DRN-4308217

The complaint

Mrs T, through a representative, says NewDay Ltd, trading as Aqua, irresponsibly lent to her.

What happened

Mrs T applied for a credit card from NewDay in November 2019. It was approved with a limit of £250. She was then given five credit limit increases as set out below:

limit increase	date	new limit
1	Jul-20	£1,000
2	Jul-21	£2,750
3	Nov-21	£4,500
4	Apr-22	£6,000
5	Aug-22	£7,500

Mrs T says she was on a low income and it does not seem effective credit checks were undertaken before issuing credit. A credit check would have shown she was high risk. And the interest charged was very high and unaffordable. The credit limit increases were ridiculous. A family member cleared her outstanding balance and closed the account in November 2022. This has led to her having to borrow more and it has impacted her mental health.

NewDay says all its lending decisions were based on reasonable and proportionate checks to ensure the credit was affordable for Mrs T.

Our investigator upheld Mrs T's complaint in part. He said that NewDay's initial lending decision was fair, but that from the first limit increase it ought to have carried out further checks and had it done it would have learnt her income was much lower than she had declared and so it ought to have made different lending decisions.

NewDay disagreed and asked for an ombudsman's review. It said Mrs T had told it her income was around £70,000 and she had managed her account exceptionally well.

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 approach to unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - is set out on our website and I have followed it here. NewDay is required to lend responsibly. It needed to conduct checks to make sure that the credit it offered to Mrs T was affordable and sustainable. Such checks need to be proportionate to things like the credit limits it offered Mrs T, how much she had to repay (including interest and charges) each month, her borrowing history with it and what it knew about her circumstances. But there is no set list of checks it had to do.

This means to reach my decision I need to consider if NewDay carried out proportionate checks at the time of Mrs T's application and each limit increase; if so, did it make fair lending decisions based on the results of its checks; and if not, what better checks would most likely have shown. I also need to think about, bearing in mind the circumstances at the time of each additional advance in credit, whether there was a point at which NewDay ought reasonably to have realised it was increasing Mrs T's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit.

I can see as part of NewDay's checks when Mrs T applied it considered her income, household income, total level of borrowing held elsewhere and monthly repayment costs – and for the limit increases it also looked at how she was managing both her Aqua account and her other debt elsewhere.

I think these checks were proportionate at application given the stage in the lending relationship and the among of credit offered, but I'm not satisfied they were for the limit increases. I think NewDay needed to take steps check Mrs T's income and housing costs had not changed significantly as it extended her borrowings. I cannot see that because she was managing a limit of £250 it could be assumed she could manage a limit three times higher sustainably.

Had it done so I think it would have realised there was a discrepancy between the income Mrs T had declared at application and her actual income. I note it says it considered the results of its external income verification check but it has not shared these results. From the available evidence I cannot understand how they would have tallied with the declared income it argues it relied on. Arguably, it ought to have been aware of this at application but I think this need not have changed its lending decision given the low limit and the results of the other checks at application (low overall debt of £5,119; no payday loans and no adverse data on Mrs T's credit file).

However, from the information I have seen proportionate income checks prior to the first limit increase would most likely have shown NewDay Mrs T was unemployed and received only minimal income from a carer's allowance and income support of around £265 a month. From this, as a responsible lender, NewDay ought to have realised there was a risk that extending Mrs T's credit would not be sustainably affordable for her. There is no evidence Mrs T's income increased whilst she had the card – rather I can see her income support stopped and so it decreased. Logically it follows that I find all subsequent credit limit increase were unaffordable.

NewDay argues that Mrs T managed her account, and external credit, exceptionally well. But it does not know how she did this. Whilst I can see her external borrowing did not increase significantly during the life of her account, Mrs T's testimony confirms she borrowed to make repayments. It seems this was informal borrowing – her representative has confirmed he repaid her balance in full on this card.

It follows I find NewDay was wrong to increased Mrs T's limit beyond the £250 opening limit.

Mrs T also said the card had a very high interest rate. But I can see from the credit agreement that the simple and compound interest rates would have been set out clearly. And Mrs T had to actively engage in the application process for her card, so I think it's likely that she was aware of what she was agreeing to pay. I haven't seen anything which makes me think that NewDay treated Mrs T unfairly or breached industry practice regarding interest charges.

Putting things right

As NewDay should not have increased Mrs T's credit limit above £250, I don't think it's fair for it to have applied interest or charges to any balances which exceeded that limit. It is reasonable Mrs T has repaid the capital she borrowed as she had the benefit of that money.

So NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £250.
- As this rework will result in a credit balance, this should be refunded to Mrs T along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded after 29 July 2020 regarding the account from Mrs T's credit file.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mrs T a certificate showing how much tax has been taken off if she asks for one.

My final decision

I am upholding Mrs T's complaint in part. NewDay Ltd, trading as Aqua, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 4 October 2023.

Rebecca Connelley
Ombudsman