DRN-5573674

The complaint

Mrs S complains that NewDay Ltd trading as Aqua (NewDay) acted irresponsibly in opening a credit card account and subsequently increasing her credit limit.

What happened

In July 2018 Mrs S applied for a credit card with NewDay. Her application was successful and NewDay applied a credit limit of £900. In November 2018 NewDay increased Mrs S' credit limit to £2,400. Mrs S said she struggled to sustain the repayments and was having to use her overdraft to meet her credit commitments. She complained to NewDay.

NewDay said they'd used Mrs S' application and credit reference agency (CRA) data to consider her credit worthiness. They'd looked at how she managed her accounts as well as available internal data. Based on these checks they said they'd made a fair lending decision as Mrs S should have had sufficient disposable income to sustain the repayments.

Mrs S wasn't happy with NewDay's response and referred her complaint to us.

Our investigator said given Mrs S had declared a low income in comparison to the credit limit applied on opening the account NewDay should have done more. But after considering Mrs S' bank statements the lending decision made by NewDay was fair. For the credit limit increase our investigator said the checks NewDay had done were proportionate. And based on these checks NewDay had made a fair lending decision.

Mrs S didn't agree and asked for 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.

I appreciate my decision will disappoint Mrs S but having done so I'm not upholding her complaint. I'll explain why.

I've considered the relevant rules, guidance and good industry practice when someone complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider in deciding what's fair and reasonable in all of the circumstances of the complaint. These are:

1.Did NewDay complete reasonable and proportionate checks to satisfy themselves that Mrs S would be able to repay the credit in a sustainable way?

a. if so, did NewDay make a fair lending decision?

b. if not, would reasonable and proportionate checks have shown that Mrs S could sustainably repay the borrowing?

2. Did NewDay act unfairly or unreasonably in some other way?

So, before agreeing to approve or increase the credit available to Mrs S NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable for her. 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.

Its important to note Mrs S was being 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 Mrs S' application.

NewDay said they looked at information provided by CRA's and information that Mrs S had provided before approving her application. From these checks they assessed that she'd an annual income of £6,500 and she'd credit commitments of £31 a month. Their checks also showed it'd been 68 months since Mrs S had a default on her credit file. And her debt to income (DTI) was low at 5.88%. They considered this would have meant that Mrs S would have had sufficient disposable income to sustain the repayments.

But I'd expect checks to be more thorough the lower a borrower's income. The credit limit NewDay was offering Mrs S was relatively high in relation to her income, So I think NewDay should have done more to establish her actual income and non-discretionary spending before they agreed to lend to her.

Mrs S has provided her bank statements for the three months prior to the initial credit card account opening. I'm not suggesting that NewDay needed to obtain any of the specific documents Mrs S has now provided, but I think these give a good indication of at least what basic information NewDay would likely have found out (or ought to have found out) about her income and existing non-discretionary commitments.

The initial account was opened with a credit limit of £900. In their assessment NewDay should assume Mrs S would draw down the full amount of credit which I think over a reasonable period would equate to a monthly repayment of around £45.

Mrs S had a joint account and I can see that both incomes were paid into this account as well as any benefit payments. Also I can see non-discretionary spending covering food, insurance, housing costs, utilities, transport, communications and media came out from this account. So I don't think it would be unreasonable to make the assumption that any repayment would be considered as part of the household expenditure. Overall taking credit commitments, and other outgoings Mrs S should have had a disposable household income sufficient to sustain the repayment.

Mrs S said she was constantly having to use her overdraft to meet her financial commitments. I can see from Mrs S' bank statements that she did use her overdraft and had an arranged overdraft fee charged to her account, which I have considered in the above assessment. While this can be a sign of financial difficulty a review of Mrs S' bank statements don't show anything beyond the overdraft use that I think would have led NewDay had they checked to conclude Mrs S was either in financial difficulties or couldn't afford to make her payments as expected. There weren't as far as I can see any evidence that she was borrowing lots of other credit or was having problems making her existing payments or any discretionary spending.

While I can see that Mrs S was using her overdraft, I don't think that in itself would be enough to conclude the lending wasn't affordable for her. So, I'm satisfied NewDay made a fair lending decision when they opened Mrs S' credit card account with a credit limit of £900.

NewDay increased Mrs S' credit limit in November 2018 to £2,400. NewDay conducted checks like those at the account opening. From these checks they assessed Mrs S had an increased monthly household income of £2,141, and credit commitments of £23. They also assessed Mrs S has having non-discretionary commitments for rent of £633 and cost of living of £415. This would have left Mrs S with a disposable income before factoring in the new lending of £1,070. With the required assumption that Mrs S would draw down the full amount of the new lending (a further £1,500) this would have meant an additional repayment each month of around £75.

NewDay also had the additional data as to how Mrs S was managing her credit card account she'd with them. These checks showed Mrs S was paying around the minimum repayment each month. They said Mrs S hadn't used her credit card for cash withdrawals, she didn't have any short term lending commitments nor had she entered into any reportable payment arrangements for her credit commitments that could have indicated she was in financial difficulty. So based on their checks NewDay decided the lending was affordable for Mrs S.

The relevant guidance says a lender must take reasonable steps to determine the amount, or make a reasonable estimate, of the customer's current income and non-discretionary expenditure. And I think NewDay did this when they assessed the affordability of the credit limit increase for Mrs S. They have shown they verified Mrs S' household income through independent information supplied by a CRA and they used CRA data to establish her credit commitments. They used statistical data, which the guidance allows them to do, for her other non-discretionary spending. Added to which their internal data showed how she was managing her account with them. So I'm satisfied the checks NewDay did were reasonable and proportionate for the type and amount Mrs S was borrowing. I think NewDay was reasonably entitled to rely on the information they'd been provided with and used. And based on these checks their lending decision was fair as they showed Mrs S should have had sufficient disposable income to sustain the repayments.

I've also considered whether NewDay acted unfairly or unreasonably in some other way given what Mrs S has complained about, including whether their relationship with her might have been viewed as unfair by a court under Section 140A Consumer Credit Act 1974. But for the reasons I've already given I don't think NewDay lent irresponsibly to Mrs S or otherwise treated her unfairly. I haven't seen anything to suggest that s10A or anything else would, given the facts of this complaint , lead to a different outcome here.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 8 July 2025.

Anne Scarr
Ombudsman