DRN-5588215

The complaint

Miss J complains that NewDay Ltd, trading as Aqua, irresponsibly provided her with a credit card.

Miss J is supported in bringing this matter by a representative. But, for ease, I'll refer to actions and submissions as being those of Miss J throughout.

What happened

NewDay provided Miss J with a credit card in April 2017 with a credit limit of £1,200. The credit limit was increased to £2,200 in July 2017 and £2,400 in October 2020.

In summary, Miss J says she struggled to repay the credit and she was close to, or exceeding, her credit limit. She says she was using the money for essential spending. Additionally, Miss J also says NewDay didn't ask her any questions to confirm she would be able to repay the credit in a sustainable way.

NewDay reviewed matters but didn't uphold the complaint. In summary, it thought the account was provided responsibly and the affordability assessments carried out were appropriate and proportionate.

Miss J remained unhappy and brought her complaint to this service. An Investigator here reviewed matters and recommended that the complaint be upheld. He thought NewDay's checks showed Miss J wouldn't have enough disposable income to sustainably afford the repayments on the facility.

NewDay disagreed with the opinion. In summary, it reiterated that its checks showed the credit card was affordable for Miss J. It also said it built in conservatism around its figures and assumes a higher repayment level towards the credit.

Overall, an agreement hasn't been reached and so the case 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.

The rules and regulations in place at the time NewDay provided Miss J with credit required it to carry out a reasonable and proportionate assessment of whether she could afford to repay what she 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 Miss J. In other words, it wasn't enough for NewDay to consider the likelihood of it getting the funds back – it had to consider the impact of any repayments on Miss J.

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 particular 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 it needed to before lending to Miss J.

The opening limit of £1,200 was provided in April 2017. As part of its submissions, NewDay says it uses various sources, including its internal and external affordability checks, data from the Credit Reference Agencies and the consumer’s declared costs to calculate affordability before deciding whether to lend.

With this in mind, NewDay recorded Miss J’s gross annual salary as £12,000, which was equated to a net monthly income of £900. NewDay then considered Miss J’s expenditure, including credit commitments, living costs and housing costs. Having done so, it considered that Miss J had sufficient disposable income to sustainably afford repayments. It completed a credit check and noted that it had been 42 months since a default had been recorded, and it had been 19 months since a public record had been recorded. Miss J appeared to be managing all her current credit well.

Having reviewed all the information provided, in the circumstances of this particular case, I think NewDay gathered enough information to show that the lending was likely to be unaffordable for Miss J. I say this because I think its checks evidenced that Miss J wouldn’t be left with much money available for unexpected expenses each month once deducting her expenditure.

NewDay said it assumes a higher level of repayment towards credit in its calculations, rather than just the required amount to meet contractual minimum payments. NewDay also says it applies conservatism to its figures. However, I’m also conscious that it hasn’t explained exactly how Miss J’s disposable income would change if it didn’t apply conservatism in the way it says it has.

So, with this in mind, I’ve not been provided with anything to persuade me that Miss J’s disposable income would have been enough to sustainably afford this line of credit. I’ve also not seen anything to persuade me that not applying conservatism in the way NewDay describes would have inflated Miss J’s disposable income to the extent that the lending became affordable. Ultimately, NewDay based its lending decision on the information it recorded. And, for the reasons already outlined, I’ve not been provided with enough to persuade me NewDay’s checks showed Miss J would have been left with enough money each month. It follows that I don’t think NewDay should have opened this account for Miss J.

Given that I think the account shouldn’t have been opened, I think it’s reasonable to argue that the increases on the facility also shouldn’t have been provided, without needing to make a finding on whether the checks carried out were reasonable and proportionate. I say this because I think if matters had happened as they should have done in April 2017, the account wouldn’t have been opened. And, I’m not persuaded that Miss J would have been able to add to the credit which ought not to have been provided in the first place. I’m also conscious that Miss J began having trouble with the card within a few months of being given it, and around the time of each increase. Therefore, for these reasons, I don’t think the increases should have been provided either.

As NewDay provided Miss J with credit that it shouldn’t have, I think it needs to take action to put things right for Miss J.

To put things right for Miss J, NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied.

- If the rework results in a credit balance, this should be refunded to Miss J along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding this account from Miss J's credit file.

- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Miss J for the remaining amount. Once Miss J has cleared the balance, any adverse information in relation to the account should be removed from their credit file.

* HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Miss J a certificate showing how much tax it has taken off if she asks for one.

I've considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Miss J 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.

My final decision

My final decision is that I uphold this complaint and direct NewDay Ltd, trading as Aqua, to settle things in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 21 July 2025.

Hana Yousef
Ombudsman