

The complaint

Mr K complains, through his representative, that NewDay Ltd trading as Aqua ("NewDay") gave him a credit card and increased the limit without carrying adequate affordability checks.

What happened

A summary of Mr K's credit limits can be found below.

Date	Event	Credit Limit	Change to
November 2016	Card approval	£300	-
July 2017	Limit increase 1	£300	£900
January 2018	Limit increase 2	£900	£2,150
June 2018	Limit increase 3	£2,150	£3,400
November 2018	Limit increase 4	£3,400	£4,500
September 2019	Limit increase 5	£4,500	£6,500

The account was closed in or around July 2022.

Following Mr K's complaint about the lack of affordability checks, NewDay issued a final response letter in August 2024, and it explained why it wasn't going to uphold the complaint.

After the complaint had been referred to the Financial Ombudsman Service one of our Investigator's issued a view to say that NewDay hadn't made an error when it approved the card or when it allowed the first two credit limit increases. However, the investigator concluded NewDay shouldn't have approved any further credit limit increases for him because a more thorough review of his finances would've shown Mr K was reliant on his overdraft, and all of his spending was on day-to-day living costs.

Mr K's representative accepted the assessment, but NewDay didn't agree and it gave reasons why. These comments didn't persuade our Investigator to change her mind about the outcome of the complaint and so it was passed to me.

I issued a provisional decision explaining the reasons why I was not intending to uphold Mr K's complaint. Both parties were asked to provide any further submissions no later than 25 June 2025.

We didn't hear from NewDay and Mr K's representative acknowledged receipt of the decision but hasn't provided any more comments.

A copy of the provisional findings follows this in smaller font and forms part of this final decision.

What I said in my provisional decision:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Our approach to unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - is set out on our website and I have followed it here. NewDay is required to lend responsibly. It needed to conduct checks to make sure that the credit it was giving to Mr K was affordable and sustainable.

Such checks needed to be proportionate to things like the credit limit it offered Mr K, how much he had to repay (including interest and charges) each month, his borrowing history with it and what it knew about his circumstances. But there is no set list of checks it had to do.

This means to reach my conclusion I need to consider if NewDay carried out proportionate checks at the time it provided the card and when it approved the credit limit increase for Mr K, and if so, did it make fair lending decisions based on the results of its checks; and if not, what better checks would most likely have shown. I'll also consider whether NewDay acted unfairly towards Mr K in some other way.

Card approval and the first two credit limit increases

The investigator didn't uphold the complaint about the card approval or the first two credit limit increases. Mr K's representative, accepted the finding reached by the investigator including not upholding this part of the complaint. While NewDay disagreed with the outcome reached by the investigator they didn't disagree that it hadn't made an error when the card was approved or the first two limit increases.

As such, that element of the complaint appears to be resolved and therefore I won't make any further findings. Instead, I've focused on the third credit limit increase which occurred in June 2018 and those that followed.

Did NewDay carry out proportionate checks when it approved the third credit limit increase?

Prior to granting this credit limit increase, NewDay has said that it carried out an income and expenditure check as well as conducting a credit search.

However, the results of the income and affordability check haven't been made available because NewDay says the data hasn't been retained. However, a summary of the credit check results it received has been made available, and it looks like Mr K at the time had just under £2,000 of other debt.

I've also taken a look at the conduct of Mr K's account to see whether there were any signs that Mr K was having or likely having financial difficulties. I've notice NewDay had levied a late fee on Mr K's April 2018 card statement. And t since the turn of 2018 Mr K was now regularly using his card for cash withdrawals. This can be a sign of some difficulties but not on its own. Since January 2018 Mr K had withdrawn nearly £1,000 when since inception of the card there had only been a couple of withdrawals. This seemed to be a change in behaviour.

I've also noted what NewDay has said about the parameters it uses to determine whether cash withdrawals could be indication of wider financial problems but the fact that Mr K went from barely withdrawing any cash to then using it regularly – each month - coupled with the late payment ought to have prompted NewDay carrying out further checks before it increased the limit.

And while Mr K did appear to be paying more than the minimum monthly repayment. I've also had to weigh this up against the checks that it did, and the fact Mr K's credit limit was increasing to £3,400. So, I do think further checks were needed before it granted the third credit limit increase. But just because I think further checks were needed that doesn't on its own mean the complaint should be upheld about this credit limit.

NewDay's checks could've gone further simply by taking a more detailed looked at Mr K's situation or requesting any documentation it felt was needed or it could've requested bank statements. To be clear that does mean that NewDay didn't need to ask for or obtain bank statements.

I accept had NewDay conducted proportionate checks it may not have seen all the information that I have seen. But, in the absence of NewDay conducting a proportionate check I do think it's fair and reasonable to consider statements that I now have access to. And having looked at the statements I've come to the same conclusions as the investigator for broadly the same reasons.

As the investigator pointed out NewDay, by carrying out a proportionate check would've likely seen that Mr K's bank statement was in effect in a permanent state of being overdrawn – even after receiving an income and the other credits into it – which appear to be contributions towards the rent. Which may suggest that Mr K was having financial difficulties.

However, I do have to weigh this up against the fact that Mr K was repaying significantly more than he needed in order to repay the facility within a reasonable period of time. Indeed, the payments he was making were in excess of what was needed to repay a much larger credit limit.

I also can't ignore that a further review of the bank statements shows that there wasn't anything beyond the overdraft use that would've led NewDay to conclude Mr K was either in financial difficulties or couldn't afford to make his payments as expected. There weren't as far as I can see any evidence that he was borrowing lots of other credit or was having problems making his existing payments. And he was not drifting into his unauthorised overdraft and incurring further charges,

Having thought about everything, while I can see that Mr K was using his overdraft, I'm not persuaded that is sufficient to say that Mr K couldn't afford to take on a larger credit limit. I am therefore, unlike the investigator not upholding the complaint about NewDay's decision to increase the credit limit because a proportionate check would've shown NewDay that Mr K was still in a position to afford the repayments.

Did NewDay carry out proportionate checks when it approved the fourth credit limit increase – to £4,500 in November 2018?

NewDay appears to have carried out the same sort of checks for this credit limit increase as it had done for the previous ones. I accept this time some of the information that it obtained has been made available and it says that it worked out that Mr K had around £2,500 per month in disposable income. So, so there wouldn't have been any affordability concerns that he couldn't take on an additional credit limit of £1,100 – taking the total credit limit to £4,500.

Looking at the account conduct, while Mr K had continued to use cash withdrawal from the account, he had also continued to make payments far in excess of the minimum payment that was needed. So, he was demonstrating that he was able to repay the existing limit within a reasonable period of time and was potentially able to take on a greater limit.

I also accept that some of the figures used by NewDay may not have been entirely accurate. I know from a review of his bank statements Mr K's income wasn't as high as NewDay calculated from the income check that it carried out.

There could be a number of reasons for this such as Mr K was receiving payments into his account from other parties which would've inflated the account turnover. But notwithstanding that, I still think NewDay was entitled to have relied on what it was told. As there wasn't anything to have prompted it to have verified Mr K's income say through either bank statements or a payslip.

The credit check has been provided, which showed the total balances owed to other credit accounts was £3,395 which is not a high figure. But there were no missed payments or signs of other delinquency and there wasn't anything to suggest Mr K was reliant on credit – after all he only had two active accounts being reported to the credit reference agency. There wasn't anything from the credit search results that would've indicated that Mr K wasn't in a position to repay a larger limit within a reasonable period of time.

Given the checks in my view were proportionate and showed that Mr K was likely in a position to afford to take on the increased credit limit and repay it within a reasonable period of time, it therefore follows that I'm not upholding Mr K's complaint about this limit increase.

Did NewDay carry out proportionate checks when it approved the fifth credit limit increase – to £6,500 in September 2019?

NewDay's income and expenditure check that it carried out suggested the new credit limit increase was affordable to Mr K, and I think these checks were proportionate given how Mr K had used the facility and what the credit check results showed NewDay.

The credit search results provided by NewDay suggested a similar position to what Mr K had been in during the course of the relationship. There were no defaults, missed payments or other types of insolvency. While Mr K did now have a third active account there were again no signs that he was reliant on credit or was struggling to repay what he already owed.

Having looked at the account conduct since the last increase, Mr K had by and large stopped taking cash withdrawals from the card – only 2 had been made within the last 10 months totalling £280. He had also continued to pay in excess of the minimum payment – for example between March and May 2018 Mr K had paid £1,200 against the account balance whereas minimum payment amounts needed to be around £490.

And while I accept there was one overlimit fee levied in January 2019, there hadn't been any other issues with the account and I don't think one overlimit fee – and only the second charge added to the account within the last three years - wouldn't have led NewDay to believe that Mr K wasn't repaying his card in a sustainable manner. And I am not persuaded that this fee ought to have prompted further checks as there was no pattern of these being charged.

There also wasn't anything in either the results of the checks it carried out or the way Mr K had used the account to date to suggest that he wouldn't be in a position to afford the new limit. I am therefore intending to not uphold Mr K's complaint.

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.

As neither party provided any further submissions, I see no reason to change the outcome that I reached and which was set out in the provisional decision. I've therefore reached the same outcome for the same reasons.

NewDay didn't make an error in providing Mr K with the card or increasing the credit limits in the manner that it did – for the reasons given in the provisional decision and which can be found above. I am therefore not upholding Mr K's complaint.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think NewDay lent irresponsibly to Mr K or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

For the reasons I've explained above and in the provisional decision, I'm not upholding Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 25 July 2025.

Robert Walker
Ombudsman