

## The complaint

Mr P complains NewDay Ltd trading as Aqua (NewDay) missed red flags and indications of clear financial distress when approving him for a credit card and then going on to extend his credit limit without completing a thorough assessment of his financial situation.

## What happened

In December 2020, Mr P took out a credit card with NewDay. The card had an initial credit limit of £900. In March 2021, NewDay increased Mr P's credit limit to £1,900. His credit limit was increased again twice more, to £2,900 in July 2021 and in November 2021 to £4,150.

In October 2024, Mr P complained to NewDay that they'd lent to him irresponsibly. He said at the time of being provided the credit he was financially vulnerable, heavily reliant on credit, frequently living in his overdraft and using other credit cards to withdraw cash to cover essential living expenses.

In November 2024, NewDay sent Mr P their final response, but they didn't uphold his complaint. In summary, NewDay said they were satisfied they acted responsibly when agreeing to lend and that their affordability assessments were appropriate and proportionate.

Mr P disagreed with NewDay's response, so he referred his complaint to our service. Mr P said his bank account statements from the time showed significant transfers in and out which related to gambling transactions and while he wouldn't reasonably have expected NewDay to identify them as such, given the unexplained level of spending and high-value transactions he would've expected them to question his affordability to repay further credit.

One of our Investigators looked into things and thought the checks NewDay carried out prior to Mr P's initial application for the credit card and each of the first two lending decisions were proportionate. And, because NewDay's checks showed the lending appeared affordable for Mr P, he didn't think they'd done anything wrong by agreeing to lend to him.

Regarding the final credit limit increase, while on this occasion our Investigator didn't think the checks NewDay carried out were proportionate, he said had they done further checks, he thought they would've still found that it was ok to approve the lending, so again he didn't think their decision to do so was unfair.

Our Investigator thought about what Mr P had said surrounding gambling, as well as his vulnerabilities and reliance on credit. But he said he didn't think proportionate checks for the final credit limit increase would have brought Mr P's issues to their attention, nor had he seen anything to suggest he was reliant on borrowing or in financial distress at the time.

Mr P disagreed with our Investigator, in part, saying there were sufficient gambling related transactions on his statements for NewDay to have recognised it wasn't appropriate to increase his access to credit and said his overall increase in external debt ought to have raised concerns about credit dependency.

Our Investigator's position didn't change, saying he wasn't of the opinion NewDay needed to

have looked at bank statements when reaching their lending decisions, so he didn't think they'd have come to their attention.

Mr P remained unhappy adding NewDay made repeated failures, not just a one off and said our Investigator had reached an outcome inconsistent with others he's received on different products relating to the same period.

Because no resolution could be reached, this case 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.

Having done so, although I appreciate it'll come as a disappointment to Mr P, I'm not upholding his complaint and for much the same reasons as our Investigator. I'll explain why.

But first, Mr P provided thorough responses to our Investigator in detail and I'm aware I've summarised this complaint in much less detail in parts than has been provided, and I've done so using my own words. No discourtesy is intended by this. Instead, I've concentrated on what I think are the key issues here. Our rules allow me to do this.

This reflects the nature of our service as an informal alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't.

I'm satisfied I don't need to comment on every detail to be able to reach what I think is the right outcome that's reasonable in the circumstances of this complaint. Instead, I've focused on what I think is the crux of my reasoning for reaching the outcome I have.

I also think it's important to say that I've reached my decision based on the circumstances of this case alone. While I understand why Mr P may consider this complaint to be similar to concerns raised with other lenders regarding finance taken out around the same time, my focus here is NewDay's lending decision, the checks they carried out and what they saw from the results of those checks.

How we handle complaints about irresponsible and unaffordable lending is explained on our website. It's this approach I've used when deciding Mr P's complaint. NewDay needed to ensure that they didn't lend irresponsibly, which in practice means they needed to carry out proportionate checks to be able to understand whether any lending was affordable for him before agreeing to provide the credit.

The rules that apply to credit agreements are set out in the FCA's consumer credit sourcebook (CONC). Section 5.2A of CONC is relevant here, as – among other things – it talks about the need for businesses like NewDay to complete reasonable and proportionate creditworthiness assessments before agreeing to lend someone money.

I've considered these rules by asking the following questions:

- Did NewDay complete reasonable and proportionate checks to satisfy themselves Mr P would be able to meet the repayments of the borrowing without experiencing significant adverse impact on his financial situation?
  - If they did, was their decision to lend to Mr P fair?
  - If they didn't, would reasonable and proportionate checks have shown that Mr P

could sustainably repay the borrowing?

- Did NewDay act unfairly or unreasonably in any other way?

For ease, I'll first address Mr P's initial credit card application before going on to address each increase to his credit limit.

#### Did NewDay complete reasonable and proportionate affordability checks?

What's considered reasonable and proportionate in terms of the checks a business undertakes will vary depending on the details of the borrowing and the consumer's specific circumstances at the time.

##### *Initial credit card application –*

Here, NewDay approved a credit card for Mr P with a limit of £900. This meant if he was to have utilised the full limit straightaway, he would have needed to have made monthly repayments of around £55 to have paid back the borrowing within a reasonable period of time.

So, I think in the first instance NewDay approved a credit limit for Mr P that was modest both in respect of the amount of credit and the monthly repayments I think they ought to have factored in, so my starting point is that I'd expect to see NewDay to have gained some understanding of Mr P's financial situation, proportionate to the credit in question.

At the time of his application, Mr P declared his annual income as being £60,000 from which NewDay estimated his net monthly income to be around £3,030. Mr P declared he had no cost towards dependents who were reliant upon him financially, and using statistical data, NewDay estimated his monthly expenditure to be around £493 towards the cost of living, around £244 towards housing costs and £325 towards existing credit commitments. NewDay then concluded Mr P was likely to have had around £1967 disposable income each month.

In addition to the information Mr P declared, NewDay also completed a credit check to help them understand how he managed both his current and existing finances.

NewDay say the credit check didn't show them any negative data reported against Mr P's active credit accounts at the time of the application, he hadn't defaulted on any credit accounts for 39 months and he wasn't subject to any repayment plans. NewDay saw Mr P had faced some difficulties having entered into an Individual Voluntary Arrangement (IVA) and bankruptcy in the three years prior but that he was not bankrupt at the time, had no products which were delinquent at the time and had not taken out any short term pay day lending.

So, NewDay established Mr P was likely to have a healthy disposable income each month based on the checks they completed. And when looking at the data the credit check returned regarding his current and more recent credit commitments, I've seen no reason I think ought to have prompted them to complete further checks. I wouldn't expect NewDay to do more.

Overall, I think NewDay completed reasonable and proportionate checks and from all the evidence and information they gathered, I'm satisfied what they saw allowed them to fairly assess if the initial agreement was affordable and sustainable for Mr P.

##### *Credit limit increases to £1,900 in March 2021 and to £2,900 in July 2021 –*

NewDay first increased Mr P's credit limit to £1,900. This meant if he was to have utilised the

full limit straightaway, his monthly repayments would need to have increased to around £115 to have paid back the borrowing within a reasonable period of time.

Around only three months had passed since NewDay estimated Mr P was likely to have had around £1967 disposable income each month, so I think it was reasonable for them to have relied on the statistical cost of living and housing costs they'd obtained previously considering there was no indication his circumstances had changed in such a short period of time.

In addition, the CRA data obtained showed NewDay that Mr P's external credit had remained stable since the initial application, that he hadn't incurred any negative reporting and that his commitments to existing credit had gone down from £325 to around £283 a month.

Internally, NewDay could also see how Mr P had been running his account for three months. While they could see he utilised around 87% of his initial credit limit straightaway, this was due to him having taken advantage of a balance transfer to his account from another credit card and they could see he'd made regular repayments to the account.

When considering the second increase to £2,900, I think NewDay ought to have factored in increased repayments of around £175 a month. This was still well within the disposable income NewDay had estimated six months prior so I would have expected them to have found some real concerns within the checks they completed for proportionate checks to have meant they ought to have gone further.

NewDay could see from the CRA check completed that Mr P's exposure to credit had begun to increase but at the time his total debt versus declared income including the balance owed to them was still only around 15%. In addition, while Mr P's overall debt had risen to around £9,200, his non-revolving debt accounted for a large proportion of the increase, so they were aware it wasn't solely revolving credit Mr P was relying on.

NewDay could still see that while Mr P's utilisation of the current credit limit had increased, it wasn't used in full straightaway after the previous increase and the CRA data showed he'd continued to manage his external credit accounts well, with no negative data present.

Mr P did make one cash advance on his account, but this was for a small amount and alone I don't think it ought to have prompted further checks.

Overall, I think NewDay completed reasonable and proportionate checks and from all the evidence and information they gathered, I'm satisfied what they saw allowed them to fairly assess if the first and second credit limit increases were affordable and sustainable for Mr P.

#### *Credit limit increase to £4,150 in November 2021 –*

By the time of the increase to £4,150, I think NewDay needed to factor in increased payments of around £250 to account for the possibility of Mr P utilising the new limit in full straightaway.

By this point, I think the credit limit NewDay approved was fairly substantial, so my starting point is that I'd expect to see NewDay to have gained a good understanding of Mr P's current financial situation, proportionate to the credit in question.

NewDay again completed a credit check which showed them Mr P's overall exposure to credit had increased significantly the month prior to the new credit limit being applied. His revolving credit had stayed steady, but his non-revolving credit had jumped from around

£2,300 to around £23,000. At the same time, the data told NewDay Mr P's commitments to existing credit hadn't really increased, which wasn't in keeping with the additional exposure they saw.

Internally, NewDay could see Mr P had made five cash advances against his card since the last increase and while the total withdrawn remained modest, I think the number of withdrawals ought to have prompted them to ask more. NewDay could also see Mr P had incurred one late payment fee.

So overall, on balance I'm not satisfied NewDay did proportionate checks when increasing Mr P's credit limit to £4,150, and I think they should have done more to ensure the new limit was both affordable and sustainable for him.

If NewDay carried out proportionate checks, did they make fair lending decisions? And if they didn't, had they carried out proportionate checks, what would they have found?

*Initial credit card application –*

NewDay took Mr P's declared annual income and from that estimated he earned around £3,030 a month.

In addition, when calculating Mr P's expenditure, NewDay used a combination of his actual existing credit commitments obtained from the CRAs, alongside statistical data. After doing this, NewDay found Mr P likely had a monthly expenditure of around £1,061, which left him a disposable monthly income of around £1,967.

As I've explained, I think the maximum repayment towards the new credit card that I think NewDay ought to have factored in, was £55 a month, so a figure well within the disposable income NewDay had calculated.

Based on what I've seen, I'm satisfied their checks were reasonable and proportionate. I'm also satisfied they made a fair lending decision based on the outcome of those checks so I'm not upholding this complaint about the initial account opening.

*Credit limit increases to £1,900 in March 2021 and to £2,900 in July 2021 –*

For the first two credit limit increases when calculating Mr P's expenditure, NewDay used a combination of his up-to-date actual existing credit commitments from the CRAs alongside the statistical data obtained three to six months prior. The minimum payments towards the new credit limits I think they ought to have factored in were between £115 and £175, both well within the monthly expenditure NewDay estimated Mr P was likely to have had.

Mr P had been managing both his account with NewDay and his external credit well and I'm satisfied based on what I've seen, their checks were reasonable and proportionate for both increases and that they went on to make fair lending decisions based on the outcome of those checks. It follows; I'm not upholding this complaint about either of the first two credit limit increases.

*Credit limit increase to £4,150 in November 2021 –*

I've already explained why I think NewDay ought to have done more checks here before making their decision to increase Mr P's limit again. I think proportionate checks would have involved finding out more about his actual expenditure. I also think this would've involved them understanding more about his commitments to existing credit, including the new borrowing he appeared to have taken out.

Our service asked Mr P for copies of his bank account statements for each of the current accounts he held at the time, for the three months prior to the third credit limit increase.

I'm not saying NewDay specifically needed to obtain bank statements as part of their further checks. Rather, I don't think it would've been proportionate for them to have done so. I think to have gained an understanding of Mr P's actual essential expenditure, they could've simply asked him.

Mr P has also provided a copy of his credit file, so while I'm aware repayments to his new credit might not yet have appeared on the bank statements, I can see Mr P took on a new Hire Purchase Agreement (HPA) in October 2021 which would have accounted for the sudden increase in his exposure to credit. I've considered this when reaching my decision.

Looking at his statements, Mr P had limited essential expenditure debiting his accounts. I could see no commitments towards housing costs, council tax or utilities however Mr P has told us he was supported in paying these so, I'm satisfied he more likely than not would've declared as such to NewDay had he been asked at the time.

On average, Mr P received around £2,820 income from his employer each month, with an average of £1,232 essential expenditure on things such as food, mobile telephone, credit commitments and a payment with the reference 'kids'.

Any gambling transaction I've seen that were obvious I've not included. This is because they aren't essential and I'm not persuaded they would've been declared to NewDay had they asked Mr P about his expenditure. I'll return to this shortly.

So, I'm satisfied NewDay would likely have found Mr P to have had around £1,590 disposable income each month, from which he had committed £350 a month towards the new HPA. This would've left Mr P with around £1,240 a month.

It follows I'm satisfied had NewDay done reasonable and proportionate checks, they would've found the third credit limit increase to be both affordable and sustainable. I can't say NewDay made an unfair lending decision here either.

I understand Mr P feels strongly about the gambling transactions seen on his statements both obvious and those where he was gambling via third parties. I'm truly sorry to hear the difficulties Mr P faced and I'm pleased he has taken steps to regain control.

While I don't dispute Mr P's account of his gambling spend, I must consider here what I think NewDay knew or ought reasonably to have known and I don't think they had any reason to be aware of the issues Mr P faced.

As I've already explained, I don't think proportionate checks would have involved NewDay physically reviewing Mr P's statements as I have done now. And had they asked him at the time, I'm not persuaded Mr P would have declared his struggles to them either.

#### Did NewDay act unfairly or unreasonably in some other way?

NewDay have acknowledged Mr P has faced financial difficulties within their final response providing options of support both internally and externally should he need to seek help.

From the evidence I've seen, I've not seen anything to suggest NewDay have treated Mr P unfairly or unreasonably in any other way. However, NewDay remain aware of his situation, so I'll remind them of their responsibility going forward to treat him with forbearance and due consideration.

I've also considered whether NewDay acted unfairly or unreasonably in some other way given what Mr P has complained about, including whether it's relationship with him might have been unfair under s.140A Consumer Credit Act 1974.

However, for the same reasons I've set out above, I've not seen anything that makes me think this was likely to have been the case.

### **My final decision**

For the reasons I've explained above, my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 18 March 2026.

Sean Pyke-Milne  
**Ombudsman**