

## **The complaint**

Mrs K complains that NewDay Ltd trading as Aqua (NewDay) shouldn't have agreed to open two credit card accounts and subsequently apply further credit limit increases as the lending was unaffordable.

In bringing her complaint Mrs K is represented by a third party. For ease of reading I will only refer to Mrs K in my decision.

## **What happened**

In September 2021 Mrs K applied for a Marbles credit card with NewDay. Her application was successful and NewDay applied a credit limit of £1,200. They subsequently increased Mrs K's credit limit as below:

- February 2022 - £2,450
- May 2022 - £3,700
- May 2023 - £4,550 and
- August 2023 - £5,550.

In October 2022 Mrs K applied for an Aqua credit card with NewDay. Her application was successful and NewDay applied a credit limit of £900. They subsequently increased Mrs K's credit limit as below:

- February 2023 - £1,750 and
- July 2023 - £2,750.

Mrs K said she struggled to sustain the repayments and said if NewDay had checked her financial situation properly they would have seen the lending was unaffordable for her. She complained about this to NewDay.

NewDay said they'd assessed the affordability of the lending by checking Mrs K's credit history, using her application data and how she managed her accounts. And based on this they decided to lend to Mrs K.

Mrs K wasn't happy with NewDay's response and referred her complaint to us.

Our investigator said NewDay hadn't made fair lending decisions as it was evident that the lending was unaffordable for Mrs K.

NewDay didn't agree they said based on Mrs K's income she should have been able to sustain the repayments. They asked for an ombudsman 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.

Having done so I uphold this complaint. I'll explain why.

I've considered the relevant rules, guidance and good industry practice when someone complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider in deciding what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did NewDay complete reasonable and proportionate checks to satisfy themselves that Mrs K would be able to repay the credit in a sustainable way?

a. if so, did NewDay make a fair lending decision?

b. if not, would reasonable and proportionate checks have shown that Mrs K could sustainably repay the borrowing?

2. Did NewDay act unfairly or unreasonably in some other way?

So, before agreeing to approve or increase the credit available to Mrs K NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable for her. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances.

What's important to note is that Mrs K was provided with a revolving credit facility rather than a loan. And this means that NewDay was required to understand whether the credit could be repaid within a reasonable period, rather than in one go.

I've looked at what checks NewDay said they did when initially approving Mrs K's application.

NewDay said they looked at information provided by credit reference agencies (CRA) and information that Mrs K had provided before approving her application. As the checks they needed to do were to establish whether Mrs K could repay any lending over a reasonable period I think these checks gave NewDay a good understanding of Mrs K's income and credit commitments. So, I'm persuaded they'd carried out sufficient checks on which to base their lending decision.

But the information showed NewDay was aware Mrs K had a gross annual income of £10,500 in September 2021, which I'd estimate to be around £900 a month. And their records showed Mrs K had credit commitments of £1,253. Which showed Mrs K didn't have any disposable income to be able to sustain any repayments. The credit limit NewDay was offering Mrs K was relatively high in relation to her low income, and her debt-to-income ratio was already in excess of 250%.

Given the above I think NewDay ought to have known that providing Mrs K with £1,200 worth of credit was unaffordable for her and she most likely wouldn't have been able to sustain the repayments. So, I don't think NewDay made a responsible lending decision when they offered her the account in September 2021. And it follows, as they shouldn't have opened the credit card account as it wasn't affordable by extension NewDay ought not to have increased their lending to Mrs K after 2021 as they did.

I've also considered the second credit card account Mrs K had with NewDay that was opened in October 2022 with a credit limit of £900. I've again considered the checks NewDay did.

They again checked with CRA's and used Mrs K's application data. While I think these checks are sufficient given the level of borrowing, I can't say NewDay made a fair lending decision. As their checks showed Mrs K had an annual income of £10,500 (again around £900 a month), but they've shown her credit commitments to be £956 a month. This showed Mrs K's debt to income ratio to be more than 225%. So again, while I'm satisfied NewDay's checks were proportionate to the lending I don't think they made a fair lending decision as their checks showed Mrs K's outgoings exceeded her income so she wouldn't have been able to sustain the repayments.

As I don't think the account should have been opened, it follows as NewDay shouldn't have opened the credit card account as it wasn't affordable by extension, NewDay ought not to have increased their lending to Mrs K for her Aqua card after October 2022.

I've thought carefully about NewDay's comments, especially those made in response to the investigator's assessment. NewDay said that their subsequent checks showed Mrs K's income had increased substantially. And that she'd declared different income amounts – on four occasions £10,500 and on two occasions £32,000. In their checks they've also said Mrs K didn't exceed her limit and wasn't late with any repayments.

But they don't change my mind about the outcome of the complaint. In managing her account as I don't think the lending decision was fair upon the opening of either of the credit card accounts it wouldn't be fair for me to reassess my decision based on how the account was managed in hindsight. Neither regarding Mrs K's income. I do note for her Marbles account when NewDay made the first credit limit increase in February 2022, they assessed Mrs K's income as being £4,545 and for her Aqua account, first credit limit increase in February 2023 they assessed Mrs K's income to be £6,007 a month I can see that for the first credit limit increases NewDay assessed Mrs K's outgoings to be £3,457 and £3,316 respectively. But the highest level of income declared by Mrs K according to NewDay was £32,000 which I would equate to around £2,200 a month.

I've also considered whether NewDay acted unfairly or unreasonably in any other way. That includes whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. But I'm satisfied the redress I've directed here results in fair compensation for Mrs K 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

### **Putting things right**

Where credit has been provided when it shouldn't have been, I think it's fair and reasonable for Mrs K to pay back the funds she's lent – when she used her credit card(s). But not the interest or any other charges that NewDay has applied. I'd also expect NewDay to remove any adverse information they've reported to the CRA's about Mrs K's credit card accounts.

### **My final decision**

I uphold this complaint. And ask NewDay Ltd to:

- Re-work each credit card removing all interest, fees, and charges.
- If the re-work results in a credit balance on either or both accounts this should be refunded to Mrs K along with \*8% simple interest per year, calculated from the date the account would have first gone into a credit balance to the date of settlement.
- Remove any adverse information they might have recorded on Mrs K's credit file in relation to each account. Or;
- if after the rework this is still an outstanding balance, NewDay Ltd should arrange an

affordable repayment plan with Mrs K for the remaining amount(s). Once Mrs K has cleared the balance(s), any adverse information in relation to both accounts should be removed from her credit file.

\*If NewDay Ltd considers tax should be deducted from the interest element of my award, they should provide Mrs K with a certificate showing how much tax they have taken off so that she can reclaim that amount, if she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 30 April 2025.

Anne Scarr  
**Ombudsman**