

The complaint

Mrs W complains that NewDay Limited (NewDay) acted irresponsibly when they agreed to lend to her

What happened

I issued Mrs W and NewDay with a provisional decision setting out why I was minded to uphold Mrs W's complaint and invited both parties to provide any further evidence and/or submissions in reply.

An extract from that provisional decision is set out below.

In May 2020, Mrs W successfully applied for an Aqua credit card with NewDay with a credit limit of £300. Following this, NewDay increased her credit limit in August 2020 to £1,300 and again in January 2021 to £2,800. Mrs W also successfully applied for a Fluid credit card with NewDay in May 2022 with a credit limit of £250. There were no credit limit increases on this second account.

Mrs W complained to NewDay to say that they shouldn't have given her these cards or increased her credit limit as they were unaffordable, as she was reliant on credit. Mrs W does not think that the checks done before the increases were thorough enough and so doesn't feel she should pay interest when the limit exceeded £300. After she reached out to NewDay about her difficulty in making payments, she was given a payment plan in April 2023. However, because she was still able to use the card, the balance continued to increase. Mrs W would like the card blocked with fees and interest suspended, and to be paid compensation for distress and inconvenience.

In their response, NewDay said they did not see any indication of financial difficulties and found that the lending was affordable and sustainable in each case. They said they have since suspended both accounts so that these could not be used further, but payments would still be required.

Mrs W wasn't happy with NewDay's response and referred her complaint to us. Our investigator said that they thought that each of the lending decisions were fair and reasonable in the circumstances.

NewDay didn't dispute this position, but Mrs W did, pointing to the amount of time where repayments were predominantly interest payments, while the balance on the accounts continued to increase. As an agreement couldn't be reached, Mrs W asked for an ombudsman to decide on the matter. So, the case has been passed to me to decide.

What I've provisionally 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.

While Mrs W has provided detailed evidence of her complaint, and whilst I've considered all the available information, I've not reflected every point that has been raised. No discourtesy is intended here, this is merely to reflect my informal role in deciding a fair and reasonable outcome. So, I've focused on what I think are the key issues of the complaint. If there is something I haven't mentioned, it isn't because I've ignored it.

I've considered what both parties have said about Mrs W's lending with NewDay. Having carefully considered everything, I don't currently think that NewDay acted fairly and reasonably throughout. I'll explain why.

The relevant rules, regulations, and guidance at the time of NewDay's lending decision required them to carry out proportionate checks. While there isn't a defined list of checks a lender needs to carry out, such checks should be proportionate, considering things like the type, amount, duration and total cost of the lending, as well as the borrower's individual circumstances. These checks needed to assess Mrs W's ability to afford the credit being approved and to be able to repay it sustainably, without causing her financial difficulties or harm.

It isn't sufficient for NewDay to just complete proportionate checks, they must also consider the information obtained from these checks to make fair lending decisions. I've considered the checks NewDay did and what they found from these checks.

Account opening – Aqua

Mrs W first acquired an Aqua card in May 2020 with a credit limit of £300. NewDay considered Mrs W's circumstances at the time by reviewing information including affordability calculations, application data and Mrs W's credit file data. Mrs W declared an annual gross income of £12,120. Considering a monthly net income of around £909 and taking into account her expenditure and the cost of the current lending, NewDay estimated that she would have a disposable income of around £254.

NewDay reviewed Mrs W's Credit Reference Agency (CRA) data which indicated that she had a low level of unsecured debt elsewhere compared to her income and was managing that debt well. She had no bankruptcies or County Court Judgments (CCJ) recorded, no payday loans or repayment plans and had no arrears at the time. Her most recent default was 43 months prior to the application. I think that on balance, it was reasonable that this did not cause concern to NewDay in the circumstances.

As such, I think the checks that were carried out by NewDay leading up to the initial account opening and credit limit of £300 were reasonable and proportionate in the circumstances.

I also have to consider if, based on the information within these checks, the information was considered fairly. During their affordability assessments, NewDay found that Mrs W had housing costs around £174, credit commitments of around £73, and living costs around £405, leaving around £254 in disposable income. Checks of Mrs W's credit file did not indicate that she would be unable to afford to sustainably make required repayments.

Considering Mrs W's good credit file history, the amount of effective disposable income and the level of credit offered, I currently think NewDay made a fair decision to lend at this stage.

Credit increase one – Aqua

In August 2020, the credit limit on Mrs W's Aqua account with NewDay was increased to £1,300.

Conducting similar checks to the above, NewDay found that Mrs W's CRA data showed she hadn't missed or had any late payments, and her accounts with other providers were managed well. Mrs W had also managed her existing Aqua credit well, by consistently paying much more than the minimum monthly payment. NewDay utilised CRA data to find that Mrs W's effective disposable income was around £521.

Although this was a substantial increase in credit, taking into consideration the way that Mrs W had managed her existing credit with NewDay, the information on her credit file and the disposable income found, I think the checks made before this limit increase were reasonable and proportionate in the circumstances.

I also have to consider if, based on the information within these checks, the information was considered fairly. NewDay used credit file information to find that Mrs W had a monthly income of around £1,163. They found that her monthly housing costs were around £157, her existing credit commitments were £24, and her cost of living was £461. This would leave a remaining disposable income of £521. Mrs W had declared a lower income of only £909 per month earlier that year. However, even if this lower amount is taken into account, this would still leave a remaining disposable income of £267. Therefore, I currently think NewDay made a fair decision to increase the credit limit at this time.

Credit increase two – Aqua

In January 2021, there was a further limit increase to £2,800. While Mrs W generally continued to manage her Aqua account well, there was a payment which exceeded the credit limit October 2020. Her CRA data also showed that she had fallen behind on two payments in October 2020 which were still behind in November 2020. I think that this ought to have indicated to NewDay that further checks should be done to better understand Mrs W's circumstances. This limit increase was also now substantially more than the amount of credit she was first given. I think this shows the checks were not proportionate to the credit limit being offered at this time.

I therefore need to ascertain what proportionate checks would have shown if they were done at the time. So, I've considered the information in Mrs W's current account statements leading up to this lending decision to get a picture of what information would most likely have been available had NewDay asked further questions at this time.

From this, I thought that the amount that NewDay relied upon through their affordability assessment was similar to that which would have been found had they asked further questions about Mrs W's income and expenditure at the time. Taking into account a monthly average of regular payments for things such food, utilities, transport costs, insurances, and subscriptions as well as income being received, I thought that the information suggested Mrs W would have over £500 of disposable income, compared to the £538 found by affordability assessments carried out by NewDay. There wasn't any housing costs found on these statements. But I think that even if the estimated housing costs given by NewDay were taken into account, there would still be a reasonable disposable income remaining for this lending to be sustainably repaid.

I don't think that the information on Mrs W's credit file a few months prior to the lending is enough to find that there were concerns about her reliance on credit or ability to make sustainable payments. So, I think that had NewDay considered Mrs W's circumstances using reasonable and proportionate checks, they would have found it was affordable and sustainable. As such, I currently think that the decision to lend was fair.

Account opening – Fluid

Mrs W received a Fluid credit in May 2022 with a credit limit of £250. NewDay reviewed affordability calculations and credit file data to consider whether Mrs W's circumstances meant this lending was affordable as well as considering information on file about her existing lending with them.

During this application, Mrs W declared that her annual income was £24,750. NewDay made checks to find Mrs W's housing costs were around £201, her credit commitments were around £182, and her cost of living was around £441. Taking into consideration her declared monthly income of around £1,778, this meant Mrs W would have a disposable income of around £952.

Upon reviewing Mrs W's credit file, they found that Mrs W didn't have any CCJs, payday loans or repayment plans recorded, or any current arrears. Her most recent default was many years prior to this application. The information held by NewDay at the time also found that Mrs W's existing credit card account was being managed well with payments frequently being made well over the required payment amount. Her level of indebtedness remained low with around £3,631 outstanding overall.

Based on the circumstances of this case, including CRA data and Mrs W's declared income, I thought that the checks which NewDay carried out before lending were reasonable and proportionate in the circumstances. I also thought that this information showed that Mrs W would be able to sustainably repay the credit offered by NewDay up to this point and that the information was considered fairly. So, I currently think NewDay made a fair decision to lend.

Mrs W raised as part of her complaint that Consumer Duty had been breached. The lending decisions occurred prior to when these rules came into place on 31 July 2023, so these cannot be considered under Consumer Duty. However, I have considered whether Mrs W was treated with forbearance after this date.

Did NewDay treat Mrs W unfairly in any other way?

Mrs W reached out to NewDay in April 2023 to let them know that she was not able to make payments on the account due to financial difficulties at the time. I would have expected NewDay to exercise forbearance and due consideration in line with their regulatory obligations after Mrs W told them she was in financial difficulties. There's no fixed method by which this is to be achieved. As the circumstances of each individual borrower is different, a business needs to tailor their actions to take account of the customer's needs. Amongst many examples, this might involve reducing or freezing interest, reducing the rate of payment, or temporary suspensions of payments. But it is up to each business to decide what steps are taken to assist each customer.

After Mrs W reached out in April 2023, NewDay set up a payment plan with her which was later extended to November 2023. During this time, she did not need to pay fees or interest, and her balance decreased. However, after the plan ended in December 2023, Mrs W was again regularly exceeding her credit limit over both accounts. I think that by three months later in March 2024 it ought to have been clear to NewDay that Mrs W was having continued difficulty making repayments across both accounts.

I do not currently think that NewDay have acted with forbearance from March 2024. As such, I don't currently find that they have acted fairly from this point in relation to both cards.

In reaching my conclusions, I've also considered whether NewDay acted unfairly or unreasonably in some other way, including whether the lending relationship between Mrs W and NewDay might have been unfair to Mrs W under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied that what I've provisionally directed NewDay to do in the section below results in fair compensation for Mrs W given the overall circumstances of her complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Putting things right

As I currently intend to uphold Mrs W's complaint by saying that from 1 March 2024 it was not fair or reasonable to continue allowing her to use the account, I don't think it's fair for NewDay to be able to charge any interest or charges under the credit agreement from this date. But I think Mrs W should pay back the amounts she has borrowed. Therefore, NewDay should:

- *Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied from this date.*
 - o *If the rework results in a credit balance, this should be refunded to Mrs W 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 this date from Mrs W credit file.*
 - o *Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mrs W for the remaining amount. Once Mrs W has cleared the balance, any adverse information in relation to the account from 1 March 2024 should be removed from her credit file.*

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

Response to provisional decision

Mrs W accepted the above outcome and there was no response from NewDay. No further information was provided by either party. As there was no further information to consider, my final decision is made for the above reasons.

My final decision

For the reasons given above, I uphold this complaint against NewDay Limited and NewDay Limited should put things right as I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 9 April 2026.

Frances Kerslake
Ombudsman