S with credit that it shouldn't have, I think it needs to take action to put things right for Miss S.

To put things right for Miss S, NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied.
- If the rework results in a credit balance, this should be refunded to Miss S along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding this account from Miss S's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Miss S for the remaining amount. Once Miss S has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

NewDay says it has sold the debt to a third party, so it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

\* HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Miss S a certificate showing how much tax it has taken off if she 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 Miss S in the circumstances of her 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 Miss S to accept or reject my decision before 4 March 2025.

Hana Yousef  
**Ombudsman**