

The complaint

Ms Q thinks that NewDay Ltd, trading as Aqua, lent to her irresponsibly when approving her for a credit card and when the credit limit on the card was later increased.

What happened

Ms Q applied for an Aqua credit card in December 2017. The credit application was approved, and Ms Q was issued a card with an initial credit limit of £450. In April 2018, Aqua offered to increase Ms Q's credit limit to £1,200. Ms Q didn't decline the offer, and so the credit limit was increased.

Ms Q got into financial difficulty in 2019 and was unable to meet the necessary minimum payments. NewDay issued a default notice to Ms Q, but Ms Q was unable to make the necessary payments on the account. NewDay defaulted Ms Q's account in April 2020.

Ms Q wasn't happy and thought that NewDay had offered credit to her that she couldn't afford, so she made a complaint. NewDay looked at Ms Q's complaint, but they said that they checks that they had undertaken when offering the credit demonstrated to them that they had not acted irresponsibly, either at the time of the original credit card application, or the later credit limit increase. NewDay also felt that they had acted appropriately in how they had managed Ms Q's account once Ms Q had fallen into arrears. So, they didn't uphold the complaint.

Ms Q wasn't satisfied with NewDay's response, so she referred her complaint to this service. One of our investigators looked at this complaint. They felt that it had been appropriate for NewDay to offer credit to Ms Q at the time of the initial credit application. However, they felt that Ms Q's circumstances at the time of the credit limit increase were such that NewDay had offered credit to Ms Q irresponsibly at that time.

So, our investigator said that NewDay should take action because of this. The recommendations made by our investigator included refunding any interest and charges applied to the account above the initial £450 credit limit and removing any adverse information from Ms Q's credit file that had been reported because of the credit limit increase.

NewDay accepted most of the actions recommended by our investigator, but they put forward an argument as to why it wouldn't be fair to ask them to remove the adverse information from Ms Q's credit file. Our investigator considered this argument and issued a second view which confirmed that he was withdrawing the requirement for NewDay to remove the adverse information from Ms Q's credit file, but that all the other previous recommendations remained in place.

Ms Q wasn't happy that the investigator had amended his recommendations in this way, so the matter 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.

I issued a provisional decision on this complaint on 16 February 2021 as follows:

I must begin by confirming that I am in agreement with the recommendations made by our investigator which NewDay has previously accepted, and while I will not refer to these during the course of this section, I will include these in the instructions I'll make to NewDay toward the end of this letter.

The key issue here is whether NewDay should remove the adverse information from Ms Q's credit file, as per the original recommendation made by our investigator.

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. NewDay have agreed that they offered credit to Ms Q irresponsibly when increasing the credit limit on her account, and so I can find no reason why it wouldn't be fair to instruct NewDay to remove the adverse information on Ms Q's credit file that has arisen from this irresponsible lending.

NewDay's argument against this course of action appears to be based on features of their own internal systems that would make complying with this instruction problematic. However, this does not provide a sufficient reason to withhold a fair outcome to a customer. So, I will be instructing that NewDay remove the adverse information from Ms Q's credit file.

Finally, I feel that the inconvenience that Ms Q has experienced in regard to the events surrounding this complaint has not been appropriately considered, so I will also be instructing NewDay to make a payment to Ms Q of £100 because of this. However, NewDay can apply this £100 to any debt that remains on Ms Q's account once all other restorative action instructed below has been completed.

I invited Ms Q and NewDay to provide any comments that they wished me to consider before I made my final decision. Ms Q accepted my provisional decision. However, NewDay raised several points.

The first was that, as a provider of credit, NewDay are obliged to make accurate reports to the credit reference agencies, and that one reason for this is so that businesses to whom Ms Q might apply to for credit in future have an accurate record of how she has managed previous credit.

NewDay also point out that retaining a record of how Ms Q has managed the higher credit limit in this instance on her credit file would help to prevent the very thing that Ms Q is complaining about happening again – being approved for a level of credit that is unaffordable for her.

I can appreciate NewDay's point here to a degree, and this service understands well the importance of accurate credit file reporting.

But my decision here includes that Ms Q should never have been offered the higher level of credit that NewDay authorised her for in April 2018. And it follows from this that any potential mis-management of that credit by Ms Q which has led to adverse information being recorded on her credit file should never have happened. And this is because Ms Q shouldn't have had the higher level of credit to potentially mis-manage, because that higher level of credit wasn't

affordable for her.

NewDay have also raised concerns that my provisional decision doesn't acknowledge that any accountability or responsibility falls on Ms Q for how she managed the higher level of credit. But NewDay had a responsibility here also – to ensure that they weren't authorising Ms Q for unaffordable levels of credit – and this responsibility is in place precisely to prevent customers such as Ms Q being granted inappropriate levels of credit and then getting into unsustainable levels of debt.

I must also note that it isn't the case that my decision absolves Ms Q of all accountability, and I say this because I'm not asking NewDay to write off any of the capital balance that Miss Q has used here. It's fair that Ms Q should repay this balance, because it's money that she has had the use of.

But NewDay shouldn't have offered Ms Q a credit limit increase in April 2018. And it is the case that I feel that the accountability for the subsequent management of that credit facility falls back to NewDay. And this is because any potential mis-management of the higher credit facility by Ms Q was only made possible because NewDay authorised her for that higher credit limit.

So, it doesn't feel fair to me that Ms Q should have paid fees or charges, or have incurred adverse information on her credit file, because of NewDay authorising her for a level of credit that was unaffordable for her. And it must also be noted that Ms Q didn't apply for this higher level of credit, but rather that it was offered to her by NewDay.

All of which means that it remains my opinion that the outcome I outlined in my provisional decision is a fair and reasonable one, and this includes the provision that NewDay must remove all adverse information from Ms Q's credit file following the credit limit increase in April 2018. And so I will be upholding this complaint on that basis.

Putting things right

NewDay should refund interest and charges applied to Ms Q's account above the £450 credit limit and rework her credit card account. Any such refund should be applied to reduce Ms Q's outstanding balance. If NewDay deducts any income tax from this amount, it must provide the necessary certificate to Ms Q.

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

NewDay should recall the account from the debt collection agency and remove any adverse information from Ms Q's credit file following the credit limit increase in April 2018.

NewDay should make a payment of £100 to Ms Q, although this payment can be used to reduce any outstanding balance still present on the account once the actions referred to above have been completed, with any remaining credit paid to Ms Q.

Finally, NewDay should assess whether any debt remains on the account following these actions and should make appropriate arrangements moving forward. If Ms Q's account cannot be returned to the previous contractual terms, as NewDay have suggested, I leave it to NewDay's discretion to agree repayment terms with Ms Q that differ from the contractual terms, so long as any difference is in Ms Q's favour.

My final decision

My final decision is that I uphold this complaint against NewDay Ltd, trading as Aqua, on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Q to accept or reject my decision before 16 April 2021.

Paul Cooper
Ombudsman