

## **The complaint**

Miss K complains that NewDay Ltd trading as Aqua was irresponsible in its lending to her.

## **What happened**

Miss K was provided with an Aqua credit card account in December 2021 with an initial credit limit of £1,200. Miss K has explained that she had fled domestic violence and needed funds to replace her possessions. Miss K said that she then took out further debt from other providers.

NewDay increased Miss K's credit limit on several occasions and Miss K said that no contact was made with her before the limit increases were applied. She said that had adequate checks been carried out NewDay would have realised she had opened numerous accounts since the account had been opened and that the credit limit increases weren't affordable for her. She said she had to borrow more to make her repayments.

NewDay issued a final response to Miss K's complaint dated 25 October 2024. It said that before the account was opened it carried out creditworthiness and affordability checks. It said that based on the information received Miss K had sufficient affordability to make the repayments due on the lending. It noted that Miss K's credit limit was increased on four occasions and said that it didn't see any indication of financial difficulties at or around the time of these credit limit increases. It said the account and limit increases were provided responsibly.

Miss K said that NewDay's response didn't address all of the complaints she had raised. She accepted the account opening was fair but said the credit limit increases shouldn't have happened. She said that NewDay was aware of her mental health and other circumstances, and had it carried out adequate checks it would have seen she was taking on lots of other credit. She said that NewDay hadn't fully investigated her concerns and hadn't treated her sympathetically through this process. She referred her complaint to this service.

Our investigator issued his view on this complaint in December 2024. He thought that reasonable checks were carried out before the account was opened but that further checks should have taken place before the credit limit increases were applied. He said that had adequate checks taken place before the credit limit increases NewDay would have realised the additional lending wasn't affordable for Miss K. He therefore upheld this complaint from the first limit increase.

Our investigator recommended that NewDay rework Miss K's account removing all interest, fees, charges and insurances (not already refunded) that had been applied to balances above £1,200. He explained that if the rework resulted in a credit balance, this should be refunded to Miss K along with 8% simple interest per year calculated from the date of each overpayment to the date of settlement, and that NewDay should remove all adverse information recorded after the date of the first limit increase regarding this account from Miss K's credit file.

NewDay provided details of the refunds to be applied to Miss K's account and noted that

there would still be an outstanding balance after the account had been reworked. The figures were updated following further correspondence with Miss K. Discussions were also undertaken about a possible arrangement to pay and NewDay confirmed that once the outstanding balance had been cleared Miss K would need to get in touch and any adverse information would be removed from her credit file and her account would be reported as settled.

Miss K said she wouldn't be able to clear the remaining debt within a reasonable time period and asked that the debt be written off. She didn't think it fair that a repayment plan would be reported on her credit file when she only needed this due to the irresponsible lending. She also raised concerns about how NewDay had communicated with her.

Miss K provided further information reiterating that NewDay was aware of her mental health conditions and she didn't think it had taken these into account in its dealings with her. She said that the interest rate on her account was increased even though she was falling deeper into debt and that when she asked for help, she said the advisers were dismissive and instead of offering support her account was cancelled without warning. She said that while her complaint was being investigated NewDay continued to apply charges to her account and threatened her with debt collectors. She said this has caused her immense stress.

As a resolution hasn't been agreed, this complaint has been passed to me, an ombudsman, to issue a decision.

### **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.

Our general approach to complaints about unaffordable or irresponsible lending – including the key rules, guidance and good industry practice – is set out on our website.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But while it is down to the firm to decide what specific checks it wishes to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments, and the total cost of the credit.

Miss K was provided with a credit card account in December 2021, with an initial credit limit of £1,200. Her credit limit was increased on four occasions resulting in her credit limit in July 2024 being £5,150.

NewDay provided details of the checks carried out before the account was opened and Miss K said she accepted this was fair. Her complaint was that the credit limit increases shouldn't have been applied. Having looked through the evidence provided this shows that Miss K had a relatively high amount of debt outstanding at the time of the credit limit increases and noting the size of the credit limits being offered compared to her income I think it would have been reasonable for further questions to have been asked before the increases were applied. While I do not think that NewDay was required to obtain copies of Miss K's bank statements, having looked through the additional evidence provided, including Miss K's bank statements, I find that had further checks been carried out then NewDay would have realised that providing additional credit to Miss K wasn't sustainably affordable. Therefore, I agree with our investigator's view that this complaint be upheld from the first credit limit increase, and I note that NewDay has accepted this in its subsequent offers to Miss K.

The outstanding issue is whether the redress recommended by our investigator and included in NewDay's calculations, provides a fair resolution to this complaint.

When a mistake has been identified we aim, as far as possible, to put the consumer back in the position they would have been had the mistake not happened. In cases of irresponsible lending, we cannot go back and stop the lending happening, but we consider it fair that the business doesn't benefit financially from the irresponsible lending. In this case, it has been accepted that while the initial account opening was fair, the credit limit increases shouldn't have been applied. Therefore, NewDay shouldn't be able to charge any interest or charges on any balances which exceed the opening credit limit of £1,200. In practice this means that Miss K's account will need to be reworked removing all interest, fees, charges and insurances (not already refunded) that were applied to balances above £1,200 from the first credit limit increase in May 2022.

NewDay provided its calculations for the refund of interest and charges and said that a balance would remain on the account. Miss K has said that her current situation means she can't afford to repay the balance, and she asked that it be written off. While I am sorry to hear of the difficult time Miss K has experienced and continues to experience and I note her comments about her gambling and being in a debt spiral, I cannot say that further checks would have necessarily identified her gambling. And while I appreciate that Miss K is struggling to repay her commitments, as the money was provided to her, I think it fair that she be required to pay back the amount she received. However, taking her circumstances into account, we would expect NewDay to work with Miss K to set up an affordable repayment plan.

I understand that Miss K doesn't want her credit file affected by a repayment plan being recorded and I note her comments about how she has worked to protect her credit file. In this case Miss K has said she isn't able to afford to repay the current outstanding balance in one large amount but could keep making minimum payments (sometimes more). While I note her desire to keep making these payments and not to enter a repayment plan, given her account has been terminated and noting the circumstances she has explained, I think that a repayment plan would be a fair way for Miss K to move forward and to ensure that any payments she makes are affordable for her. While this will be recorded on her credit file, once the account balance has been cleared any adverse information affecting this account should be removed and the account will be recorded as settled.

Miss K has also complained about how NewDay has communicated with her and that it continued to apply interest and charges to her account while her complaint was being investigated. I appreciate how upsetting this must have been, but NewDay wasn't required to stop applying interest and charges while the complaint was ongoing. It confirmed that once Miss K accepted the settlement the interest and charges would be stopped. NewDay then confirmed that as the account had been terminated there would be no more interest and fees applied, and it provided details of its customer support team for Miss K to contact if she needed further support.

I appreciate that Miss K was upset that after raising her concerns she was stopped from using her account. But given the issues she had raised about not being able to afford the repayments, I think it reasonable that NewDay explained in its final response that the account would be suspended and that the account was then closed. This would stop any further use being made and the amount of debt increasing.

Miss K has also said that interest rate increases were applied to her account without clear reasons increasing her repayments. We have asked for further details about this from NewDay but these haven't been provided. However, in this case, as I am upholding this complaint from the first credit limit increase and NewDay is required to refund all interest and

charges exceeding the initial credit provided from that point, I find that this is a fair outcome to this complaint.

So, while I do not underestimate the upset Miss K has experienced through the process of dealing with her complaint, I find the outcome already set out to be fair and I do not require NewDay to do anything further in resolution of this complaint. That said, given NewDay is aware of Miss K's health conditions and the circumstances she has experienced, I would expect it to take this into account when working with her regarding her outstanding balance.

I've also considered whether New Day acted unfairly or unreasonably in some other way given what Miss K has complained about, including whether its relationship with Miss K might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Miss 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**

As I don't think New Day should have increased Miss K's credit limit above £1,200, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, I think that Miss K should be required to pay back the amount that was lent.

Therefore, New Day should:

- Rework Miss K's account removing all interest, charges or insurance premiums (that haven't already been repaid) that have been applied to balances above the initial credit limit of £1,200 from the first limit increase;
- As it has been explained that after the rework, there will still be an outstanding balance, NewDay should arrange an affordable repayment plan with Miss K for the remaining amount.
- Once Miss K has cleared the balance, any adverse information in relation to the account should be removed from her credit file from the date of the first limit increase.

If NewDay has sold the account to a third party debt collector, it will need to either buy the debt back or work with the third party to bring about the above steps.

### **My final decision**

My final decision is that NewDay Ltd trading as Aqua should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 27 June 2025.

Jane Archer  
**Ombudsman**