

The complaint

Mr K complains that NewDay Ltd trading as Aqua was irresponsible in its lending to him. He wants all interest and charges refunded along with statutory interest and any adverse information recorded on his credit file removed.

Mr K is represented by a third party but for ease of reference I have referred to Mr K throughout this decision.

What happened

Mr K was provided with an Aqua credit card by NewDay in April 2018. The initial credit limit was £900, and this was increased on two occasions, first to £1,650 in February 2019 and then to £2,900 in February 2020.

Mr K says that adequate income and expenditure reviews weren't undertaken before the lending was provided to ensure that he could afford the repayments. Mr K has said he could only afford to make the minimum repayments and was operating at or close to the credit limit. He says the lending was unaffordable and has caused his mental and physical health to deteriorate.

NewDay issued a final response to Mr K's complaint dated 16 May 2024. It said that before lending it carried out a comprehensive affordability assessment using a wide range of information. It said before providing the account in April 2018, it considered Mr K's income and other information contained in his credit report. It also carried out similar checks before the credit limit was increased in 2019 and 2020. It said that based on the information available to it the lending was responsible.

Mr K referred his complaint to this service.

Our investigator thought that NewDay carried out proportionate checks before the lending was provided. Having considered the information NewDay received through its checks he thought the initial lending decision was reasonable. However, he noted that before the first credit limit was applied, Mr K's financial position appeared to have deteriorated with him taking out cash advances, incurring late fees and using a higher amount of his credit limits. He also noted that Mr K had taken out multiple payday loans. He thought this showed that Mr K was reliant on credit at this point. Therefore, he upheld this complaint in regard to the credit limit increases.

NewDay didn't respond to our investigator's view and so this complaint has been passed to me, an ombudsman, to issue a decision.

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.

Our general approach to complaints about unaffordable or irresponsible lending – including

the key rules, guidance and good industry practice – is set out on our website.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But while it is down to the firm to decide what specific checks it wishes to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments, and the total cost of the credit.

Account opening April 2018

Before the account was opened, NewDay gathered information about Mr K's income and carried out a credit check. Mr K declared an annual gross income of £25,000 which gave a net monthly income of around £1,568. His living costs were recorded as around £433. The credit check showed that Mr K's most recent default was recorded 25 months prior to the application and that his active accounts were up to date. Taking into account the credit limit being provided compared to Mr K's income, the repayments that would be due on this, and noting that aside from a historic default, his credit checks didn't raise concerns, I find the checks carried out before the account was opened were reasonable. As these suggested the initial credit limit of £900 was affordable for Mr K, I do not find that New Day was wrong to provide Mr K with the account and £900 credit limit.

Credit limit increases

Mr K's credit limit was increased to £1,650 in February 2019. Before the increase took place, NewDay has said it assessed Mr K's account management and I can see it had information about Mr K's other credit commitments. I find this reasonable.

Looking through the information available to NewDay this shows that in the months leading up to the first credit limit increase, Mr K had incurred over limit fees in October and November 2018, late fees in November and December 2018 and had taken out cash advances in January 2019. I think this account management should have raised concerns that Mr K might be struggling with his existing commitments. The external credit information also showed that Mr K was taking out payday loans which further suggests he was struggling financially and that providing further credit to Mr K wasn't responsible.

Following the first credit limit increase, Mr K exceeded the new credit limit. In the months between the first and second credit limit increases, Mr K exceeded his credit limit on several occasions although I note he made a large payment towards his account in January 2020. Mr K was also taking out cash advances and continued to make use of payday loans. I think this should have raised concerns about Mr K's account management and his ability to sustainably manage further credit.

Because of this, I do not think that NewDay should have increased Mr K's credit limit beyond the initial limit of £900.

I've also considered whether NewDay acted unfairly or unreasonably in some other way given what Mr K has complained about, including whether its relationship with him might have been viewed as unfair by a court under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Mr K in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

As I don't think NewDay should have increased Mr K's credit limit above £900, I don't think

it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Mr K has had the benefit of all the money he spent on the account so I think he should pay this back.

Therefore, NewDay should:

Rework Mr K's account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £900 after 25 February 2019.

If the rework results in a credit balance, this should be refunded to Mr K 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 recorded after 25 February 2019 regarding this account from Mr K's credit file.

Or, if after the rework the outstanding balance still exceeds £900, NewDay should arrange an affordable repayment plan with Mr K for the remaining amount. Once Mr K has cleared the outstanding balance, any adverse information recorded after 25 February 2019 in relation to the account should be removed from his credit file.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mr K a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

My final decision is that NewDay Ltd trading as Aqua should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 13 January 2025.

Jane Archer
Ombudsman