

Complaint

Mr H is unhappy with what NewDay Ltd (trading as “Aqua”) did to put things right after it agreed it irresponsibly lent to him.

Background

When Aqua considered Mr H’s complaint it didn’t think it acted unreasonably when initially providing Mr H with his credit card in September 2014 and when it increased his credit limit to £550 in December 2014 and £1,250.00 in May 2015. But it accepted that it shouldn’t have increased Mr H’s credit limit on the four further occasions that it did from September 2015 onwards. Aqua agreed to reduce Mr H’s outstanding balance by all of the extra interest, fees and charges it added as a result of these limit increases.

Mr H remained dissatisfied as he didn’t think that what Aqua had agreed to do went far enough and he referred his complaint to our service. Mr H’s complaint was then considered by one of our investigators. She thought that what Aqua had already done to put things right for Mr H was fair and reasonable in all the circumstances of his case. Mr H disagreed and asked for an ombudsman’s decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully considered everything, I think that what Aqua has already agreed to do to put things right for Mr H is fair and reasonable in all the circumstances of his complaint. I’ll explain why I think this is the case.

Mr H hasn’t specifically said that he disagrees with our investigator’s assessment on Aqua’s initial decision to provide him with a credit card and then increase his credit limit on the first two occasions. However, for the sake of completeness, I’ve considered whether Aqua did fairly and reasonably agree to advance Mr H credit when it did so in September 2014, December 2014 and May 2015.

The initial decision to provide Mr A with a credit card with a limit of £250

Aqua needed to make sure that it didn’t lend irresponsibly. In practice, what this means is Aqua needed to carry out proportionate checks to be able to understand whether Mr H could afford to repay before it decided to provide Mr H with a credit card and then increase his credit limit. Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we’d expect

a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

Mr H was given a credit facility where there was an expectation that he'd repay what he borrowed plus the interest due within a reasonable period of time. The relevant rules, regulations and guidance throughout the period Aqua was lending to Mr H don't set out what a reasonable period of time is. So I think it's important to note that a reasonable period of time will always be dependent on the circumstances of the individual case.

That said, Mr H's declared income at the time together with there not being anything too concerning on his credit file leads me to think that it was reasonable and proportionate for Aqua to conclude Mr H would be able to repay £250 within a reasonable period of time. So I don't think that Aqua did anything wrong when it decided to provide Mr H with a credit card that had an initial limit of £250.

The first credit limit increase in December 2014

Aqua offered Mr H a credit limit increase to £550 in December 2014. In my view, this was a significant increase and Aqua needed to ensure Mr H could sustainably repay a balance of £550 within a reasonable period of time. Aqua's correspondence appears to suggest that its decision to increase the credit limit on Mr H's account was based on his account conduct and management. I have significant concerns with the principle of this approach.

It is not clear to me why a borrower who is able to successfully manage a given credit limit can then automatically be deemed, without further checks, to be able to successfully manage a higher limit. It seems to me that this logic would likely lead to continually increasing limits, unless or until problems arise.

Notwithstanding this, at the time of the first limit increase I can see that Mr H had made a couple of large payments to his account and the balance was kept under the limit in the months since the account had been opened. So I can to some extent see why this may have given Aqua the impression that Mr H was managing the account well. And although I don't think that this is, in itself, means that Mr H was in a position to sustainably repay the balance within a reasonable period I find that the decision to increase Mr H's credit limit to £550 wasn't unreasonable.

The second credit limit increase in May 2015

The second credit limit increase increased Mr H's credit limit by £700 from £550 to £1,250. I don't know what additional checks to what it had done previously, if any at all, Aqua carried out before deciding to offer the credit limit increase to £1,250. But, in any event, the information I do have leads me to think that it wasn't unreasonable for Aqua to have reached the conclusion Mr H might be able to sustainably repay the additional £700 within a reasonable period of time.

I say this because Mr H's credit file still didn't show anything too concerning and he continued making payments far in excess of the minimum due. Indeed, Mr H appears to have made a payment almost equal to his entire existing credit limit in the month proceeding this application. I've seen what Mr H has said about his income not having been verified. But the payments he made and the other information Aqua had didn't contradict Mr H's income declaration, or obviously demonstrate what he'd said was implausible.

So overall and having considered everything, I can see why Aqua also might have had the impression Mr H could afford to repay an additional £700 and I don't think it was wholly unreasonable for Aqua to have offered and then provided this credit limit increase to Mr H.

And this means that I don't think that Aqua's decision to only uphold Mr H's complaint from the credit limit increases which took place from September 2015 is unreasonable.

Why I think what Aqua has agreed to do to put things right for the remaining credit limit increases, which it shouldn't have provided, is fair and reasonable in all the circumstances

I now turn to what Aqua did to put things right for Mr H as a result of the credit limit increases it agrees it shouldn't have provided to him.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business, as far as reasonably practicable, to put the consumer in the position they would be in if that wrong hadn't taken place. So, in an ideal world, we'd tell Aqua to put Mr H in the position he'd now be in if he hadn't been given the credit limit increases he shouldn't have.

But, as our investigator explained, when it comes to complaints about irresponsible lending this isn't straightforward. Mr H was given the credit limit increases in question and he used the funds. So, in these circumstances, we can't undo what's already been done. And it's simply not possible to put Mr H back in the position he would be in if he hadn't been given these credit limit increases in the first place.

As this is the case, we have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. Where a business increases the credit limit on a facility in circumstances where it should have realised the additional credit was unaffordable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any interest and charges on that additional credit.

This means we'd normally expect a lender to refund the extra interest and charges it added as a result of any credit limit increases which shouldn't have been granted. Indeed, Mr H appears to know that's what we usually tell businesses as this is pretty much what he asked Aqua for when he made his initial complaint.

In this case, Mr H has been left with an outstanding balance even though he has been 'refunded' all of the extra interest, fees and charges applied as a result of these credit limit increases. So while Mr H has been left with a balance on his account and he might be unhappy with this, Aqua has done what I'd normally expect it to do here.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it provided credit it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

Mr H says Aqua should do something different here. He now wants the remaining balance on his credit card written off. He says Aqua never verified his income and he doesn't have the means to pay back the outstanding balance.

I've thought about what Mr H has said. But all the interest, fees and charges Aqua shouldn't have added have been removed from his account. So what Mr H is left with to repay are the funds which he had the use of and I don't agree that the interest, fees and charges have left him with a debt that he wouldn't otherwise have been left with. I think it's perfectly fair and reasonable to expect Mr H to repay these funds. And I don't think that Mr H's unhappiness at having a balance to repay, even after his complaint was upheld, is, in itself, a compelling reason for me to depart from our usual approach here.

That said, I am mindful of what Mr H has said about his income both at the time and at present. Aqua might not have verified Mr H's income. But it did proceed on the basis of information Mr H provided and in circumstances where Mr H may well have been spending funds he knew he couldn't afford to repay. I don't think it would be fair and reasonable for Aqua to profit from its decision to provide unaffordable credit limit increases and I'm satisfied that the refund of the extra interest, fees and charges addresses this. But bearing in mind the remainder of Mr H's additional balance is made up of his spending and he also provided some of the inaccurate information relied on, I don't think that it's fair for me to hold Aqua entirely responsible for this.

Equally, the third-party debt purchaser which now purchased Mr H's debt is required to exercise forbearance and due consideration in the event Mr H tells it he is now struggling to repay what he owes. This involves considering things such as setting up an affordable payment plan, taking into account what, if anything, Mr H is able to repay. And at this stage this matter is yet to be determined.

Bearing in mind all of this, I'm satisfied that what Aqua has already agreed to do to put things right for Mr H is fair and reasonable in all the circumstances of his case and I'm not requiring it to do anything more. As this is the case, it's up to Mr H to decide whether he wishes to accept Aqua's offer.

My final decision

For the reasons I've explained, I'm satisfied that what NewDay Ltd has already agreed to do to put things right for Mr H is fair and reasonable in the circumstances of her case. So I'm not requiring it to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 August 2021.

Jeshen Narayanan
Ombudsman