DRN-2497750

The complaint

Mr N complains that NewDay Ltd (trading as Aqua) increased his credit card limit several times - beyond what he could afford to repay. Mr N also complains that Aqua made matters worse by increasing his interest rate.

What happened

Mr N opened a credit card account with Aqua in 2014. They gave him a £300 credit limit to start with, but then increased it several times. Mr N says he began to have problems when his credit limit was increased to £1,500 in May 2015 and that he was soon only able to make the minimum repayment each month by applying for payday loans. Mr N says although his financial situation was getting worse, in March 2016 Aqua increased his credit limit to £2,500. Mr N says this led to a snowball effect of debt – then Aqua stepped up his interest rate.

Mr N complained that the way Aqua handled his account caused his financial situation to deteriorate, to such an extent that in 2018 he defaulted on his debts. Aqua didn't think they'd done anything wrong, so our investigator looked in to things for Mr N.

Our investigator thought Aqua hadn't acted irresponsibly by increasing Mr N's credit limit. But he thought they should have realised Mr N was in financial difficulty due to missed payments from January 2018. The investigator thought Aqua should have contacted Mr N sooner to discuss how they could help him, so he recommended all interest and charges Mr N paid in May and June 2018 should be refunded.

Aqua disagreed with our investigator's view. They provided further evidence showing Mr N didn't miss any payments until April 2018, and their letters encouraged him to get in touch with them if he was struggling.

My provisional decision

In my recent provisional decision I said:

Credit limit increases

Mr N hasn't disputed Aqua's first credit limit increase, so I've focussed on the later increases in November 2015 and March 2016.

The Financial Conduct Authority (FCA) sets out rules and guidance for lenders to follow when they're deciding whether to increase someone's credit limit – these are set out in the Consumer Credit Sourcebook (CONC). At the time of the increases in this case, CONC expected lenders to first check the customer's creditworthiness. This meant considering their ability to repay the amount of credit within a reasonable time. It also involved looking at whether making those repayments might lead to other problems for the customer – such as causing financial difficulties. The extent of the check could be proportionate to the *circumstances – taking into account factors such as the amount of the credit limit, the customer's financial position and their credit history.*

As well as the CONC provisions, there are best practice guidelines issued by the credit card industry on increasing credit limits responsibly. These guidelines say creditworthiness checks should include information from credit reference agencies and at least one other source. This could be the customer's income and financial commitments, how they've handled their finances in the past, or internal credit scoring.

Aqua say they have a "low and grow" strategy - starting with a low credit limit then reviewing the account at regular intervals with a view to increasing it. Aqua have provided evidence showing that their reviews were based on information from credit reference agencies, as well as looking at how Mr N had been managing his account.

I'm satisfied that the reviews Aqua carried out were a reasonable and proportionate way to check Mr N's creditworthiness. I can see they received credit reference agency information about Mr N from the time he opened his account, so they followed the best practice guidelines about the types of information they should use. From March 2016 Aqua received extra information from a second credit reference agency, but there was no requirement for them to do this.

Up to the time of the second credit limit increase in March 2016, I didn't see anything in the credit reference agency information Aqua have provided that should have warned them about Mr N's ability to repay more credit. The credit report Mr N supplied more recently shows a similar picture in 2016. It does show signs that Mr N got into financial difficulty, but this wasn't until later. For this reason, I can't say there was anything in the credit reference agency information at the time that should have given Aqua cause for concern about increasing his credit limit.

Mr N's account history shows that, up to the credit limit increase in November 2015, he was managing his account well. I can see that his balance increased after this. A significant increase in outstanding balance could be a sign of financial difficulty, but this alone wouldn't give cause for concern. Mr N's account history shows that he continued to make payments on time, and he was managing to pay significantly more than the minimum monthly payment.

Aqua said that, in his application to open this account in 2014, Mr N declared that he'd been employed for nearly two years with an annual income of £32,500. Looking at all the information Aqua had about Mr N, I didn't see anything to suggest he was borrowing more than he could afford to repay. And I didn't see any warning signs that he might be struggling to make repayments before the second credit limit increase.

I've seen evidence that Aqua wrote to Mr B on 26 October 2015 and 25 February 2016 to tell him about their decision to increase his credit limit. Those letters also explained what he'd need to do if he didn't want this to happen. For these reasons, I don't think Aqua did anything wrong by deciding to increase Mr N's credit limit.

Interest rate increases

I appreciate that Mr N didn't tell Aqua that his financial situation was deteriorating. But we expect lenders to look for signs that customers are struggling, even if they haven't got in touch to ask for help. Our investigator thought there was evidence that Mr N was in financial difficulty early in 2018 – he said Aqua had acknowledged this. The investigator thought they should have done more to help Mr N at that point. Having carefully reviewed the evidence Aqua have supplied, I've come to a different conclusion - I'll explain why.

In the first year of the agreement Mr N paid off quite a large amount of what he owed each month. But from July 2016 Mr N went over his credit limit. And although he was still making more than the minimum repayments, he wasn't managing to reduce the overall amount he owed. In September 2016 he took a payday loan. When Aqua acknowledged that there were signs Mr N was in financial difficulty, I think they were referring to the fact that this was being flagged up to them in the credit reference agency data between May 2016 and April 2017.

Aqua have said that, if Mr N had told them he was in financial difficulty, they'd have been in a position to try to assist him. But they didn't try to contact Mr N. And the following month, in May 2017, Aqua decided to increase Mr N's interest rate.

Aqua have provided a copy of their letter to Mr N dated 26 May 2017, giving notice that his annual percentage rate (APR) would increase from 29.7% to 33.9% on 1 August. A similar letter dated 26 December 2017 gives Mr N notice of an increase to 41.9% on 5 March. So I can see Aqua followed good practice guidelines on credit card repricing notification, which say lenders should give at least 60 days' notice of this type of decision to increase interest rates. This gives the customer the option to close the account and pay back the money at the current interest rate.

But having the right to opt out of an interest rate increase doesn't automatically mean Mr N was treated fairly. Aqua's letters to Mr N say they considered a number of factors when setting his individual interest rate, which would have included how he managed his account and possibly credit reference agency information about other credit agreements he had. Aqua haven't told us what caused them to increase Mr N's rate, so I'm inclined to think this was due to his worsening financial situation.

I appreciate that Aqua need to consider the risk of customers failing to repay what they owe – and that their interest rates, fees and charges reflect that. But the FCA sets principles that businesses such as Aqua must follow, which include a requirement to treat customers fairly. Aqua had information to show that Mr N had been in financial difficulty in the 12 months leading up to May 2017. Instead of simply increasing his interest rate, I think Aqua should have contacted Mr N to ask him about his financial situation, and to discuss what they could do to help him.

At the beginning of 2018, Mr N's payments were only just covering the interest, fees and charges applied to the account. The second interest rate increase took effect in March 2018 – Mr N didn't manage to make any further payments after this. I think Aqua should have realised Mr N was already in financial difficulty, and that interest rate increases would make things worse for him. For these reasons, I think Aqua didn't treat Mr N fairly when it decided to increase his interest rate.

Increasing Mr N's interest rate increased the amount of money he owed. I can't direct Aqua to reduce Mr N's balance, because his debt was sold to another business in October 2018. But unfairly increasing Mr N's interest rate meant he owed more money and caused him a considerable amount of trouble and upset given his mounting debts, so I think it's fair that Aqua should compensate him for that.

I said that, subject to any further comments I received, I intended to uphold the complaint and order Aqua to pay Mr N £450 compensation to reflect the increased cost and trouble and upset he'd been caused.

Responses to my provisional decision

Mr N didn't send any further comments. Aqua did respond, saying they didn't agree that they'd treated Mr N unfairly. Their main points were:

- Aqua had followed the rules and guidelines for credit card interest rate variations. They'd contacted Mr N prior to the rate increase by sending him a letter, giving him the option to stop using the account and pay the balance at the current rate.
- Mr N chose not to stop using the account, and his statements indicate he wasn't using his card for only for necessities. Aqua feel that Mr N should be accountable for his continued spending despite his financial difficulties.
- There are no rules requiring Aqua to make contact by telephone, and it wouldn't be reasonable to expect a business of Aqua's size to contact each individual customer prior to an interest rate change because their account management behaviour has changed.
- The contact telephone number Aqua have on file for Mr N is not the same as the one shown in his recent complaint.

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.

FCA principles include a requirement for financial businesses to pay due regard to the interests of its customers and treat them fairly. This principle applies to Aqua's decisions to increase Mr N's interest rates. For the reasons I've explained in my provisional decision, in Mr N's individual circumstances, I find those decisions to have been unfair.

I can see that, having made the decisions to increase Mr N's interest rate, Aqua followed industry best practice guidelines on credit card repricing in the way they implemented those changes. They gave Mr N notice of the intended interest rate increases and allowed him the option to stop using the account and pay the balance at the current rate. However, this doesn't automatically mean he's been treated fairly.

I've again reviewed the evidence about Mr N's use of his credit card during the 12-month period from May 2017. Whilst I agree that Mr N chose not to stop using his account, I find that his monthly expenditure was generally quite low. In 10 out of 12 of those months, the interest Aqua applied to Mr N's account exceeded the value of new purchases. I saw no evidence that his spending was inappropriate for someone in a deteriorating financial situation. Although I agree one or two subscriptions may not be considered necessities, on balance I'm satisfied that those may have been contractual obligations of 12 or even 18 months' duration.

I'm not suggesting that Aqua should contact *every* customer by telephone before increasing their interest rate. But where – as in Mr N's case – there's evidence to suggest the customer is in financial difficulty, the relevant guidance indicates a lender should take proactive steps to look in to matters and provide assistance. I'm not persuaded that Aqua did enough in this respect, and in my view what Aqua did do was likely to make things worse for Mr N, given his deteriorating financial situation.

My final decision

For the reasons I've set out, I uphold this complaint and direct NewDay Ltd to pay Mr N £450 compensation to reflect the increased cost and the trouble and upset he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 8 February 2021.

Corinne Brown
Ombudsman