

The complaint

Mr H complains that NewDay Ltd trading as Aqua ("NewDay") were irresponsible when lending him two credit cards and by increasing his credit limit.

Mr H is represented by a professional third party, but for ease of reference I'll refer to Mr H throughout.

What happened

Mr H applied for a credit card with NewDay in August 2019. NewDay granted him with a credit card that had an initial limit of £450. The limit was increased once in March 2020 to £800. This card was paid in full in 2022.

In October 2023, Mr H was provided with a second card from NewDay – although at this point, the first one had already been paid off. This application was accepted, and he was provided with a limit of £900. This credit limit was never increased on this card and as of May 2024, it had no balance.

In 2024, Mr H complained to NewDay. He said he feels proportionate checks weren't carried out at the time of either application, or when the credit limit was increased. He said the credit wasn't affordable and he'd like a refund of interest and charges, plus 8% simple interest.

NewDay looked into his complaint, issuing their final response in May 2024. They said the checks they carried out at the time were proportionate – they'd found nothing adverse, and therefore the credit was affordable for Mr H.

Mr H was unhappy with this response so referred his complaint to our service. An Investigator here looked into things – and they agreed with NewDay that the checks were proportionate, and a fair lending decision was made.

Mr H didn't agree. He said in the lead up to the card being granted, he was using payday loans and therefore didn't have the disposable income NewDay believes he had. Because 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.

Having done so, I've reached the same conclusions as the Investigator. I'll explain my reasoning in more detail below.

The rules and regulations in place at the time NewDay provided Mr H with the credit card and subsequent increase 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 H. In other words, it wasn't enough for NewDay to consider the likelihood of them getting the funds back or whether Mr H's circumstances met their lending criteria – they had to consider if Mr H 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 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 H.

I'll first look at account ending 5835, opened in August 2019. NewDay assessed whether Mr H could afford the car by using information he declared at application, and information they obtained when completing a credit search.

They found out at the time, Mr H was earning an annual income of around £25,000 and had monthly disposable income of around £540. The checks carried out showed that Mr H didn't have any defaults, payday lending or repayment plans in place at the time. His debt-to-income ratio was also recorded as 0%, meaning he had very little other external debt at the time of application. Considering all of this, and the fact NewDay were providing him with a modest limit of £450, I don't think it would've cost him a lot to repay the credit card in a reasonable period of time, and therefore NewDay's checks were proportionate, and they made a fair decision to lend to Mr H.

I've thought about the increase in March 2020. Mr H was managing the credit card well – he was making over the minimum repayment amount most months, and there were no late or overlimit fees. His external debt was showing at around £400 prior to the increase – which although appeared to be more than when the card was taken out, it's still a small amount when compared to his income and declared expenditure. Because Mr H was demonstrating the card was affordable by paying well over the minimum, and his circumstances externally didn't appear to change much, I think NewDay conducted proportionate checks and made a fair decision when increasing Mr H's limit from £450 to £800.

I note Mr H's comments regarding the use of payday lending prior to the first card being provided, but this isn't evident in the checks NewDay completed. The rules set out by the regulator merely state that checks should take place and that they should be proportionate to the type and amount of credit being provided. But there is no obligation on lenders to ask to see bank statements, so I can't say NewDay would've been aware of any payday lending, nor should they have been aware. They completed a credit check, which was proportionate to the credit being provided, and they haven't acted unfairly in relying on the information they collated.

I've also considered what Mr H has said regarding using the card for a cash withdrawal prior to the first increase, and while on some occasions cash withdrawals may be a cause for concern, a cash withdrawal alone, when considering the other information NewDay held about Mr H and how the account had been managed up until that point wouldn't be enough for me to say they should've done more here.

I've gone on to consider the second card, provided in October 2023 for £900. By this point it appeared, based on what was declared by Mr H, his income had increased significantly to around £42,000 a year, and while his external credit commitments had increased slightly

from when he had the previous card, he was still showing as having around a 3% debt to income ratio. There was no indication of any financial difficulties, and based on the relationship NewDay previously had with Mr H, there was nothing to suggest he wouldn't be able to afford a credit card with a modest limit of £900. So again, I believe the checks were proportionate and the lending decision fair.

I appreciate this will come as a disappointment to Mr H, but based on what I've seen, I can't say NewDay have acted unfairly when deciding to lend to him or to increase his limit in 2020. In reaching my conclusions, I've also considered whether the lending relationship between NewDay and Mr H might have been unfair to Mr H under s140A of the Consumer Credit Act 1974 ("CCA"). However, for the reasons I've already explained, I'm satisfied that NewDay did not lend irresponsibly when providing Mr H with the credit card, or by increasing his credit limit. And I haven't seen anything to suggest that s140A CCA would, given the facts of this complaint, lead to a different outcome here.

My final decision

It's my final decision that NewDay Ltd trading as Aqua made a fair lending decision when providing Mr H with two credit cards, and when they increased his limit on one occasion.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 June 2025.

Meg Raymond
Ombudsman