DRN-5759838

The complaint

Ms K complains that NewDay Ltd trading as Aquacard lent to her irresponsibly.

What happened

In February 2018, Ms K applied for – and was given – a credit card with NewDay. An Initial credit limit of £450 was agreed. Since then, her limit was amended as follows:

Date	Credit Limit Increase / Decrease (CLI/*CLD*)	New Limit
24 October 2018	CLI1	£900
27 June 2019	CLI2	£2,150
21 October 2019	CLI3	£3,900
8 November 2020	*CLD1*	*£3,000*
8 February 2022	CLI4	£4,000

Ms K complained to NewDay. She said she already had around £10,000 of debt elsewhere when she applied for the card and was a single mother working part time on a low income. She said when NewDay increased her limits, she wasn't working at all. Ms K says NewDay never contacted her about *"persistent debt"*, and she had to pay *"massive"* interest on the account. She said she spoke to NewDay a few times and *"was firmly told interest could not be decreased"*. To resolve her complaint, Ms K asked for a refund of interest she has paid on the account.

NewDay looked into Ms K's complaint and issued a final response letter. It explained the checks it had carried out including a review of information she had provided, information obtained from credit reference agencies such as how she managed her existing credit commitments. It said Ms K had declared an income of £21,000 per year when she applied, and her credit elsewhere was up to date. NewDay said it conducted a similar assessment before each credit limit increase was offered, and it had given Ms K 40 days to opt out of any increase if she felt it was unaffordable for her. Overall, it felt it had lent to her responsibly and didn't uphold the complaint.

Ms K didn't accept NewDay's response, so she referred her complaint to our service. One of our investigator's looked into it. She felt NewDay had conducted reasonable and proportionate checks for the account opening and for CLI1. But she felt it ought to have done more to understand Ms K's situation before offering CLI's 2-4.

Our investigator looked at Ms K's bank statements for a few months prior to each CLI and felt that Ms K had sufficient disposable income to be able to manage the increases. She said if NewDay's checks had gone further, it would still have agreed to lend to Ms K. She didn't uphold the complaint.

Ms K didn't accept our investigator's opinion of the complaint and said the investigator had *"absolutely no idea about the rules and regulations"*. As there was no agreement, 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 approach to complaints about irresponsible and unaffordable lending on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding this complaint. I note that Ms K has said our investigator didn't apply the rules and regulations, so I've included direct reference to some of them in this decision – much more than I would normally. This isn't because the investigator didn't consider them, rather she didn't refer to them directly because our service is designed to be informal and the regulations can be a little complex.

The Consumer Credit Sourcebook (CONC) sets out the regulations lenders must follow. When the account was opened and for CLI1, CONC 5.2.3G gave brief details of the kinds of things businesses could think about when assessing applications for credit.

It was replaced by CONC 5.2A on 1 November 2018 which remained in force and unchanged throughout CLI2-4. CONC 5.2A.20 sets out the kind of information a lender should take into account. The regulations are not prescriptive; they outline the kinds of things businesses might consider.

Essentially, NewDay needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Ms K irresponsibly. I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did NewDay carry out reasonable and proportionate checks to satisfy itself that Ms K was in a position to sustainably meet the repayments?
    - If not, what would reasonable and proportionate checks have shown at the time?
    - Did NewDay make a fair lending decision?
- Did NewDay act unfairly or unreasonably towards Ms K in some other way?

NewDay had to carry out reasonable and proportionate checks to satisfy itself that Ms K would be able to repay the credit sustainably. It's not about it assessing the likelihood of it being repaid, but it had to consider the impact of the repayments on her. There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the repayments and the overall circumstances of the borrower.

NewDay says it provides credit to people who may not have a perfect credit record, so it generally agrees a smaller initial credit limit and may increase it as the consumer shows they are able to afford and maintain payments over time.

Account opening – February 2018

When Ms K applied for the account, she declared her income to be £21,000 per year (£1,360 or so per month). She had existing credit commitments requiring monthly repayments of £239 and housing and living costs of around £870. This left a monthly disposable income of £250 or so.

NewDay took that information into account in its assessment and went on to review Ms K's credit file. This showed she had no defaults, County Court Judgments or Bankruptcies. Ms K's existing credit was all up to date.

Taking that information into account, NewDay agreed an initial £450 credit limit for Ms K.

I don't see anything in the checks NewDay carried out that would have caused it any concern. It follows that I think the checks were reasonable and proportionate and that it reached a fair decision to lend.

CLI1 to £900 – October 2018

For the first few months Ms K didn't use the account. But in August 2018, her statement balance was £410.03 which she reduced to £202 in September and £155 in October. So NewDay would have had no concerns about the way she was using the account.

NewDay reviewed her credit file each month and her external credit had fluctuated each month between £4,700 and £5,800 and there were no missed payments. Using automated tools, it found Ms K's income to be £3,600 or so in October 2018. It considered the expenditure details it had on record for Ms K and took the decision to offer to increase her limit to £900 at that stage. The notes show Ms K accepted the limit increase on 24 October 2018, so it appeared on her November statement.

I've seen nothing in the checks NewDay conducted or Ms K's account performance which I think ought to have led it to ask further questions of her before offering the limit. I think it made a fair decision to offer the increase to Ms K.

CLI2-4 (to £2,150, £3,900 and £4,000)

I think each of these limit increases were significant and took place comfortably over a year from application. So CONC 5.2A.6 says a further creditworthiness assessment would be required.

I can see NewDay obtained an income figure for each limit and used automated tools to estimate her expenditure (as allowed in CONC 5.2A.17 (2) and 5.2A.19 (1)). These showed that the credit limits were comfortably affordable based on the data it held.

By CLI2 (June 2019), Ms K was still using her account with NewDay well. Her statement balance was generally around £3-400 (although it had reached £830 and dropped as low as £90) against her £900 limit. Her income was identified as being £2,905 with expenditure estimated as £1,339, but her external credit had increased to around £9,800.

By CLI3 (October 2019) Ms K's account balance with NewDay had reached £1,100 or so – comfortably within her £2,150 limit. She'd made the required payments and her external credit remained up to date. Her income was showing as £2,480 with expenditure of £1,300. Her external debt had dropped to £8,100 but increased again back to around £9,800.

Ms K requested her limit to be reduced to £3,000 in November 2020, which NewDay agreed to as I would expect. At this stage, her external debt was showing as £16,350. For a few months after that, her balance was slightly over the new limit, but in June 2021, she reduced it to £285. She began to use the card again - up to £2,000 by November 2021 but her external debt had fallen to £14,550.

Around 14 months later, February 2022 NewDay offered CLI4 to £4,000. At this time, her balance on her account was around £1,800 against her £3,000 limit. NewDay found her income to be £3,750 and her expenditure to be £2,270. Her external credit had was now showing as £14,650 and was up to date.

So on the face of it, I can see why NewDay felt the increases were reasonable and that it had enough information to reach those decisions. CONC 5.2A.27 says the lender must assume the consumer draws the whole credit limit and *"repays by equal instalments over a reasonable period"*. CONC 5.2A.28 says a *"reasonable period for repayment for the purposes …[would be]… the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the credit limit"*.

If Ms K had applied for a loan of up to £4,000 in this period, I may well have been further checks given the growth in her external debt from around £5,000 up to a maximum of £16,000 and her income seemed to vary significantly between £2,480 to £3,750. So, I think it would have been sensible for NewDay to have had a closer look at Miss K's circumstances prior to each of these CLI's.

Again, there is no set way of for lenders to gain a better understanding of a consumers circumstances set out in CONC. But one way a business may choose to gain a better understanding is to review their bank statements as these will generally give a good picture.

Ms K has provided us with bank statements for a few months prior to CLI2, 3 and 4, and I have looked closely at those. On each occasion, the statements show a mix of income from work, benefits and a regular transfer from a family member. The income through the account shows NewDay's figures to have been reasonable. The essential expenditure leaving the account leaves a healthy disposable income and more than sufficient for her to meet the repayments due on NewDay's account, and as required under CONC 52A.28.

Ms K has questioned the use of her family member's monthly payment to her as part of her income. CONC 5.2A.12 says a business may consider *"income received by another person in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement"*. The money in from the family member is regular enough in amount and time for me to think that it would be reasonable for NewDay to have considered it would be likely to continue and therefore take it into account in an assessment. That said, even if that amount was not included, I think NewDay would still have considered the lending was affordable for her.

Overall, I think NewDay reached fair decisions to offer Ms K the limit increases it did.

<u>Did NewDay act unfairly or unreasonably towards Ms K in some other way?</u>

I've carefully read and considered everything provided by Ms K and NewDay. I can see that Ms K did contact NewDay on occasion regarding the interest rate applicable on the account. NewDay responded to her concerns and provided advice. But it is free to set the cost of the credit it provides, so long as it does so fairly. I can't see that Ms K's interest rate was set unfairly or increased out of line with what I'd expect.

I can see too that Ms K spoke to NewDay in March 2020 about financial difficulties as she had been affected by the Covid-19 pandemic and was out of work. It agreed a payment freeze to July 2020, and spoke to her again at that point. Ultimately her limit was reduced in the November 2020 as mentioned above. I think NewDay's actions were in line with what I'd expect.

Ms K told us that NewDay hadn't written to her about *"persistent debt"*. CONC 6.7.27 says that a consumer is in persistent debt when they have paid more in interest, fees and charges than they have towards the capital they owe over the previous 18 months. I've looked at Ms K's balances and it's clear that while she sometimes made the minimum payments, she also made lump sum payments. This means her account didn't meet the persistent debt definition such that NewDay would be required to step in.

For the reasons I've already given, I don't think NewDay lent irresponsibly to Ms K or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A of the Consumer Credit Act 1974 would, given the facts of this complaint, lead to a different outcome here.

I'm sorry to disappoint Ms K by providing a similar assessment to that of our investigator, but I hope my reference to the regulations is helpful for her and assures her that the investigator did bear them in mind when reaching her opinion of the complaint.

If Ms K finds herself in difficulties, I'd encourage her to speak to NewDay to try to reach a reasonable repayment plan. I remind NewDay of its obligation to treat customers in difficulty fairly.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 19 November 2025.

Richard Hale
Ombudsman