

Complaint

Mrs G has complained that NewDay Ltd (“NewDay”) irresponsibly provided her with credit card accounts, which it then allowed her to access funds in order to gamble even after a prohibition on using credit cards for gambling was introduced.

Background

Mrs G had two credit card accounts with NewDay. The following accounts were opened on the following dates:

Aqua Card

July 2016 – Opened with a credit limit of £300
November 2016 – Limit increased to £1,100.00
March 2017 – Limit increased to £2,300.00
July 2017 – Limit increased to £3,800.00
February 2018 – Limit increased to £5,300.00.

Fluid Card

May 2018 – Opened with a credit limit of £900
April 2019 – Limit increased to £1,650.00
July 2019 – Limit increased to £2,650.00
February 2020 – Limit increased to £3,650.00.

NewDay didn’t think that it had done anything wrong when providing Mrs G with either of her credit cards or increasing her credit limit on any of the occasions it did. So it didn’t uphold the complaint. Mrs G was dissatisfied with NewDay’s response and referred her complaint to our service.

One of our investigators looked at everything provided and she thought that NewDay had hadn’t done anything wrong or treated Mrs G unfairly. So she didn’t think that the complaint should be upheld.

Mrs G disagreed with our ombudsman’s assessment and asked for an ombudsman to review her complaint.

My findings

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 general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website.

NewDay needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mrs G could afford to repay what she was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure.

With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate. But certain factors might point to the fact that NewDay should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the frequency of borrowing, and the longer the period of time during which a customer has been indebted (reflecting the risk that prolonged indebtedness may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I've kept all of this in mind when deciding Mrs G's complaint.

Aqua Card

Mrs G's Aqua Card was opened in July 2016 with a credit limit of £300. Mrs G's credit card, under the regulator's rules and guidance, is also known as a revolving credit facility. As Mrs G's Aqua Card was a revolving credit facility, this meant that NewDay was required to understand whether Mrs G could repay around £300 within a reasonable period of time. Not whether she could pay the entire amount in one go.

I understand that NewDay carried out a credit check before initially agreeing to provide this credit card. NewDay has been unable to provide a detailed output of its credit checks. But given the credit check was carried out a number of years ago, I don't find this too surprising and I've not drawn any adverse inferences from this.

What is important to note is that a credit limit of £300 would have required a small monthly payment in order to clear the full amount owed within a reasonable period of time. And the information I've seen about Mrs G circumstances does suggest that she had the funds to make these payments. As this is the case, I'm satisfied that it wasn't unreasonable for NewDay to have agreed to open Mrs G's Aqua Card for her.

As I've explained in the background section of this decision, NewDay subsequently increased Mrs G's Aqua credit limit on five occasions until it eventually reached £5,300.00 in February 2018.

NewDay has said that it carried out credit searches on Mrs G and considered this in conjunction with relying on Mrs G's conduct and record on her Aqua Card when deciding if it

should lend to her. However, while I do think that this was a reasonable course of action for the first credit limit increase, I don't think that this on its own was sufficient for the later ones.

Given the amount Mrs G would be expected to pay on the increased limits from March 2017, I would have expected NewDay to have found out more about Mrs G's income and expenditure (particularly about her actual regular living expenses) before providing the March 2017 increase as well as any further ones.

NewDay has been unable to evidence having done this in this instance. As this is the case, I don't think that the checks it carried out before it provided the March 2017 to February 2018 limit increases were reasonable and proportionate.

Where a firm failed to carry out reasonable and proportionate checks before providing credit or increasing the amount available to a customer, I need to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown. So I've looked at the information Mrs G has provided to get an idea of what NewDay is likely to have learned had it carried out further enquiries into Mrs G's living expenses.

In particular, I've looked at the current account statements Mrs G has provided for the period leading up to the February 2018 credit limit increase. In doing so, I accept that Mrs G's actual circumstances may not have been reflected in the information she may have provided.

However, the bank statements provided show that Mrs G was receiving regular funds and when her regular living costs and monthly expenditure are deducted from what she received, Mrs G does appear to have enough in funds left over to make the increased repayments needed for the limit increases offered.

Furthermore, I can also see that Mrs G's usage of the facility at this point was reasonable. She was making decent repayments which was reducing what she owed and she didn't go near her existing limits either. So there wasn't anything to indicate that NewDay might have been increasing Mrs G's overall indebtedness in a way that was unsustainable or otherwise harmful either.

Overall and having carefully considered everything, while I don't think that reasonable and proportionate checks were carried out on all occasions, I've nonetheless not been persuaded that proportionate checks would have shown that NewDay that it shouldn't have initially provided an Aqua Card, or any of the credit limit increases to Mrs G.

I'm therefore not upholding Mrs G's complaint about having been provided with an Aqua credit card or the credit limit increases on it.

Fluid Card

NewDay has said that it carried out similar checks (to those carried out on in relation to the Aqua Card) on Mrs G) when deciding whether to provide her with a Fluid Card and the subsequent credit limit increases. However, while I think that this was a reasonable course of action for the initial decision on whether to provide the Aqua Card as well as the first limit increase, I don't think that this was reasonable for the Fluid Card.

I say this because at the time of the application for the Fluid application, I have to take into account that Mrs G already had a credit limit of £5,300.00 available to her on her Aqua Card. So NewDay needed to factor in the fact that Mrs G could have had outstanding balances to repay to it on both of her cards.

Given the amount Mrs G would be expected to pay to NewDay should Mrs G owe on both her credit cards, I would have expected NewDay to have immediately found out more about Mrs G's income and expenditure (particularly about her actual regular living expenses) before providing the Fluid Card as well as any of the credit limit increases.

NewDay has been unable to evidence having done this in this instance. As this is the case, I don't think that the checks it carried out before it provided the Fluid credit card or any of the limit increases on it were reasonable and proportionate.

As I've explained where a firm failed to carry out reasonable and proportionate checks before providing credit or increasing the amount available to a customer, I need to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

So I've looked at the information Mrs G has provided to get an idea of what NewDay is likely to have learned and whether it would have provided a Fluid card and the associated limit increase, had it carried out further enquiries into Mrs G's circumstances.

In order to do so, I've once again looked at the current account statements Mrs G has provided for the period leading up to all of the lending decisions on the Fluid Card. The bank statements Mrs G has provided show that she was still in receipt of regular funds and when her regular living costs and monthly expenditure are deducted from what she received, Mrs G had enough in funds left over to make the increased repayments needed for this card as well as the subsequent credit limit increases, at the time they were offered.

Furthermore, I can also see that Mrs G often had significant surpluses in her bank account. And NewDay is likely to have taken this into account had it seen this. So once again there wasn't anything to indicate that NewDay might have been increasing Mrs G's outstanding indebtedness in a way that was unsustainable or otherwise harmful.

Indeed, in my view, further checks would more likely have not have shown that Mrs G would be able to make the necessary repayments to both her facilities even when the limit was increased, within a reasonable period of time. Equally I don't think that Mrs G's lending history and pattern of her lending (with NewDay as a whole) in itself clearly demonstrated that she shouldn't have been lent to.

I accept that Mrs G's actual circumstances may not have been fully reflected either in the information she provided, the information NewDay obtained at the time of the lending decisions, or that her circumstances may have been worse than it appears from the information provided. I'm really sorry to hear about Mrs G's mental health issues, her gambling difficulties and the difficult financial situation she's now experiencing.

But NewDay didn't know anything about any of this. And even though I think that NewDay's checks ought to have gone further – because it provided two credit cards with reasonably sized credit limits - and extended into finding out about Mrs G's actual living expenses, I don't think this would have made a difference to its decisions.

So overall and having carefully considered everything, I'm satisfied that it wasn't unfair for NewDay to have provided Mrs G with a Fluid Card or any of the associated limit increases either.

NewDay's management of Mrs G's credit cards

I've also considered what Mrs G has said in relation to the way that NewDay did not review her credit card usage and that it failed to manage her accounts. Having done so, it seems to

me that Mrs G is arguing that NewDay should have monitored her accounts and prevented her from making gambling transactions.

The first thing for me to say is that NewDay didn't make a commitment to review Mrs G's credit card accounts annually, in the same way that perhaps a bank would commit to reviewing an overdraft facility in line with the generally accepted practice for that product. It's also worth me adding that it isn't generally expected that a lender will carry out such reviews on a credit card in the same way – particularly as the lender will not usually be able to attain the same level of understanding about a customer's overall circumstances from credit card statements, as it might do from bank account statements.

There are separate regulatory rules in relation to when a credit card account enters into persistent debt and when a lender should eventually suspend further spending on a customer's credit card. As far as I can see, Mrs G did enter the process for receiving persistent debt letters on her Aqua credit card. I've also seen copies of the letters that Mrs G was sent and these appear to be in line with the regulator's requirements.

As I understand it, Mrs G did not pay more in interest, fees and charges than she did towards the capital owing on the Fluid card for the period of time required to trigger the persistent debt process on that credit card. And as this is the case Mrs G wasn't sent the same letters.

Mrs G has also said that NewDay should have stopped her gambling transactions as providers weren't permitted to accept credit card payments from April 2020. The first thing for me to say is that the Gambling Commission, which introduced the rules Mrs G has referred to, regulates gambling companies not financial services firms such as NewDay. And the ban Mrs G has referred to is in relation to gambling providers accepting credit card payments, rather than lenders such as NewDay allowing such transactions in the first place.

Nonetheless, I would expect a lender to factor in such a consideration when deciding whether to allow such a payment, in order for it to act fairly and reasonably. That said, I've looked through Mrs G's credit card statements for her credit card accounts – in particularly the statements from April 2020 onwards. Having done so, I can't see any immediately obvious gambling transactions on them.

Mrs G has also said that NewDay shouldn't have allowed such an amount of smaller transactions to take place on her credit cards. I've thought about what Mrs G has said. However, having looked at Mrs G's statements it is clear that she was making large amounts of small transactions to other currency platforms.

I can't say for sure that Mrs G's transactions were for gambling as it is not clear from the statements. But even if it was, it's clear that by turning funds from her credit cards into other digital currency, in a number of small transactions, Mrs G had found a way around the Gambling Commission's ban on gambling providers accepting credit card payments.

It's clear that Mrs G has gone to great lengths to be able to access funds from her credit card, which she says, was, in order to gamble. And it is still not immediately apparent to me that that is what happened here. But, in any event, I can't reasonably say that NewDay ought to have taken action and refused to authorise the payments and that its failure to do so means that it would be fair and reasonable to now compensate Mrs G, when she took active steps to get around the restrictions put in place to stop her credit cards being used to gamble.

In these, circumstances, I've not been persuaded that NewDay failed to act fairly and reasonably in its dealing with Mrs G, in relation to failing to step in as a result of the way Mrs G used her credit cards either.

Overall and having considered everything, while I can understand Mrs G's sentiments, I don't think that NewDay treated Mrs G unfairly or unreasonably when providing her credit cards, increasing her credit limits or in allowing her to use her cards in the way that she did. So I'm not upholding Mrs G's complaint. I appreciate this will be very disappointing for Mrs G. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

Although I'm not upholding this complaint, I'd like to remind NewDay of its obligation to exercise forbearance and due consideration (now that it is aware of Mrs G's current position) should it be the case that Mrs G is struggling to make her credit card payments as she is experiencing financial difficulty. I would also encourage Mrs G to get in touch with and cooperate with NewDay in order to set up repayment plans for any amounts owing.

My final decision

For the reasons I've explained, I'm not upholding Mrs G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 8 April 2024.

Jeshen Narayanan
Ombudsman