

## **The complaint**

Mr W complains that NewDay Ltd (trading as Aqua) irresponsibly lent to him.

## **What happened**

Mr W applied for a credit card with Aqua in 2014. Based on the information he provided, Aqua accepted his application and opened his account on 11 August 2014. Aqua initially gave Mr W a credit limit of £250. But on 4 January 2016 his credit limit was increased to £1000.

Mr W said prior to this increase he was subject to a Debt Management Plan (DMP), which included his debt to Aqua. He also said, by this point, he had incurred many fees due to exceeding his credit limit and making late payments to his Aqua account and payday loans he had taken out. So he didn't feel it should have increased his credit limit and complained to Aqua that it had irresponsibly lent to him. He said the credit limit increase led to financial difficulties and caused his financial situation to spiral out of control.

After Aqua investigated it said it hadn't done anything wrong when it approved his credit card application. And it explained that it carried out appropriate affordability checks prior to increasing his credit limit. So, it was satisfied Mr W could afford the borrowing and, it said, he'd been given the option to decline the increase he'd been offered. It also said it had accepted his reduced payment arrangements when it became aware he was experiencing financial difficulties and defaulted his account and sold it to a debt collection agency (DCA) in August 2017 in line with the terms and conditions of Mr W's account. So, Aqua rejected his complaint.

Being dissatisfied with Aqua's response to his complaint Mr W referred it to our service. Our investigator looked into this and upheld Mr W's complaint. Overall, they thought Aqua's decision to approve his application for a credit card was fair. But they didn't think it had acted responsibly in increasing his credit limit to £1000. So, they recommended Aqua refund all interest, fees and charges Mr W incurred as a result of his credit limit being increased to £1000. And they told Aqua to either buy back Mr W's account from the DCA and make the necessary adjustments or pay an appropriate amount to the DCA for it to make the necessary adjustments to pay Mr W an amount equivalent to the reduction needed on the outstanding balance. They also told Aqua it should remove any negative entries on Mr W's credit file resulting from the credit limit increase.

Aqua agreed to remove the interest and charges from when it increased Mr W's credit limit, which it said totalled £739.70. But it wasn't prepared to amend any information recorded on his credit file because it said it was obliged to provide a true and accurate reflection of a customer's payment history. And it felt removing what was recorded would be unfair. Our investigator reviewed their previous recommendation and upheld Aqua's comments. But Mr W disagreed with our investigator's view and asked for his complaint to be referred to an ombudsman.

## **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'd like to make it clear at the outset that, while a DCA was also involved in how Mr W's outstanding account balance was dealt with, this complaint relates only to what Aqua did. So, I'll limit my findings to whether it acted fairly and reasonably here.

The first issue I've considered is whether Aqua's decision to approve Mr W's credit card application was irresponsible.

Mr W feels he shouldn't have been given credit by Aqua because he was in debt with a number of companies when he opened his account. But this wouldn't necessarily mean Aqua's decision to approve his credit card application was wrong. It offers cards to people who want to improve their credit rating because they have poor or absent credit history. So it wouldn't be unusual for an Aqua customer to have debts pre-existing elsewhere, or for it to decline lending just for this reason.

Aqua was required to lend responsibly to Mr W. Before agreeing to do so, it should have assessed the affordability of credit to ensure that Mr W could afford to repay what he was borrowing. It's up to Aqua which checks it carries out but they need to be reasonable and proportionate to, for example, the amount being borrowed, the cost of repayment and a customer's lending history. We can't say a lender should've done any particular check and there isn't a set list of checks it needed to do.

Before approving Mr W's credit card application, Aqua said it made a credit assessment – using its own internal risk strategies and information supplied by Mr W and credit reference agencies (CRAs). It said that, after doing so, it was satisfied Mr W met its acceptance criteria.

I can see that when Mr W applied for a credit card he declared an income of £12000 with unsecured debt of around £2700. Aqua said no arrears or defaults were recorded with CRAs. Given this, and the relatively small amount of credit Aqua offered him, I think it was reasonable for it to have accepted Mr W's initial application with a relatively small credit limit.

I'll turn now to Mr W's complaint insofar as it relates to the credit limit increase Aqua gave him in January 2016.

Before it changes a customer's credit limit Aqua said it reviews how they're using their card and managing other credit commitments. It says it makes risk based assessments to ensure its lending is appropriate to a customer's financial circumstances. And based on these assessments it may either increase or decrease a customer's credit limit.

Aqua said Mr W's account was reviewed on 4 January 2016 and, at that point, he became eligible for a credit limit increase to £1000. It stated he met the criteria to qualify for an increase on this occasion and, while it offered him the opportunity to opt out of that increase, the new credit limit took effect on 8 January 2016. Aqua said this suggests Mr W proactively contacted it to accept the increase because a customer would usually have up to 40 days to opt in or out of a credit limit increase.

Aqua accepts Mr W incurred over limit and late fees prior to increasing his credit limit. However, it said these don't automatically exclude a customer from being considered for a credit limit increase. It explained its policy is to exclude customers who are consistently over

the limit and consistently make late payments in each of the three months leading up to the increase.

I've carefully considered the statements of Mr W's account to see how he was managing his account prior to the credit limit increases. I can see in the 12 months leading up to the date his credit limit increased he incurred eight late fees and four over limit fees. From September 2015 until January 2016 Mr W incurred a late payment fee each month. It's clear to me that Mr W was struggling to manage his account when his credit limit was only £250. I appreciate that Mr W didn't decline the credit limit increase he was offered by Aqua. But I think quadrupling his credit limit in January 2016 against this background was irresponsible. And I'm persuaded the new credit limit increased Mr W's indebtedness substantially and further evidenced his inability to manage his account.

I can see that immediately after Aqua increased Mr W's credit limit he spent up to and exceeded his new limit quickly. He incurred over limit and late fees and used his account to fund gambling and make a number of cash advances. The UK Cards Association best practice guidelines on credit card limit increases issued in 2011 points to this sort of behaviour as being a 'risk indicator' that a customer is showing signs of financial difficulty.

I appreciate that Aqua may not have been able to predict exactly how Mr W might have utilised his new credit limit. But I'm persuaded that, based on the information it had available, a fuller financial review of his account management and borrowing elsewhere prior to January 2016 would have been appropriate here.

I also think a fuller financial review would have presented a picture of someone who was experiencing financial difficulties and falling further into debt. And I'm persuaded this would have, most likely, deterred it from increasing Mr W's credit limit. I'm not persuaded that a reasonable lender, even one that targeted the same customer demographic as Aqua, would've made the same decision to increase Mr W's credit limit in January 2016 based on how he had been managing his account. So, I don't think Aqua acted reasonably in increasing Mr W's credit limit.

Aqua said when it was notified Mr W was experiencing financial difficulties it worked with him to assess the affordability of his monthly payments. And it set up a reduced repayment plan of monthly payments, which it felt was affordable to Mr W's personal circumstances at that time. I can see this plan was reviewed regularly. In taking such action I think Aqua treated him positively and sympathetically as we'd expect it to. I can also see the interest on Mr W's account was waived while he made reduced payments. A lender doesn't have to do this and I think Aqua acted fairly here overall.

Aqua defaulted Mr W's account on 31 August 2017. He feels this date is incorrectly recorded on his credit file. But, as our investigator explained, this issue wasn't raised as part of Mr W's original complaint. So, I can't consider whether Aqua made an error in defaulting his account until it's had an opportunity to investigate. I can see our investigator has recommended Mr W raise a new complaint with Aqua about this issue, which I think is good advice.

Part of Mr W's complaint concerns Aqua's decision to sell his outstanding balance to a DCA. But this is in accordance with the terms and conditions I've seen so I can't fairly conclude it made an error. It's a commercial decision Aqua is entitled to take if it wishes and it's common practice for businesses to take this action so that a DCA can take over, as they are generally more able to be more flexible with the payments and amounts they're able to accept without any further charges or interest being applied.

Finally, Mr W complains that adverse information has been recorded on his credit file, which relates to how he managed his account after his credit limit was increased. However, I can

see this information has been recorded by the DCA and not Aqua. I realise Mr W will be disappointed with this but he will need to take his concerns regarding the fairness any entries on his credit file up with the DCA directly because it isn't a party to this complaint.

### **Putting things right**

In thinking about the fairest way to resolve this complaint for Mr W, I've taken into consideration that he used the money that the limit increase made available to him. But, as I don't think Aqua should have increased his credit limit, it should reconstruct Mr W's account as though the credit limit increase from £250 to £1000 hadn't taken place. It should recalculate the interest payable as if it was based on a credit limit of £250 and refund all interest and charges it applied to Mr W's account on any balance above that limit.

As I've explained Mr W's account has been passed to a DCA. So, Aqua should either buy that account back from the DCA and make the necessary adjustments, pay an amount to the DCA in order for it to make the necessary adjustments, or pay Mr W an amount equivalent to the reduction needed on the outstanding balance. Other than this I'm not directing Aqua to do anymore.

### **My final decision**

My final decision is that I uphold this complaint. NewDay Ltd (T/A Aqua) should do the following to resolve this complaint:

- Reconstruct Mr W's account as though the credit limit increase from £250 to £1000 hadn't taken place.
- Recalculate the interest payable as if it was based on a credit limit of £250 and refund all interest and charges it applied to Mr W's account on any balance above that limit.
- Either buy that account back from the DCA and make the necessary adjustments, pay an amount to the DCA in order for it to make the necessary adjustments, or pay Mr W an amount equivalent to the reduction needed on the outstanding balance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 June 2020.

Julie Robertson  
**Ombudsman**