

## **The complaint**

Mr D complains that NewDay Ltd trading as Aqua (NewDay) shouldn't have agreed to open a credit card account and subsequently apply further credit limit increases as the lending was unaffordable.

In bringing his complaint Mr D is represented by a third party. For ease of reading I will only refer to Mr D in my decision.

## **What happened**

In May 2015 Mr D applied for a credit card account with NewDay. His application was successful and NewDay applied a credit limit of £900. NewDay applied further credit limit increases October 2015 - £1,600, April 2016 - £2,600, and March 2017 - £3,400. The credit limit was reduced in August 2020 to £2,650.

Mr D said he struggled to sustain the repayments and said if NewDay had checked his financial situation properly they would have seen the lending was unaffordable for him. He complained about this to NewDay.

NewDay said they'd assessed the affordability of the lending by checking Mr D's credit history, using his application data and how he managed his accounts. As well as estimating his cost of living and housing costs. Based on these checks they decided to lend to Mr D as he'd sufficient income to sustain the repayments.

Mr D wasn't happy with NewDay's response and referred his complaint to us.

Our investigator said NewDay's checks had been proportionate and the lending decision fair upon the opening of the account. But NewDay hadn't made a fair lending decision when they applied further credit limit increases. He said it should have been evident that Mr D was reliant on credit. To put things right he said NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £900 after 31 October 2015.
- Any rework resulting in a credit balance, should be refunded to Mr D along with 8% simple interest per year calculated from the date of each overpayment to the date of settlement.
- Remove all adverse information recorded after 31 October 2015 regarding this account from Mr D's credit file. Or, if after the rework the outstanding balance still exceeds £900, NewDay should arrange an affordable repayment plan with Mr D for the remaining amount. Once Mr D has cleared the outstanding balance, any adverse information recorded after 31 October 2015 in relation to the account should be removed from his credit file.

NewDay hasn't responded to our investigators outcome so Mr D's complaint has been referred to 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 partially uphold this complaint. I'll explain why.

I've considered the relevant rules, guidance and good industry practice that applied at the time of the lending for when someone complains about irresponsible and/or unaffordable lending. And I've applied this to Mr D's complaint.

NewDay were required to undertake an assessment of Mr D's credit worthiness. They needed to consider the ability of Mr D to sustain the repayments. And to consider any potential impact they were aware of at the time of the lending on Mr D's financial situation.

So, before agreeing to approve or increase the credit available to Mr D NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable for him. 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 Mr D 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 Mr D's application. NewDay said they looked at information provided by credit reference agencies (CRA) and information that Mr D had provided before approving his application. These showed Mr D had an annual income of £26,500 which they assessed as £1,644.80 a month. From the CRA data they found he'd credit commitments of £634 a month. In their assessment NewDay also allowed £435.76 for Mr D's cost of living outgoings and £252.65 for his housing costs. Which they considered left Mr D with £322.39 in disposable income before the new lending was factored in. Their checks did show that Mr D's debt to income ratio (DTI) was 48.80%, so before the new lending he was using nearly half of his income to cover his debt.

NewDay said they hadn't seen any signs of financial vulnerability as Mr D didn't have any county court judgments (CCJ's), hadn't defaulted on any of his credit commitments. And hadn't missed any of his credit commitment repayments.

The credit card account was opened with an initial credit limit of £900. As outlined above NewDay needed to assess whether Mr D could repay this, with the assumption he'd draw down the full £900. To repay this within a reasonable period I'd consider Mr D would have needed to pay around £45 a month.

I'm satisfied from these checks NewDay were able to establish a good understanding of Mr D's income and outgoings. So, they've carried out sufficient checks and based on these they made a fair lending decision as Mr D should have had sufficient disposable income to sustain the repayments.

NewDay increased Mr D's credit limit by a further £700 to £1,600 in October 2015. Given the time that has elapsed since the account was first opened and subsequent credit limit increases, the information available is limited. NewDay has little evidence of the checks they said they did to ensure that Mr D would be able to repay the credit in a sustainable manner. But said that they would have used information from his application and CRA's to help determine the state of his finances.

I don't draw any adverse conclusions from NewDay's inability to provide me with the results of their checks. But without that information it would be difficult to fairly conclude that the checks they did were proportionate.

But NewDay's checks had already shown Mr D's debt was already nearly half of his income. They also had the additional information as to how Mr D was managing his account with them. I can see that within a couple of months of his account being opened Mr D had exceeded his £900 credit limit, incurring an over the limit fee. He'd also used his credit card for a cash advance of £250 which incurred a cash withdrawal fee of £7.50. At this time NewDay's records showed Mr D had five active accounts with credit commitments of £5,165.

For the months prior to the credit limit being increased, I can see Mr D was making repayments, but the reduction was minimal to his outstanding balance after interest charges were applied. And I can see Mr D's credit commitments had increased to over £7,000. Given at the time of the account opening Mr D's DTI was nearly half of his income, and he'd increased his debt further by around £2,000 before the credit limit increase to £1,600. I think this showed Mr D's increasing reliance on credit. By NewDay increasing his credit limit by a further £700 I think they ought to have considered the financial impact this would have had on him. Added to which their records show Mr D had incurred fees as he'd exceeded his credit limit. He'd also used his credit card for a cash withdrawal which whilst an option does incur additional fees which I think shows Mr D's financial need.

Overall, I can't say NewDay's checks were proportionate when they increased Mr D's credit limit. But based on the information they already had I don't think any further checks were needed as they'd sufficient evidence to show any further lending would have had a detrimental impact on Mr D's finances. I say this as I think NewDay's checks showed he was already struggling to manage his existing credit commitments without the need for further reliance on more credit. And by increasing his credit limit they were adding to his financial burden. So, I don't think NewDay acted fairly by increasing Mr D's credit limit and by extension any further credit limits they applied as it should have been evident from their checks that Mr D would struggle to sustain the repayments.

I've also considered whether NewDay acted unfairly or unreasonably in some other way given what Mr D has complained about, including 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 Mr D in the circumstances of his 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 Mr D to pay back the funds he's lent – when he used his credit card. 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 Mr D's credit card account.

### **My final decision**

I partially uphold this complaint. And ask NewDay Ltd to:

- Re-work the credit card account removing all interest, fees, and charges applied above £900 after the date the credit limit increase of £1,600 was applied to Mr D's account.

- Refund Mr D should the rework result in a credit balance 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 Mr D's credit file in relation to the account. Or if after the rework there remains an outstanding balance, NewDay Ltd should arrange an affordable repayment plan with Mr D for the remaining amount. Once Mr D has cleared the balance, any adverse information in relation to this account after the date the £1,600 credit limit was applied to his account should be removed from his credit file.

\*His Majesty's Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mr D a certificate showing how much tax has been taken off if he asks for one. If they intend to apply the refund to reduce an outstanding balance, they must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 July 2025.

Anne Scarr  
**Ombudsman**