

## **The complaint**

Mr S believes that NewDay Ltd, trading as Aqua, lent to him irresponsibly and is unhappy that they defaulted his credit card.

## **What happened**

Mr S applied for an Aqua credit card in January 2015. Aqua accepted Mr S's application and issued him with a credit card with an initial credit limit of £100. In July 2015, Aqua reviewed Mr S's account and offered him a credit limit increase to £1,100. In August 2016, Aqua increased the credit limit on the card again to £1,700.

In January 2017 Mr S notified Aqua that he was struggling financially. Mr S wasn't able to complete an income and expenditure assessment at that time and didn't contact Aqua again about this. The account went into arrears, and when Aqua tried to contact Mr S to follow up on this point they were told that they had the wrong contact number on file.

The account remained in arrears, and in April 2017 it was passed to a debt collection agency and all interest and charges were stopped. Debt collection activities were unsuccessful, and the account was then sold to a debt purchasing company in 2017.

Around May 2020, Mr S complained to Aqua, saying that it was irresponsible in giving him the card. Aqua reviewed Mr S's complaint but didn't uphold it as they felt that they hadn't lent irresponsibly. Aqua said that they had performed the necessary checks before issuing the card and before increasing the credit limit on both occasions, and that these checks didn't highlight anything that would cause them to agree that they lent to Mr S irresponsibly.

Mr S didn't agree with Aqua and so referred the matter to our service. One of our investigator's looked at this complaint, and specifically at Mr S's circumstances at the time that the card was issued and at the time of both the first credit limit increase in July 2015 and the second in August 2016. While our investigator was satisfied that the initial issuance of the card and also the first credit limit increase was warranted, they felt that Mr S's circumstances at the time of the second credit limit, in August 2016, should have given Aqua cause for concern, and that this particular limit increase shouldn't have taken place.

So, our investigator upheld Mr S's complaint about irresponsible lending for the August 2016 credit limit increase only and said that Aqua should put Mr S back in the position that he would have been in had that second credit limit increase never have taken place. This included refunding fees and interest, as well as removing the default which Aqua subsequently applied from Mr S's credit file. Aqua disagreed with our investigator's view and so the complaint was escalated to an ombudsman for a final 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.

To begin, I'll briefly address both the initial card issuance and the first credit limit increase in July 2015. Our investigator found no cause for concern with regard either of these events and I am in agreement with this position. I say this because I have reviewed the information that Aqua used to assess Mr S's financial circumstances at those times and based on that I agree that those offers of credit to Mr S were appropriate. So, I'll move on to consider the second credit limit increase which occurred in August 2016.

Following Aqua raising the credit limit to £1,100 in July 2015, it's notable that Mr S quickly took the account balance close to, and occasionally over, that limit. I've also noted that in the 12 months leading up to the second credit limit increase, Mr S made monthly repayments that were consistently close to the minimum repayment allowed, and also that Mr S took the card over the agreed credit limit on two occasions during that same time period. Finally, I have also considered that in the four months leading up to the second credit limit increase, Mr S made late repayments in three of those four months.

These factors, if considered individually, might not have been a cause for concern. However, taken as a whole – alongside a broader consideration of Mr S's circumstances, I think these should have given Aqua cause for concern when assessing whether a second credit limit was appropriate.

However, I also note Aqua's response to these points, which in essence is that our investigator was taking the raw data out of context. For instance, Aqua noted that while Mr S did indeed make late repayments in three of the four months leading up to the second credit limit increase, each repayment was by a matter of a few days, and that the payments were eventually made. Aqua argued that this was consistent with someone who didn't pay attention to repayment timescales, rather than being an indicator of someone in financial difficulty.

I can understand Aqua's position here, and the points which they raise aren't without merit. But I think when taken as a whole, the signs that I've mentioned above do suggest that they were offering credit to someone who wasn't always able to manage what he'd already borrowed. As I've said, taken individually, these factors might be indicative of someone just not managing their account well. But I think when considering all the points together, the wider picture is more suggestive of someone struggling to stay on top of what they had borrowed, and I think that these indicators warranted a more cautious approach. Because of this, I don't think that it was fair for Aqua to have made a further increase to Mr S's credit limit in this instance.

So, I agree with our investigator's position, and so I will be upholding this complaint.

### **Putting things right**

To put things right, Aqua should put Mr S back into the position he would have been in had the second credit limit to £1,700 not taken place.

This means refunding all fees and interest applied to the balance above £1,100 from August 2016 onwards. Any refund can be used to reduce any outstanding debt.

Aqua should remove the overlimit and late payment markers applied after the second credit limit increase to £1,700. Any late payment or overlimit markers on the credit file before the second credit limit increase should remain.

Aqua should then ensure that any subsequent payment arrangements between Mr S and

Aqua have been accurately captured and recorded on Mr S's credit file.

Aqua should also remove the default from Mr S's credit file. It's difficult to know what would have happened with the debt here in terms of the repayments if Aqua hadn't have given Mr S this increase. But, in the circumstances there is the possibility he may have been able to avoid this. In any event, I note that Mr S has had the impact of this default on his credit file for a few years now despite it not being fair for Aqua to have increased his limit – and so in the circumstances here, I think it's fair that Aqua removes this too.

Once these refunds and amendments have taken place, Aqua should inform the current owner of the debt about what has happened here and tell it to amend the relevant balances in line with the above. Then, Mr S remains liable to repay any outstanding balance here. He should discuss this with the current debt owner to arrange an agreeable way forward here.

### **My final decision**

My final decision is that I uphold this complaint for the reasons explained above. NewDay Ltd trading as Aqua must:

- Refund all fees and interest applied to the balance above £1,100 from August 2016 onwards
- Remove the overlimit and late payment markers applied after the second credit limit increase to £1,700 – ensuring that any subsequent payment arrangements are accurately recorded
- Remove the default from Mr S's credit file
- Tell the current owner of the debt what it has done here and ensure the current balance is amended and accurate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 January 2021.

Paul Cooper  
**Ombudsman**