

## **The complaint**

Miss H has complained that NewDay Ltd trading as Aqua acted irresponsibly when it gave her a credit card ending 5303 in May 2024. Miss H argues that the credit is unaffordable and that NewDay failed to take her financial circumstances into account before it offered her the card, therefore acting irresponsibly.

Miss H is represented in the complaint but for simplicity I will refer to Miss H throughout as if all submissions have been made by her.

## **What happened**

I don't need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Miss H being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision.

On 12 May 2024, after she had already instructed her representatives to make a claim to NewDay in relation to a different NewDay credit card, Miss H applied for and took out a credit card with NewDay with account ending 5303, with a credit limit of £1,200. She has not used the card, nor has the account incurred any fees or charges. Miss H then complained that NewDay had acted irresponsibly in offering her the card.

In its final response letter, NewDay confirmed the steps it had taken to establish affordability before issuing the card. However, because Miss H was claiming it wasn't affordable, NewDay suspended the use of the card.

Dissatisfied with NewDay's response, Miss H referred her complaint to our service. An Investigator looked at what had happened. Having done so, he was satisfied NewDay had carried out reasonable and proportionate checks before issuing the card. He was also satisfied NewDay had reached a fair lending decision, and that NewDay hadn't treated Miss H unfairly for any other reason.

Miss H didn't accept the Investigator's findings.

## **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.

Miss H also complained about another credit card account ending 0480. In a separate decision issued today, I have explained why the Financial Ombudsman Service won't be looking at that complaint. This decision relates only to account 5303.

Before entering into a credit agreement NewDay needed to check that Miss H could afford to repay the credit out of her usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit, for example the amount offered, and to Miss H's particular circumstances. In addition NewDay needed to have proper regard to the outcome of its risk assessment in relation to affordability. The overarching requirement was that NewDay needed to pay due regard to Miss H's interests and treat her fairly.

With all this in mind, I have to consider whether NewDay carried out reasonable and proportionate checks when it opened the account for Miss H to satisfy itself that she would be able to repay the credit offered within a reasonable period of time. If it didn't do this, what would reasonable and proportionate checks have shown? Was there anything of concern in the checks NewDay carried out, and did it make fair lending decisions? Did NewDay treat Miss H unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A Consumer Credit Act 1974 (s.140A CCA)?

It seems to me that NewDay carried out proportionate checks when it opened the account. It considered what Miss H said on her application form and checked her credit file. I've reviewed the information NewDay gathered and I haven't seen anything which suggests that Miss H would have any difficulty meeting her repayments for the level of credit offered out of her stated income. I also don't think there was anything in the information NewDay had gathered about Miss H's circumstances that should have led it automatically to decline her application, or prompted it to complete further checks before entering into the agreement.

Bearing in mind there wasn't anything in the information provided by Miss H that was inconsistent or difficult to explain, I don't think that it was unreasonable for NewDay to rely on what Miss H provided about her income and expenditure during her application. In the circumstances, the information obtained suggested that Miss H could repay the balance within a reasonable period of time. The checks NewDay carried out were reasonable and proportionate.

Altogether, considering the information about Miss H's income from the application form, what NewDay saw on Miss H's credit file, and the amount of credit it was offering, I can't say that NewDay made an irresponsible or unfair lending decision when it opened the account for Miss H.

Miss H has never used the account, and NewDay has suspended it whilst we have been considering this complaint. Miss H has therefore suffered no financial loss or detriment. If Miss H no longer wants the account, she can ask NewDay to cancel it.

In reaching my conclusions, I've also considered whether the lending relationship between NewDay and Miss H might have been unfair to Miss H under s.140A CCA. However, for the reasons I've explained, I've not been persuaded that NewDay lent irresponsibly to Miss H, or otherwise treated her unfairly. Given this, I'm not persuaded that s.140A CCA would, given the facts of this complaint, lead to a different outcome.

### **My final decision**

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 25 April 2025.

Jan O'Leary  
**Ombudsman**