

## **The complaint**

Ms P is unhappy that NewDay Ltd trading as Aqua (Aqua) provided her with a credit card and increased the limit. She says they lent to her irresponsibly.

## **What happened**

Ms P opened a credit account with Aqua in December 2012 with an initial credit limit of £250.

The limit was increased on the following occasions:

- In April 2013 to £600;
- In November 2013 to £1,000;
- In August 2014 to £1,750; and
- In March 2015 to £2,500.

In 2016, Ms P was struggling to make repayments. Aqua agreed a repayment plan in February. Later that year, Ms P contacted a debt management company. Aqua also sent a default notice in December. Following this, Aqua sold the debt to a third party in June 2017 and recorded a default on Ms P's credit file.

Ms P raised a complaint with Aqua in February 2020. She felt that had they properly checked her credit record, Aqua would have seen she had lots of short term, high interest lending and that she wouldn't be able to repay her balance within a reasonable period.

Aqua responded in May 2020. They agreed that they shouldn't have increased the credit limit in February 2015 because the way Ms P was managing her account had changed. They felt they had acted reasonably in respect of the other increases.

The investigator issued their view explaining why he felt the refund that Aqua had issued was fair and reasonable in the circumstances and he didn't ask them to do anything further.

The investigator also explained why he felt that we couldn't look into Ms P's concerns about the card being issued in 2012 and the limit increases in April and November 2013. He said they fell outside of our time limits.

Ms P didn't agree with the investigator's view about how Aqua should put things right. She felt that 8% simple interest should be added to the amount refunded. She also didn't agree the default was fairly recorded on her credit file. Therefore, the case has passed to me to decide.

I issued a provisional decision about the merits of the complaint on 17 September 2021. I said:

*The rules and regulations at the time Aqua increased the credit limit in July 2014 and February 2015 required it to carry out a reasonable and proportionate assessment of whether Ms P would be able to repay what she owed in a sustainable manner. This is sometimes referred to as an affordability check.*

*The check must be borrower focussed. This means Aqua needed to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Ms P. Also, the checks must be proportionate and what constitutes a proportionate check is dependent on a number of factors. By way of example, such factors might include the amount of credit being borrowed and the consumer's current situation and outlook.*

#### *Limit Increase – August 2014*

*Aqua increased Ms P's credit limit from £1,000 to £1,750. This was a significant increase and I would expect to see Aqua gather some external information about Ms P's financial circumstances before agreeing to increase the limit. As well as, taking into consideration how well Ms P managed her account, particularly since her credit limit was previously increased in November 2013.*

*So, I've thought about the information Aqua had about Ms P's account management. I can see from the evidence that Ms P did on occasion exceed her credit limit. But these were by relatively small amounts. And I'm not persuaded these occasions were enough to indicate that she may have difficulty repaying additional credit. This is also because I can see she brought the account back within the credit limit relatively quickly.*

*I've also considered what information Aqua obtained from an external credit reference agency. Having done so, I can't see there was any indication that might have alerted Aqua that the credit limit increase would be unaffordable to Ms P in respect of her financial situation and her other borrowing.*

*However, I do note that they didn't receive information about payday lending at this time and I think this is something they should have been mindful of. If Ms P was borrowing money from payday lenders, this might have meant increasing the credit limit was unaffordable because it's a factor which reasonably could affect her ability to repay credit sustainably. I note this is information they now receive.*

*However, I'm not persuaded had Aqua obtained this information that their decision to lend would have changed or that it meant their decision was irresponsible. This is because I've reviewed the credit report provided by Ms P and I note the accounts highlighted therein. I can see she had a history of payday and short-term lending. But they appear to have been settled by the time of this increase. Having a history of payday lending doesn't necessarily mean that a later limit increase was irresponsible, particularly where the accounts appear to have been settled.*

*I should also note that from the information I have it appears Ms P was able to manage this credit limit. I understand she didn't notify Aqua of financial difficulties until February 2016. So, this is an additional reason which indicates the limit increase was affordable at the time.*

*For the reasons outlined above, I'm not persuaded Aqua irresponsibly increased Ms P's credit limit in July 2014.*

#### *Limit Increase – March 2015*

*Aqua have accepted they shouldn't have increased Ms P's credit limit to £2,500 because of the change in her account management. In order to put things right they paid Ms P £587.90 which was made up of the charges (£96), fees (£132), interest (£338.90) and cash advance fees (£21).*

*However, Ms P also says that 8% simple interest should be added. I've considered this carefully. In some cases, we might consider awarding 8% simple interest. If we direct a lender to make a refund or waive charges and interest because they've lent irresponsibly then this reduces the amount owed by the borrower. And if the borrower has been making repayments, this could mean the borrower has actually overpaid. Therefore, we might ask the lender to pay 8% simple interest on the amount which has been overpaid.*

*However, in this case the debt was sold on to a third-party debt collection agency and Ms P reached a settlement. She paid back less than what was owed. And importantly the reduction exceeded the amount refunded by Aqua. Therefore, I'm not persuaded its reasonable for Aqua to also pay 8% simple interest as it doesn't appear Ms P overpaid.*

*Ms P also says the negative entry should be removed from her credit file and she is concerned that it was recorded much later than her other defaults. However, Aqua have a duty to report activity accurately to credit agencies. Having considered the facts, I'm not persuaded Ms P would have been able to avoid the default marker even if Aqua hadn't increased her credit limit on this occasion. This is because she would still have had a card with a credit limit and other borrowing. I appreciate that Ms P will be disappointed by this, but it's not appropriate in the circumstances to ask them to remove it.*

*Ms P has also said Aqua delayed recording the default. Aqua have said the default was recorded fairly and asked me to consider the relevant regulations which I can assure them I have considered. And I note the Information Commissioner's Office ('ICO') says that a default should be recorded when an account is three months in arrears, and it would expect an account to be defaulted before six months of arrears. Aqua registered the default after seven months of arrears. Aqua have explained this was only an additional month and they aren't required to register the default within 28 days of the default notice. They don't feel that this is an unreasonable or excessive delay in reporting as it reflected seven consecutive months of missed contractual payments.*

*I've considered the requirements, but my role is to consider what's fair in the circumstances. As such, I've considered the reasons the default wasn't recorded sooner. I can see a default notice was sent on 13 December 2016 and Ms P was given until 3 January 2017 to repay the arrears. The default notice explained that if Aqua didn't receive the proposed amount within 28 days of the date of the letter then they would pass details of the default onto a credit reference agency. And I note by January 2017 she was in arrears by two months.*

*Given the information set out in the default notice, I can see no reason that persuades me it was reasonable to wait until June 2017 to register the default. I understand Aqua had previously arranged a repayment plan with Ms P after she told*

*them about her financial difficulties. They were first notified of her situation in February 2016. Therefore, when Ms P still hadn't brought her arrears up to date by the deadline in the notice, it was reasonably clear that her situation wasn't going to change so that she could make the repayments.*

*Therefore, I minded to say Aqua should have recorded the default sooner...*

In my provisional decision, I went on to explain how I thought Aqua should put things right. I said:

*Aqua have already refunded Ms P £587.90 which is made up of charges, fees, interest and cash advance fees. This is in line with what I would expect. And I've already explained why we wouldn't add 8% simple interest to the payment in these circumstances.*

*However, I've also not been persuaded that it was fair for Aqua to record the default when they did. And I think that they should amend the date of the default so it is recorded at three months from when Ms P paid less than the contractual amount in December 2016. So, it should be amended to 3 February 2017.*

I gave both parties the opportunity to respond before issuing my final decision on the matter.

I didn't receive a response from Ms P. Aqua responded to say they had nothing further to add.

### **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.

Having done so, I can see no reason to depart from the conclusion I reached in my provisional decision.

### **Putting things right**

I explained how I thought Aqua should put things right in my provisional decision. Having thought about this, I remain of the view that Aqua should arrange for the date of the default to be amended. This is fair and reasonable in all of the circumstances and the reasons for this are outlined above.

### **My final decision**

NewDay Ltd trading as Aqua have already refunded Ms P £587.90.

In addition, NewDay Ltd trading as Aqua should arrange for the date of the default to be amended so it is recorded as 3 February 2017.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 19 November 2021.

Laura Dean  
**Ombudsman**