

## **complaint**

Ms G is represented by her brother, Mr G who brings this complaint on her behalf. He thinks that NewDay Ltd trading as Aqua (NewDay) shouldn't have allowed Ms G to take out a credit card with it – because she is a vulnerable consumer.

## **background**

In September 2015, Ms G took out a credit card with NewDay. She was provided with a limit of £300, which she reached the same month she took out the card. It seems the only purchases made on the account were to what appears to be an online gambling site.

Ms G failed to make repayment on the account. In November 2015, Ms G's sister spoke with NewDay to ask why Ms G had been provided with a credit card and explained that she was a vulnerable consumer. NewDay responded to say it had carried out appropriate checks before lending to Ms G. But it invited Ms G's sister to submit medical evidence and it said it would review the account.

NewDay didn't receive anything further and so it defaulted the account. In May 2016, NewDay decided it was no longer going to try to collect the debt and so charged off the account.

In October 2016, Mr G complained to NewDay. He said as Ms G was unemployed at the time of the application and only in receipt of state benefit, it was wrong for NewDay to have lent to her at all. He sent NewDay medical evidence about Ms G's mental health condition.

To put things right, Mr G wanted NewDay to write off the account balance. He also said both he and Ms G had been caused distress by all that had gone on and he felt this warranted significant compensation.

NewDay didn't uphold Ms G's complaint. It said it didn't know Ms G was vulnerable at the time of the application. It said it processed Ms G's application in good faith relying on the information she had given it at the time. It said it would be wrong for it to discriminate and decline credit to those in receipt of benefits.

It said as soon as it had been made aware of Ms G's mental health condition and financial situation it had placed her account on hold. It didn't agree to pay any compensation, highlighting that it was not pursuing the balance on Ms G's account.

Unhappy with NewDay's response, Mr G wrote again to NewDay and he asked this service to look at Ms G's complaint. He didn't think NewDay had done enough here. He also wanted it to remove any adverse information from Ms G's credit file and to pay compensation.

Our adjudicator didn't uphold Ms G's complaint. He thought NewDay had carried out proportionate affordability checks at the point of application and he thought it had acted reasonably in response to Ms G's complaint.

Mr G didn't agree and asked for an ombudsman's decision.



## **my findings**

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

*should NewDay have allowed Ms G to open the credit card account in the first place?*

I can understand why Mr G thinks it was wrong of NewDay to have lent to Ms G at all. But we would not expect a bank to refuse to lend to a customer simply because they had a mental health condition. That could arguably amount to unfair discrimination. Instead, we would expect a bank to lend responsibly. Equally the fact that a customer's only source of income is state benefits, just like a mental health condition, is not a reason in itself to refuse to lend. In such circumstances, we would expect a bank to consider whether it was responsible to lend to the customer in question just like any other customer.

When deciding whether or not to lend, lenders must undertake reasonable and proportionate checks to see if lending is affordable. What is expected of a lender depends on several factors, including the amount of the credit, the repayments, what the lender knows about the customer, and the information that the customer has provided.

Here, Ms G was provided with a credit card limit of £300. The first monthly repayment was around £17.

NewDay told us about the checks it carried out when it lent to Ms G. It carried out a credit search and credit scoring and it asked Ms G about her income. The application shows that Ms G declared a yearly income of around £12,800 and indicated she was unemployed. As far as I can see, NewDay didn't ask her anything about her expenditure. Although Ms G has a longstanding mental health condition - I can't see that NewDay would've known that at the time it lent to her.

I asked NewDay for the results of the credit search it carried out. From the information it provided, I can see Ms G had four active credit accounts at the time of application, none of which it seems were being reported as in arrears. There were no county court judgments. There was one default but that was over four years old.

Having looked at Ms G's full credit file and what NewDay knew of Ms G, I can't see any information that might have prompted it to make further enquires before lending to her.

Having considered all of the information available, including what NewDay knew at the time of the application, the credit limit sought and the monthly repayments, I think the checks carried out by NewDay were proportionate. So it follows that I don't think NewDay was acting irresponsibly when it lent to Ms G.

*did NewDay respond appropriately once it became aware Ms G was a vulnerable consumer?*

NewDay said it was first made aware of Ms G's vulnerabilities in November 2015. NewDay said once it became aware Ms G was a vulnerable consumer it placed a block on her account. It said its normal process is to place a hold to allow for medical evidence and details of income and expenditure to be sent to it.



It didn't receive this evidence and so at the end of February 2016, it started its default process and sent Ms G letters inviting her to contact it to discuss the arrears. In May 2016, NewDay charged off the debt and decided not to pursue Ms G any further for it.

NewDay wasn't under any obligation to charge off the debt and it is certainly a positive and sympathetic step that it has taken. But I think NewDay needs to go little bit further here and fully write off the debt. By this I mean that the balance is set to zero and no further payments are due.

I think this course of action is appropriate given the particular circumstances of this case, namely that: the debt had already been charged off; the seriousness and long-term nature of Ms G's mental health condition; and that Ms G appears to have little or no disposable income to service the debt. Although this will have little practical impact on Ms G (as the debt wasn't being pursued) it is in line with relevant guidelines and brings complete closure to the matter for Ms G.

I acknowledge NewDay's concern that if it were to write the balance off, it would reflect on Ms G's credit file as though she has a nil balance – which could mislead potential lenders. But reporting the balance as written off is in line with relevant guidance. What's more, the account should still show as having been defaulted which serves to highlight to future potential lenders the difficulties Ms G has had with her finances.

I acknowledge that Mr G thinks that the default should be removed from Ms G's credit file. But I think the default is an accurate, and as I've set out above, necessary reflection of what happened with this account. So I don't think I can fairly or reasonably ask NewDay to remove the default from Ms G's credit file.

I'm sorry Mr G feels distressed by his dealings with NewDay. But, as our adjudicator explained, I can only fairly tell a business to pay compensation for any trouble or upset experienced by its customer – not a third party. In any event, NewDay is no longer pursuing Ms G for the debt, which is money that she had the benefit of and as I've set out above, I don't think was irresponsibly lent in the first place.

Having carefully considered the complaint, I think that NewDay has, broadly speaking, acted positively and sympathetically here - save that it should fully write off the debt to fairly address this complaint.

### **my final decision**

My final decision is that I uphold this complaint in part only. To settle it, NewDay should fully write off the debt.

Under the rules of the Financial Ombudsman Service, I'm required to Ms G to accept or reject my decision before 1 September 2017.

Siobhan Kelly  
**ombudsman**