

The complaint

Miss C complains that NewDay Limited, trading as Aqua, lent to her irresponsibly when it increased the credit limit on her credit card and that the credit was unaffordable for her.

What happened

Miss C applied to New Day for an Aqua credit card in November 2020. Her application was accepted and NewDay opened an account for her with a credit limit of £600. It increased the credit limit to £1,600 in April 2021, to £3,100 in August 2021 and to £4,600 in December 2021.

Miss C, using a professional representative, complained to NewDay in January 2024. The complaint letter said that NewDay had a responsibility to carry out affordability checks each time a credit facility is entered into, extended or replaced, to assess that the credit facility is right and affordable and that the credit limit increases on Miss C's account were unaffordable for her.

NewDay said that it was satisfied that Miss C was provided with the account correctly and in line with its responsible lending policy. It also said that it was satisfied that each credit limit increase was provided to Miss C correctly and in line with its lending policy and that adequate checks were completed to ensure that they were affordable. Miss C wasn't satisfied with its response so complained to this service.

Miss C's complaint was looked at by one of this service's investigators who, having considered everything, thought that it should be upheld in part. She thought that the checks made by NewDay before the account was opened were reasonable and proportionate and that it made a fair lending decision. But she didn't think that the checks made before the three credit limit increases were reasonable and proportionate so she considered whether reasonable and proportionate checks would've caused NewDay to conclude that the credit limit increases were unaffordable for Miss C. She thought that Miss C had sufficient disposable income to afford the first two credit limit increases but she felt that, had NewDay carried out reasonable and proportionate checks before the third credit limit increase, it would've found that credit limit increase to be unaffordable and wouldn't have lent to Miss C.

She recommended that NewDay should: rework Miss C's credit card account removing all interest, fees, charges and insurances (not already refunded) that had been applied to balances above £3,100 after 1 December 2021; if that results in a credit balance, the credit balance should be refunded to Miss C with interest and it should remove all adverse information recorded after 1 December 2021 regarding the account from Miss C's credit file – or if after the rework the outstanding balance still exceeds £3,100, it should arrange an affordable repayment plan with Miss C for the remaining amount and, once Miss C has cleared the outstanding balance, any adverse information recorded after 1 December 2021 in relation to the account should be removed from Miss C's credit file. She also said that as NewDay had sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with it to ensure the redress that she'd set out was carried out promptly.

NewDay says that it doesn't agree with the investigator's findings that Miss C's complaint should be upheld from the third credit limit increase on balances over £3,100. It provided its new affordability paper which it says gives a background to its affordability assessments, and the creditworthiness checks conducted before it offers the limit increases to existing customers. It has also provided its report from December 2021 which shows that Miss C had an estimated disposable income of £1,340.89, no repayment plans with it or other lenders, no fees, no payday loans, defaults, or arrears with other lenders either at that time or during the preceding months so it found the new limit affordable for her. It also said that it didn't request bank statements as part of that assessment (and wasn't required to do so) so it can't apply the information from Miss C's bank statements to show her financial circumstances towards the end of 2021 retrospectively.

The investigator said that a firm must undertake a reasonable assessment of the creditworthiness of a customer before significantly increasing a credit limit for running-account credit under a regulated credit agreement and Miss C's credit limit had increased by three times as much over eight months, so this was a significant increase over a short period of time without giving Miss C a reasonable period to show that she could sustain the credit limit increases given previously. She said that NewDay should've reconfirmed Miss C's committed income and expenditure to ensure that she could afford the third increase due to the rapid increases and that, had it done so, it was likely the information that the investigator had obtained would've been declared and would've shown that the increase was unaffordable. She asked NewDay to let her know if it still disagreed with her findings but no further response has been received from NewDay.

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.

The investigator has described in detail why she thought that the checks made by NewDay before Miss C's Aqua credit card account was opened were reasonable and proportionate and that it made a fair lending decision. Neither Miss C nor her representative has said that they don't accept that finding and I agree with the investigator that the checks made by NewDay before Miss C's Aqua credit card account was opened were reasonable and proportionate and that it made a fair lending decision.

NewDay was required to undertake a reasonable assessment of Miss C's creditworthiness before significantly increasing the credit limit on her Aqua credit card. It has provided an affordability paper which it says gives a background to its affordability assessments, and the creditworthiness checks conducted before it offers the limit increases to existing customers.

Less than five months after the account had been opened, NewDay increased Miss C's credit limit from £600 to £1,600 – a 167% increase. Less than four months after that, it increased her credit limit from £1,600 to £3,100 – a 94% increase. And less than four months after that, it increased her credit limit from £3,100 to £4,600 – a 48% increase. So in just over a year Miss C's credit limit had increased from £600 to £4,600 – a 667% increase. I'm not persuaded that NewDay has provided enough evidence to show that it conducted reasonable and proportionate checks before the three credit limit increases were made and I agree with the investigator that its checks weren't reasonable and proportionate.

The investigator also described in detail why she thought that Miss C had sufficient disposable income to be able to afford the first two credit limit increases and neither Miss C nor her representative has said that they don't accept that finding. I agree with the investigator that the evidence that has been provided shows that it was more likely than not that Miss C had enough disposable income to be able to afford the first two credit limit

increases.

The evidence that has been provided by Miss C shows that in December 2021 her total monthly incomings were about £2,500 and that her total monthly outgoings were about £2,460 which left her with a disposable income of about £40 each month. I don't consider that that would have been enough for her to be able to pay for the increase in her monthly payment to NewDay if she used the credit limit and to leave her enough money for discretionary expenditure so I don't consider that the December 2021 increase in her credit limit was affordable for Miss C.

NewDay has provided its report from December 2021 which shows that Miss C had an estimated disposable income of £1,340.89, no repayment plans with it or other lenders, no fees, no payday loans, defaults, or arrears with other lenders either at that time or during the preceding months so it says that it found the new limit affordable for her. But I've seen no evidence to show that it obtained any information from Miss C about her monthly income and expenditure at that time. I consider that reasonable and proportionate checks before NewDay increased Miss C's credit limit in December 2021 would have included obtaining information about her monthly income and expenditure. I also consider that, had NewDay made reasonable and proportionate checks, it's more likely than not that it would have obtained information to show that Miss C's disposable income wasn't in the region of £1,340.89 and that she didn't have enough disposable income to be able to afford a credit limit increase from £3,100 to £4,600.

I consider that NewDay shouldn't have increased Miss C's credit limit above £3,100 and I find that it should refund to Miss C any interest and charges on any balances which exceeded that limit after 1 December 2021. But Miss C has had the benefit of any purchases that she made using her Aqua credit card account so I consider that she should pay for those purchases.

The investigator also said that she'd considered whether NewDay had acted unfairly or unreasonably in some other way given what Miss C had complained about, including whether its relationship with her might have been unfair under section 140A of the Consumer Credit Act 1974, but as she was upholding Miss C's complaint in part she didn't think that she needed to make a finding on that. I agree with that conclusion and I consider that the actions that I've set out below that NewDay needs to take to put things right are a fair and reasonable response to Miss C's complaint.

Putting things right

I find that it would be fair and reasonable in these circumstances for New Day to:

1. Rework Miss C's Aqua credit card account, removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £3,100 after 1 December 2021.
2. If the rework results in a credit balance, the credit balance should be refunded to Miss C with 8% simple interest per year calculated from the date of each overpayment to the date of settlement - it should also remove all adverse information recorded after 1 December 2021 regarding this account from Miss C's credit file.
3. If after the rework the outstanding balance still exceeds £3,100, it should arrange an affordable repayment plan with Miss C for the remaining amount – once Miss C has cleared the outstanding balance, any adverse information recorded after 1 December 2021 in relation to the account should be removed from her credit file.

As NewDay has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with it to ensure the redress set out above is carried out promptly.

HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Miss C a certificate showing how much tax it's deducted if she asks it for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting tax.

My final decision

For these reasons, my decision is that I uphold Miss C's complaint in part and I order NewDay Limited, trading as Aqua, to take the actions set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 1 October 2024.

Jarrold Hastings
Ombudsman