

The complaint

Mrs F complains that NewDay Ltd, trading as Aqua, acted irresponsibly when it increased the limits on her credit on several occasions.

What happened

Mrs F had an Aqua credit card which she'd taken out in 2012 with an initial limit of £250. NewDay increased the limit on this card several times so that by January 2016 it was £4,750. Mrs F says NewDay was irresponsible in offering these increases as it was clear she was running her account at the maximum of her credit limit and over reliant on credit.

In 2015 Mrs F application for a Marbles credit card with NewDay. The application was accepted with an initial credit limit of £900. This was increased to £1,700 in October 2015 and increased again in August 2016 to £2,700. She says these increases were unaffordable.

Mrs F got into financial difficulties in October 2016. She feels NewDay was irresponsible in increasing her credit limit as it did and that this had worsened her financial problems. She would now like NewDay to refund all interest and charges on her accounts.

NewDay rejected the complaint. It said when it issues a credit card it takes into account the information on the application as well as information available from other sources such as credit reference agencies. However, its cards are marketed at consumers with a less than perfect credit history so it's not unusual to see some adverse history on some applications. It has a "low and grow" policy in that it starts with a low initial balance which can be increased depending on how the consumer manages the card.

It said Mrs F's Aqua card had an initial low credit limit of £200. The first increase was at Mrs F's request and she had then accepted all the subsequent ones without raising any concerns. It felt Mrs F had been managing her account appropriately and there were no missed or late payments to suggest she was having difficulty in maintaining the payments.

NewDay felt it had carried out appropriate checks before issuing the Marbles card. This included checking her income and employment status and other sources. Mrs F had said she was employed with an income of £14,000 and access to other household income of £36,000. It hadn't seen any indicators to show Mrs F was having financial problems at this time and considered its decision to accept the application was reasonable. It didn't agree it had been irresponsible.

Our investigator didn't uphold the complaint and said she felt NewDay had carried out appropriate checks before issuing the credit cards and there were no obvious indicators to suggest Mrs F was struggling to meet her payments even after the increases had been agreed. For that reason, she wouldn't be asking NewDay to do anything more.

Mrs F disagreed and maintained her view that NewDay hadn't carried out appropriate checks before offering the increases on her cards. She asked for her complaint to be referred to an ombudsman.

On 15 January 2021 I issued a provisional decision in which I made the following points:

The crux of this complaint was whether NewDay had carried out adequate checks before deciding to increase Mrs F's borrowing on her credit cards. While there was no specific list of checks a lender must carry out before deciding to offer a credit card account, or to increase a credit limit, the checks in each case needed to be appropriate to the product and proportionate to the amount that was being borrowed. And this applied each time lending limit was increased to ensure that the additional borrowing was affordable.

Some of Mrs F's complaints went back to 2012. However, under the rules that govern what complaints we can accept we were not able to look at issues that had arisen more than 6 years ago, or more than three years from when the consumer could reasonably have known there was a cause for complaint unless there were exceptional circumstances. In this case I considered that the time would start to run on each card from when the card was first issued and then at the point of each subsequent credit increase and, on that basis, I could only look at those events that happened after January 2014.

I noted that the first relevant increase on Mrs F's Aqua card was in October 2014. At this point the limit was increased from £1,400 to £2,150. This was followed by the following increases

March 2015 to £2,900
August 2015 to £3,650
January 2016 to £4,750.

It was clear from the statements that Mrs F was running this card at the maximum of her lending and that every time the limit was increased, Mrs F's borrowing also increased to the maximum of the new limit. While Mrs F managed to maintain her monthly payments up until October 2016 it was clear that her balance wasn't reducing over this time with the result that she was having to pay more and more in interest each month to keep her account in credit.

The guidance on Credit Card Limit Increases issued by the UK Cards Association says that one of the indicators that should be taken into account before an increase is offered is *"paying the minimum over an extended period and possibly across multiple credit/store cards, particularly with high balance/ limit utilisations"*.

On that basis, I consider that the way Mrs F was running her account was a significant risk indicator as regarding her ability to sustain further increases, either on this card or any other product.

In June 2015 NewDay accepted Mrs F's application for a second credit card. In her application Mrs F had stated that she had an income of £14,000 with access to a further income of £36,000. There were also no late pay or missed payments to suggest she was in financial difficulty at this time. In the circumstances I did not consider it was irresponsible in itself to have issued Mrs F with this card at that time.

The notes on Mrs F's application, however, noted that she had "high indebtedness". This, together with Mrs F's significant credit liability at this time, should have raised concerns about the affordability of any future increases in her borrowing. And it was clear that the issue of this card, and the subsequent increases on both cards, did increase Mrs F's borrowing considerably without any apparent checks being made to see if her income was increasing in line with this.

As a result, Mrs F's borrowing increased significantly within a relatively short time as the table below shows:

	Aqua	Marbles	Total borrowing
May 2015	£2,900	0	£2,900
June 2015	£2,900	£900	£3,800
August 2015	£3,650	£900	£4,550
October 2015	£3,650	£1,700	£5,350
January 2016	£4,750	£1,700	£6,450
August 2016	£4,750	£2,700	£7,450

It was clear from this that the combined increases on the two credit cards resulted in a significant increase in Mrs F's borrowing between June 2015 and August 2016. And the fact that Mrs F fell into financial difficulties on both cards in October 2016 suggests these later increases were not affordable or sustainable.

While I had taken into account what NewDay had said about its "low and grow" policy and why it considered the increases were reasonable, I considered that Mrs F's high indebtedness and the way she'd been managing her Aqua card should have prompted some additional enquiries into her income and expenditure before these increases were offered., including why, if she had access to an income of over £36,000, she wasn't using it to reduce her overall balance, which by now had increased considerably.

This was particularly the case with the increases which came in automatically unless a customer proactively declined to accept them. For that reason, it was important that the business satisfied itself that any increase was affordable before it was offered to the consumer. In Mrs F's case I wasn't satisfied that NewDay had carried out sufficient checks before offering the later increases and that this additional borrowing had therefore contributed to her financial problems. On that basis, I proposed that NewDay should refund all interest and charges its applied to Mrs F's Aqua and Marbles accounts from August 2015 onwards together with interest at 8% from the date of payment to the date of refund and also remove all adverse information about both accounts from Mrs F's credit file from August 2015 onwards.

Both Mrs F and NewDay have responded to my provisional decision. Mrs F has accepted the recommendations I proposed.

In its response NewDay made a number of points as follows:

- before October 2016, Mrs F's account were well managed with payments being made on time, and that there was nothing to suggest she couldn't meet her payments. It didn't accept that the high level of indebtedness or the way Mrs F was using her card indicated that the additional borrowing wasn't affordable. It appeared Mrs F had become unwell around October 2016 and that it was this, and not the increases in her credit limit, that had caused the problems with her account.
- it submitted that the refund of the interest and charges should be limited to those occurring immediately before her account fell into arrears, that is from August 2016 and not August 2015.
- It said that the interest on the refund would usually apply where the account had been cleared in full each month but in this case that had happened and that Mrs F had therefore had the benefit of the goods and services purchased on credit but not fully paid for them. It didn't feel this should apply on this case.

- New Day said it had a legal obligation to ensure the information provided to the credit reference agencies was accurate. It noted that Mrs F had failed to make any payments on her Aqua card between February and July 2017 or on her Marbles card between March and July 2017, not even a reduced amount and felt it would be irresponsible not to report this.

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 have taken the comments from both Mrs F and NewDay into account but having done so I haven't seen anything to cause me to change my view that NewDay hadn't made appropriate checks to ensure that the increases in Mrs F's credit limit from August 2015 were affordable and that this contributed to Mrs F's financial problems.

The records show that Mrs F was running her cards at or near the maximum of her credit limit and that she had been doing so for some time. The effect of this is that the consumer is in effect paying a much higher amount interest for the borrowing without actually reducing the capital sum outstanding. That is noted as a risk against further credit limit increases in the guidance on Credit Card Limit Increases issued by the UK Cards Association and should have acted as an indicator that further checks would be appropriate.

While NewDay has said the impact of making the minimum payment is set out on the monthly statements and it's for the customer to decide how to pay the outstanding balance, NewDay also has a responsibility to ensure that the customer is able to afford any further increases.

NewDay has said Mrs F had a reasonable income and access to a further £36,000. But having access to income is not the same as having control over it and I can't see that any checks were made as to whether Mrs F would be able to use this towards her own borrowing. In Mrs F's case the notes show that Mrs F already had a high level of indebtedness at the time the second card was issued and it seems to me that this should have cautioned against making significant further increases without first making sure Mrs F was in a position to afford them.

As has been said before, the increases took her borrowing from £3,800 in June 2015 to £7,450 by August 2016. That's an increase of almost 100% over a 15-month period and I consider that this should have prompted more detailed and specific checks on the affordability of such increases. And the fact Mrs F went into financial difficulties in October 2016 suggests that the later increases weren't affordable.

For that reason, I remain of the view that the increases after August 2015 weren't affordable.

However, taking into account the additional information provided, I've come to a slightly different view as to what NewDay needs to do to put matters right. Mrs F already had an outstanding balance of £3,800 in August 2015. It wouldn't be reasonable to ask NewDay to refund all of the additional interest and charges after that date. Instead I consider that it would be reasonable for NewDay to rework Mrs F's account to deduct any interest and charges relating to the increases after that date. Any refund should then be used to reduce any outstanding balance. If the refunds are greater than the amount still outstanding the balance should be repaid to Mrs F.

NewDay should also check for any periods when Mrs F's payments would have been enough to clear her balances and, if this is the case, it should pay 8% annual simple interest on any periods when Mrs F would have been in credit.

Instructing a business to remove adverse credit information from a customer's credit file is a course of action that this service has the remit to make, and one which I consider to be fair and reasonable when considering the circumstances of this complaint. As I consider the increases after June 2015 were irresponsible, I can find no reason why it wouldn't be fair to instruct NewDay to remove the adverse information on Mrs F's credit file that has arisen from this irresponsible lending.

This is slightly different to what was set out in my provisional decision but I think it is fair and reasonable. And because the change is minor, I consider that it is appropriate to continue to a final decision.

My final decision

My final decision is that I uphold Mrs F's complaint and direct NewDay Ltd trading as Aqua to:

- refund the interest and charges applied to Mrs F's account above the £3,800 credit limit in June 2015 and rework her credit card accounts. Any such refunds should be applied to reduce Mrs F's outstanding balances. If NewDay deducts any income tax from this amount, it must provide the necessary certificate to Mrs F.
- check for any periods when Mrs F's payments would have been enough to clear her balances and, if this is the case, it should pay 8% annual simple interest on any periods when Mrs F would have been in credit.
- remove any adverse information from Mrs F's credit file relating following the credit limit increases in June 2015.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 23 April 2021.

Cerys Jones
Ombudsman