

The complaint

Miss S 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.

What happened

In January 2023 Miss S applied for a credit card account with NewDay. Her application was successful and NewDay applied a credit limit of £1,200. In June 2023 NewDay increased Miss S' credit limit to £2,700. And in October 2024 they increased the credit limit further to £3,000. Miss S said she struggled to sustain the repayments and said if NewDay had checked her financial situation properly they would have seen the lending was unaffordable for her. She complained about this to NewDay.

NewDay said they'd used the information Miss S had provided in her application, and credit reference agency (CRA) data. They assessed that Miss S had a regular monthly income, was managing her credit commitments well and didn't show any signs of financial vulnerability. They also used their internal data as to how Miss S was managing any accounts, they'd with her. They said based on these checks they decided their decision to lend to Miss S was fair.

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

Our investigator didn't agree that NewDay had done enough to check Miss S' financial circumstances given the amount she was being lent. After considering what further checks could have shown she said while the lending on the initial account opening was fair the subsequent credit limit increases weren't as Miss S didn't have sufficient disposable income to sustain the repayments.

NewDay 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'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 Miss 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 Miss 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 Miss 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.

What's important to note is that Miss S 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 Miss S' application.

NewDay said they looked at information provided by CRA's and information that Miss S had provided before approving her application. From these checks they assessed that Miss S had a monthly income of £1,373.30 and she'd credit commitments of £221 a month. NewDay also assessed Miss S to have housing costs of £239.98 and living costs of £424.57. And they considered this would have meant that Miss S would have had sufficient disposable income to sustain the repayments. I can see Miss S' debt to income ratio was 44.86%. NewDay said their checks showed Miss S was managing her accounts well with no evidence of missed payments or financial vulnerability.

But from NewDay's checks this showed Miss S' debt was already nearly 50% of her income. And I'd expect checks to be more thorough the lower a borrower's income. The credit limit NewDay was offering Miss S was relatively high in relation to her income, So I think NewDay should have done more to establish Miss S' actual income and outgoings rather than a reliance on statistical data.

Miss S has provided her bank statements for the three months prior to the initial credit card account opening and the credit limit increases. I'm not suggesting that NewDay needed to obtain any of the specific documents Miss 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 credit commitments.

From these I can see Miss S' housing costs were higher than those considered by NewDay as her monthly rent alone was £400. The initial account was opened with a credit limit of £1,200. In their assessment NewDay should assume Miss S would draw down the full amount of credit which I think over a reasonable period would equate to a monthly repayment of around £60. Overall taking Miss S' credit commitments, and other outgoings she should have had a disposable income sufficient to sustain the repayment. So, I'm satisfied NewDay made a fair lending decision when they opened Miss S' credit card account with a credit limit of £1,200.

I've next considered the credit limit increase NewDay applied in June 2023 for £2,700. This was an additional £1,500. I've thought carefully about NewDay's comments, especially those made in response to the investigator's assessment.

Again, I've considered Miss S' bank statements for the three months prior to the credit limit increase. Without factoring in the repayment for this credit card for its initial credit limit of £1,200 Miss S had a disposable income of around £190. But I can see Miss S had been paying around £35 a month in repayments for this credit card. After factoring this in Miss S had a disposable income of around £155.

With the required assumption that Miss S would draw down the full amount of the new

lending (a further £1,500) this would have meant an additional repayment each month which I don't think would have left Miss S with sufficient disposable income to sustain the repayments. I say this as the repayment over a reasonable period would now be around £75 a month more which would have left Miss S with only around £80 a month to cover discretionary and unexpected costs which I don't think was sufficient given Miss S was a tenant. So, I don't think NewDay made a responsible lending decision when they increased Miss S' credit limit to £2,700. And by extension any further credit limit increases.

I've also considered whether NewDay acted unfairly or unreasonably in some other way given what Miss 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 I'm satisfied the redress I've directed below results in fair compensation for Miss S 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

Where credit has been provided when it shouldn't have been, I think it's fair and reasonable for Miss S to pay back the funds she's lent – when she used her 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 Miss S' credit card account.

My final decision

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

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £1,200 after 11 June 2023. Should the rework result in a credit balance, this should be refunded to Miss S 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 11 June 2023 regarding this account from Miss S' credit file. Or, if after the rework the outstanding balance still exceeds £1,200, they should arrange an affordable repayment plan with Miss S for the remaining amount. Once Miss S has cleared the outstanding balance, any adverse information recorded after 11 June 2023 in relation to the account should be removed from her credit file.

*HM Revenue & Customs requires NewDay Ltd to deduct tax from any award of interest. They must give Miss S a certificate showing how much tax has been taken off if she 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 Miss S to accept or reject my decision before 23 June 2025.

Anne Scarr
Ombudsman