

The complaint

Miss A complains that NewDay Ltd trading as Aqua was irresponsible when it offered her a credit card account and later increased her credit limit.

What happened

NewDay opened a credit card account for Miss A in March 2020 with a credit limit of £1,200. It increased the credit limit to £1,950 in September 2020 and again to £3,450 in December.

Miss A complained to NewDay in early 2024 that it had been irresponsible to lend to her. She said she should never have been accepted for credit because of her poor credit rating. Miss A said that she wasn't receiving her full pay when she applied for the account and wasn't in a position to meet her existing commitments including her mortgage.

NewDay didn't uphold Miss A's complaint. It reviewed the information it relied on in its affordability assessment and was satisfied that it approved Miss A's application correctly and in line with its responsible lending policy. NewDay did, however, say that given the information Miss A had provided about her circumstances, it would uphold her complaint from the second credit limit increase given in December 2020. It offered Miss A a refund of fees and interest paid as a result of this credit limit increase.

Miss A was unhappy with this response and referred her complaint to us. Our investigator assessed the complaint and recommended that it be upheld in part. They found that NewDay wasn't irresponsible to have opened the account for Miss A but shouldn't have increased her credit limit thereafter. They recommended that NewDay refund any interest, fees or charges that Miss A incurred on balances above £1,200 after September 2020 and remove any adverse markers placed on her credit file from this date.

NewDay didn't agree with this recommendation and asked for the complaint to come to an ombudsman to decide.

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.

I've also had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as NewDay, need to abide by. NewDay will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement or significantly increasing the credit limit, NewDay needed to check that Miss A could afford to repay the credit out of her usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit, for example the amount offered, and to Miss A's

particular circumstances.

The overarching requirement was that NewDay needed to pay due regard to Miss A's interests and treat him fairly. CONC 2.2.2G gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my main considerations are did NewDay complete reasonable and proportionate checks when it opened the account for Miss A or when it increased her credit limit to satisfy itself that she would be able to repay the credit offered within a reasonable period of time? If it didn't do this, what would reasonable and proportionate checks have shown? Did the checks reveal anything of concern and, ultimately, did NewDay make fair lending decisions? Did NewDay treat Miss A unfairly in any other way?

NewDay said that Miss A gave her income as £12,000 (in other words, around £970 net a month) when she applied for an account in March 2020. NewDay provided a summary of the information it relied on in its assessment which included information from Miss A's credit file. Miss A held three active accounts with an unsecured borrowing balance of £100 and a defaulted account balance amounting to £400. This default had occurred around five years prior to her application and she had no current adverse information against her accounts. The information also showed that Miss A held a mortgage.

Miss A mentioned in her complaint referral that she didn't have a good credit score, but I don't think the defaulted balance would, or should, have caused concern for NewDay given how long ago it had happened and that she didn't appear to have any current adverse information.

I don't know if NewDay checked what Miss A had said about her income using information from the credit reference agencies or any other source. Miss A provided us with statements for her bank account which show that her income was about what she'd declared for February and March 2020. Even if NewDay had investigated Miss A's income further, I think it would have been reassured that she had recourse to the level of income she'd declared.

Altogether, I think NewDay's checks could be considered to be reasonable and proportionate here, given Miss A's level of income, her level of existing debt and how she was managing this, and the credit limit offered. I can't say that NewDay was irresponsible to open the account on the basis of the information it had and so I am not planning to uphold this part of Miss A's complaint.

Miss A shared with us that she had been struggling with undiagnosed mental health conditions for some time before she was offered the account. She explained that these impacted on her ability to manage her finances at times, for example through impulsivity, and she continues to be supported by health care professionals. Let me say at this point that I am very sorry to hear of Miss A's difficulties with her health. However, I haven't seen anything to suggest that NewDay knew, or should have known, about her conditions or their impact before opening the account for her, and so I don't think this was something the lender should have considered in its assessment.

NewDay increased the limit on Miss A's account from £1,200 to £1,950 in September 2020. I've reviewed the information NewDay provided about Miss A's account transactions and the information it gathered from credit reference agencies. The balance on the account remained under £600 through August, September and October 2020 and Miss A hadn't missed any payments. However, the balance on Miss A's mortgage had been increasing by about £300 a month since June and she'd taken out a cash advance in July and four in August. I think this should have raised the concern that Miss A wasn't managing to meet her

existing priority debts and was reliant on credit. I don't think NewDay treated Miss A fairly or with regard to her interests when it offered her further credit under these circumstances, bearing in mind her income level and the amount it was now offering.

NewDay has since reviewed Miss A's bank statements for the months leading up to the first limit increase and said that it didn't see any indications that she might have been struggling with her finances – she hadn't incurred any unauthorised overdraft charges or returned direct debits, for example. I'm afraid I disagree with NewDay on this point. Miss A's bank statements from the time show that she was spending money on gambling sites, amounting to well over half her wages in August 2020 for example, and borrowing from a high cost lender. Had NewDay considered this evidence in its decision to increase the credit limit in September and proceeded to do so, I would likely find that it had not made a fair lending decision.

Altogether, I think NewDay was irresponsible when it increased Miss A's credit limit in September 2020 and it now needs to put things right for her as I've set out below. I have also considered whether NewDay treated Miss A unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied that the redress I have directed below results in fair compensation for Miss A in the circumstances of her complaint and that no additional award would be appropriate in this case.

Putting things right

I've concluded that NewDay didn't make a fair lending decision when it increased Miss A's credit limit beyond £1,200 in September 2020 and so I don't think she should have to pay any interest, fees or charges associated with balances over this amount or have her credit file adversely impacted. However, I do think it's fair that Miss A repays the money she spent as she's had the use of it.

Therefore, NewDay should:

- Rework Miss A's account removing all interest, charges or insurance premiums that have been applied to balances above £1,200 from September 2020;
- If the rework results in a credit balance, this should be refunded to Miss A 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 from Miss A's credit file.
- Or, if after the rework, there is still an outstanding capital balance, NewDay should arrange an affordable repayment plan with Miss A for this remaining amount. Once Miss A has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Miss A a certificate showing how much tax has been taken off if she asks for one. NewDay can deduct any refund it has already paid to Miss A in relation to this complaint from this total.

My final decision

For the reasons I've explained above I'm partly upholding Miss A's complaint about NewDay Ltd trading as Aqua and it needs to take the above steps to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept

or reject my decision before 3 August 2024.

Michelle Boundy
Ombudsman