

The complaint

Miss R complains that NewDay Limited trading as Aqua (NewDay) lent to her irresponsibly. She says NewDay didn't do enough to check she could afford to repay the lending sustainably. Miss R says that the initial limit and all subsequent limit increases were unaffordable.

What happened

Miss R opened an Aqua branded credit card account with NewDay in August 2013. Over the following years her limit increased as follows:

Date	Event	Amount
14 August 2013	Account opening	£250
03 February 2014	Credit limit increase 1	£500
03 April 2014	Credit limit increase 2	£1,200
03 September 2014	Credit limit increase 3	£2,000
03 February 2015	Credit limit increase 4	£3,000

Miss R complained to NewDay about the lending, and it explained it believed it had done the appropriate checks at both the account opening and the subsequent limit increases. Miss R was unhappy with this response and referred the case to this service.

One of our investigators looked into Miss R's complaint. He agreed the checks carried out by NewDay had been proportionate and the account was affordable for the opening credit limit on the account, and the limit increases up to £2,000. However, he didn't think the decision to increase Miss R's limit to £3,000 was fair.

Miss R accepted what our investigator said but NewDay didn't respond. So, the complaint has been passed to me for 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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance, and good industry practice - on our website. I've taken that into account when considering Miss R's complaint.

NewDay needed to take reasonable steps to ensure that it didn't lend irresponsibly to Miss R. This means that it should have carried out proportionate checks to make sure she could afford to repay what she was being lent in a sustainable way. These checks could take into

consideration several different things, such as how much was being lent, the amount of the repayments and Miss R's income and expenditure. There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Where the amount being lent to a customer is moderate, less thorough checks might be reasonable and proportionate. However, there are some factors which are likely to indicate that more thorough checks are needed, such as:

- A lower income
- A higher amount to be repaid
- Long term or running credit
- The number and frequency of loans and other credit accounts

I've taken all of this into account when considering Miss R's case. Having done so I don't think NewDay has acted fairly for broadly the same reasons as the investigator.

Opening limit and limit increases up to September 2014

An opening limit of £250 is relatively modest and would generally incur low monthly repayments if the account is maintained. So, we might not expect the same level of checks on this sum as we would expect on higher credit limits.

At account opening, Miss R had missed one payment in the last six months but at the time of the lending her accounts were up to date. She had a debt-to-income ratio of just under 20% and she had no defaults, bankruptcy's, CCJ's, IVA's or recorded debt management plans. So, I don't think the checks NewDay did, revealed any potential concerns about unaffordability at account opening. Given this, I think it reached a fair decision to lend at this point.

The credit limit increases between account opening and September 2014 significantly increased Miss R's overall available credit from £250 to £2000. Given the passage of time NewDay hasn't been able to provide any details from the checks it carried out at the time of these increases. This isn't unreasonable given how long ago the lending decisions were made. But it means I can't fairly say it carried out reasonable and proportionate checks. I think it would have been reasonable for NewDay to have carried out checks to ensure she could sustainably repay the increased credit limits. So, I need to establish what NewDay would likely have found if it completed proportionate checks.

Miss R has been able to provide us with a copy of her current account statements for the periods just prior to each limit increase. Having reviewed these, I can see Miss R was maintaining her other credit accounts at that time and making overpayments to some of her other credit facilities. Miss R also had a steady income, and enough disposable income to sustainably manage the payments to the account. So had NewDay carried out proportionate checks, I don't think the evidence would have suggested the credit limit increases made up to and including the increase in September 2014, would have been unaffordable. So, again I think NewDay made fair decisions to lend up to this point.

Limit increase in February 2015

Given the circumstances of Miss R's case, I think NewDay unfairly increased Miss R's credit limit in February 2015, and I'll explain why.

Again, I can't say NewDay performed reasonable and proportionate checks as it hasn't been able to supply the details of these given the passage of time. I can't be certain what further checks NewDay would have done and there's no definitive list of checks that a business must do. So, I can't say exactly what it would have seen had it tried to find out more. But I think it would have been reasonable for NewDay to gain a better understanding of Miss R's financial circumstances given the level of the limit increase, perhaps by asking her for information about her income and expenditure.

To establish what NewDay would likely have found had it completed proportionate checks, I've turned again to Miss R's current account statements from the time of this limit increase. I think it's reasonable for us to rely on these in the absence of any other evidence.

Having reviewed these statements, I can see in the months before the limit increase, direct debits to make the monthly payment to this credit card had been returned unpaid. So, I think it was apparent by this point that Miss R was struggling to maintain the credit limit she already had. This ought to have prompted NewDay to carry out more checks to ensure the new credit limit would be sustainable.

Had NewDay carried out more thorough checks, they would have seen that Miss R was reliant on her overdraft. Her living costs and indebtedness had increased, and this left her with significantly less disposable income to meet her everyday needs or absorb any future financial shock.

So, if NewDay had carried out proportionate checks I think it would have understood that increasing Miss R's credit limit in February 2015, would likely reduce her disposable income to an unmanageable level and lead to her not being able to sustainably repay the debt. So, I don't think it reached a fair decision to increase her limit at this point.

Putting things right

I think it's fair and reasonable for NewDay to refund any interest and charges incurred by Miss R as a result of the credit unfairly extended to her. I don't think the limit should have been increased from February 2015 onwards, therefore NewDay should rework the account and:

- Remove any interest and charges incurred as a result of any increases (including any buy now pay later interest) over £2,000. This means, NewDay can only add interest accrued on the balance up to the credit limit of £2,000.
- NewDay should work out how much Miss R would have owed after the above adjustments. Any repayment Miss R made since February 2015 should be used to reduce the adjusted balance.
- If this clears the adjusted balance any funds remaining should be refunded to Miss R along with 8% simple interest per year* - calculated from the date of overpayment to the date of settlement.
- If after all adjustments have been made Miss R no longer owes any money, then all adverse information regarding this account should be removed from her credit file from February 2015.
- Or, if an outstanding balance remains, NewDay should look to arrange an affordable payment plan with Miss R for the outstanding amount. If the debt was sold to a third party, NewDay should either repurchase the debt or liaise with the third party to

ensure the above steps are undertaken. Once Miss R has cleared the balance, any adverse information because of the unfair lending should be removed from the credit file.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Miss R a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

I think NewDay acted unfairly when it extended further credit to Miss R from February 2015. To put this right, I direct NewDay Limited to pay compensation as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 14 July 2025.

Charlotte Roberts
Ombudsman