

The complaint

Mr B says NewDay Ltd trading as Aqua ('NewDay'), irresponsibly lent to him. He says it didn't take reasonable steps to ensure he could afford the repayments towards a credit card. He says that this has caused him some financial problems over the time he has used it.

Mr B's complaint has been brought by a representative and I've referred to Mr B and the representatives' comments as being from Mr B for ease of reading.

What happened

This complaint is about a credit card that Mr B took out in January 2018. The initial credit limit was £1,200. The credit limit was increased in August 2018 to £2,300, it was increased in December 2018 to £4,000 and then in September 2019 to £5,200.

Mr B has complained to NewDay saying it shouldn't have given him the credit card and then increased the limits of it. He feels that he has been financially disadvantaged by making the repayments to the card.

NewDay considered this complaint, and didn't uphold it. It thought it'd done adequate checks, which showed that Mr B could afford the card, and it conducted robust assessments, that showed the card was affordable. It did these assessments when the card was started and at each credit limit increase.

Mr B didn't agree with this and brought his complaint to the Financial Ombudsman Service.

Our Investigator upheld Mr B's complaint. She thought the card shouldn't have been approved as the checks NewDay made at the start showed that Mr B would only have around £100 left after his normal expenditure to make the card repayments and any other expenditure he would have.

NewDay didn't agree with the Investigator. It said that its assessments were robust, and in line with the regulator's guidelines and rules at the time of sale. And Mr B did not use all his credit limits and generally paid the balance in full. There was no sign of any credit problems at the time the card was started and when it increased the credit limits.

There was some further correspondence, but no new issues were raised. Because NewDay didn't agree, this matter has been passed to me to make a final 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.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider when 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 itself that Mr B 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 Mr B could sustainably repay the borrowing?
2. Did NewDay act unfairly or unreasonably in some other way?

And, if I determine that NewDay didn't act fairly and reasonably when considering Mr B's application, I'll also consider what I think is a fair way to put things right.

Did NewDay complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay the credit in a sustainable way?

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration, and payments of the finance being applied for, as well as the borrowers' personal circumstances at the time of each application.

NewDay asked Mr B what his income was, and he said that it was around £17,000 a year or £1,200 a month. I can't see that NewDay verified Mr B's income, although it may have used a tool from a credit reference agency to do this and now no longer has this information. I understand it did routinely verify an applicant's income in this way.

NewDay did look at Mr B's credit file and it says it applied a series of calculations that looked for signs of financial stress and affordability. It's said these included looking at the amount of active credit accounts Mr B had, how he was using his other credit facilities and what his debt to income ratio was. It concluded that he could likely afford the card repayments from this check.

NewDay then went on to estimate Mr B's other likely expenditures using statistical information provided by the Office of National Statistics ('ONS'). It's worth noting that the regulations do allow this, and I don't think this was an unreasonable approach to take here.

These checks showed Mr B had an income of just over £1,200 a month. He was already paying just over £300 a month to other creditors, and it estimated his housing costs were just under £400 a month. It estimated his other living costs were just over £400 a month. This would leave him with just over £100 (the exact figure was £104.82) each month to repay the card and any other expenditure he may have had.

Our Investigator thought these checks, made before the card started, showed that Mr B was unlikely to be able to pay the card repayments in a sustainable manner as the amount he had left over was too low after considering his existing commitments and other expenditures. I have independently reviewed the evidence of Mr B's income and expenditure and have come to the same conclusion.

I agree that the amount that Mr B had left over was probably too small. I'm saying this on the basis his income was modest. And the amounts estimated for his other expenditures were also modest. So, there was a higher likelihood, if Mr B had any unforeseen expenditures, that he may have struggled to repay these alongside the card, from the very low amount he had left over after his other expenditures.

And when saying this I'm bearing in mind that the information from NewDay shows Mr B had a mortgage with a value of £138,000 and other unsecured debts of £8,900. So as a homeowner it's a reasonable assumption that unforeseen expenditures would happen from time to time. And there was unlikely to be enough left over when this was the case.

And Mr B was already paying over £300 to his existing creditors and the housing cost amount that NewDay used would likely be his mortgage repayment. This would mean about £700 of his income was already going to creditors in some shape or form. I think this is too high.

I appreciate that Mr B didn't seem to have any recent credit problems, and he did repay the card well, as NewDay said. And I've noted what it said about how it assessed the lending and how this has changed over time. But I don't think either of these factors alter what I have said about the checks NewDay did.

But considering all the information I've seen about Mr B's circumstances I think these factors made it unlikely that Mr B would be able to sustainably repay the new card. And NewDay should have acted on the information it had and not provided the card. So, it now needs to put things right.

Did NewDay act unfairly or unreasonably in some other way?

Finally, I've thought about whether considering this complaint more broadly as being about an unfair relationship under Section 140A of the Consumer Credit Act 1974 would lead to a different outcome. But even if it could (and should) reasonably be interpreted in that way I'm satisfied this wouldn't affect the outcome in this case.

I haven't seen anything to make me think NewDay acted unfairly or unreasonably in some other way.

Putting things right

I don't think NewDay ought to have opened the account, so I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I think Mr B should pay back the amounts he has borrowed. Therefore, 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 Mr B along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement.
- NewDay should remove all adverse information regarding this account from Mr B's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should try to arrange an affordable repayment plan with Mr B for the remaining amount.
- Once Mr B has cleared the balance, any adverse information in relation to the account should be removed from their credit file.

If NewDay has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mr B a certificate showing how much tax has been taken off if he 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

For the reasons I've explained, I uphold Mr B's complaint.

NewDay Ltd should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 August 2025.

Andy Burlinson
Ombudsman