

## **The complaint**

Miss R complains NewDay Ltd trading as Aqua, (“NewDay”) increased her credit card limit when she couldn’t afford it.

## **What happened**

In April 2014 Miss R took out a credit card with NewDay, it had an initial credit limit of £250. Between July 2014 and July 2017, the credit limit was increased three times.

Miss R has said she couldn’t afford the credit increases NewDay allowed her. She said the balance was quite often near to the limit and she only ever paid around the minimum amount required. Miss R mentioned that when she took the card out, she was reliant on various welfare benefits for income and her circumstances meant that wasn’t going to change. She says she eventually had to enter into a repayment plan after the final increase in July 2017, as she could no longer afford the credit card repayments. Miss R complained to NewDay about this.

NewDay responded saying it didn’t think it had done anything wrong. It mentioned that each time Miss R’s credit limit was increased, her account was reviewed, and various checks were undertaken to ensure the increase was affordable. It said Miss R was sent a letter on each occasion and was given the option to ‘opt out’ of the increase but she didn’t do this. Miss R disagreed with NewDay’s response and brought her complaint to this service.

Our Investigator looked into the complaint and thought NewDay had acted unfairly in applying the credit increases to Miss R’s account. She thought that Miss R’s account management history demonstrated that she was often near to her limit just before each increase and that she had had difficulty maintaining the minimum repayments on the account as she had received late payment charges. The investigator said NewDay should put things right by refunding the interest and charges to the account from the date of the second credit increase in April 2016. She also recommended NewDay pay Miss R £150 compensation to reflect the distress and inconvenience NewDay had caused Miss R through the unsuitable limit increases.

NewDay disagreed with the investigator and asked for an ombudsman to review the case. In doing so it reiterated many of the points it had previously made. It explained it followed its Responsible Lending policies when providing Miss R with her credit limit increases. It also pointed out Miss R was using the account for non-essential spending, was able to make payments towards it and said she held some responsibility for her spending decisions. It also made the point that high utilisation of the card itself wasn’t a reason to deny a credit limit increase, and there were no other internal or external concerns raised at the time of each increase.

## **My provisional findings**

I issued my provisional findings on this complaint on 15 July 2021. I said I intended to uphold the complaint for the following reasons:

*The rules and regulations throughout NewDay's lending relationship with Miss R required it to carry out a reasonable and proportionate assessment of whether she could afford to repay what she owed in a sustainable manner. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".*

*These checks needed to be 'borrower focussed' and so NewDay needed to consider not only the likelihood of it getting its money back, but also whether repaying the credit would cause undue difficulties for Miss R.*

*The checks needed to be "proportionate" to the specific circumstances of the lending. Generally, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit involved.*

*Miss R has provided this service with a more detailed account of her circumstances – and her financial position when NewDay offered her the increases. It's clear from what Miss R has told us that she had limited means in which to be able to afford to repay the borrowing that was made available to her. So what I now need to decide is if NewDay carried out the appropriate checks and increased her credit limit responsibly by taking into account what I've said above. And if there were any indicators that Miss R might not have been able to afford the increases. With this in mind, I have gone on to consider each credit limit increase NewDay has allowed Miss R.*

*The first credit limit increase in July 2014*

*In July 2014 NewDay sent Miss R a letter to say it would like to offer her an increase in her credit limit from £250 to £750. The letter said it had done this due to how she had managed her account and that it thought the new limit was suitable for her.*

*The new limit was three times that of the original and I think that represents quite a significant increase. So NewDay needed to carry out the appropriate checks to ensure Miss R could afford the increase in borrowing.*

*NewDay has sent me a copy of its internal data it says it took into account when offering the increase. However, given the very short time (only two months) between Miss R taking the card out and the limit increase being offered, I'm not sure how NewDay has demonstrated it carried out appropriate checks to ensure the new limit was affordable.*

*While decisions aren't made in hindsight, looking at what happened immediately after the increase I think at least gives an indication of what NewDay might have found out had it done more checks. Within two months of the limit increasing Miss R went over the credit limit and missed a payment, incurring an early payment charge. No further significant payments were made to the account and it stayed near to the limit.*

*With the above in mind, it isn't clear to me why after such a short space of time, New Day concluded the increased limit was affordable to Miss R. I don't agree NewDay should have increased the limit on this occasion.*

*The credit limit increase in April 2016*

*NewDay wrote to Miss R in April 2016 again saying that because of the way she'd been managing her account, NewDay thought a credit limit increase to £1,350 was suitable for her.*

*Looking at the internal data I can see that Miss R had missed five payments and been over the limit on three occasions since the previous credit limit increase. Which, to me, suggests she had some difficulties in maintaining the previous limit. Miss R had also only been making around the minimum repayment for the credit card balance and as such the balance remained near the limit for most of the time.*

*The new limit was over five times that of the original limit of £250. Given her previous account management, and the amount of increase, I don't think NewDay should have offered her this credit limit increase.*

*The credit limit increase in January 2017*

*Again Miss R was written to and offered a credit limit increase based on her account management. The internal data shows that since the last credit limit increase while Miss R hadn't missed any payments, she was only making around the minimum repayments on the balance. The data also shows Miss R had other debts that had started to accrue around this time and she had started to use the card for cash withdrawals.*

*Two months after this credit limit increase, Miss R entered into a repayment plan as she could no longer afford the repayments.*

*For the same reasons as mentioned previously, I don't think NewDay should have increased Miss R's credit limit on this occasion.*

*Based on the internal data NewDay has provided I don't think it should have increased the credit card limit on any of the occasions mentioned above. The data shows that Miss R was struggling to manage her commitments and the credit card account in the way expected.*

*New Day has said high utilisation of an account isn't a reason in itself to refuse lending. While this may be the case, I don't agree it did enough on these occasions to establish the lending was suitable for Miss R and that it wouldn't cause her any undue hardship.*

*NewDay has said that before deciding to increase a credit limit it referred to its internal data which also takes into account information recorded by credit references. No internal or external concerns were raised so it believes the limit increases were suitable for Miss R. However, based on what I've outlined above I think there was information available to NewDay which suggested it should have undertaken more thorough checks. While NewDay didn't technically have to ask Miss R for income and expenditure information at the point of each increase. Given what it was aware of about her circumstances and source of income, I question that without doing so, how it could have possibly satisfied itself of her ability to repay the significant level of borrowing it was making available to her. For example, it had no knowledge of whether her income had increased or decreased, or what her level of external commitments were outside of that reported to credit reference agencies.*

*I realise NewDay wrote to Miss R on each occasion and gave her the opportunity to 'opt out'. It says she must bear some responsibility for not doing so and continuing to spend on the card. However, I don't see how this makes a difference to the fact of whether it was fair or reasonable of NewDay to offer those credit limit increases in the first place.*

*Similarly, NewDay has mentioned that when Miss R went into a repayment plan her income and expenditure showed she had no disposable income, but she chose to make payments of £22. The fact Miss R decided to rearrange her finances and make money available to pay NewDay more than she needed, to service the arrears, doesn't make a difference to whether NewDay should have made the increased borrowing available to her in the first place. In*

*doing so, it put her and her financial position under undue stress and significantly contributed to the position Miss R subsequently found herself in.*

*In light of the above I intend to uphold Miss R's complaint.*

### **Responses to my provisional findings**

Miss R responded saying she accepted my provisional findings.

NewDay has not responded to my provisional decision.

As the deadline has now passed, I have reconsidered the case before making my 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.

As neither party has provided any further comments for me to consider, I see no reason to depart from my original findings. Having reconsidered everything, I remain of the opinion Miss R's complaint should be upheld.

### **Putting things right**

As Miss R had to pay a significant amount of interest and charges as a result of her credit limit unfairly being increased from July 2014 onwards, I think that she lost out because of what NewDay did wrong. So NewDay should put things right.

In most cases, where credit has been provided when it shouldn't have been, it would be fair and reasonable for the lender to refund any interest and charges paid by the borrower (if they were any) plus interest. And the borrower would be expected to repay any remaining amount of the funds they were given. So I'd expect Miss R to pay back the funds she was lent – when she used her card – but not the interest.

NewDay should rework Miss R's account to remove the effect of any interest and charges accrued on the account as a result of the unfair credit limit increases which took place in July 2014, April 2016, January 2017 and July 2017. In other words, for the period from the July 2014 statement, NewDay can only add any interest due on the first £250 of the balance – all late payment and over limit fees also need to be refunded irrespective of what any reconstructed final balance may show.

The payments Miss R made from July 2014 onwards should then be applied to the reworked balance. Any extra that was paid should be treated as overpayments and returned to Miss R. NewDay should also add interest, at 8% simple per year, from the date any overpayment was made to the date of settlement.

NewDay should also remove any adverse information recorded on Miss R's credit file as a result of this account.

I also think NewDay should pay Miss R £150 compensation for the stress it placed on her financial situation – and in turn her.

All of this means that in order to put things right for Miss R, NewDay should:

- rework the account to ensure that from July 2014 interest is only charged on the first £250 outstanding to reflect the fact that no further credit limit increases should have been provided. All late payment and over limit fees should also be removed; and
- the payments Miss R made from July 2014 should then be deducted from the reworked account balance. Any extra that was paid should be treated as overpayments and refunded to Miss R; and
- Pay Miss R an additional £150 for the trouble and upset it caused by continually increasing her limit.
- add interest at 8% per year simple on any overpayments, if they were any, from the date they were made to the date of settlement †

† If HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Miss R a certificate showing how much tax it's taken off if she asks for one.

From what I've seen it appears as though NewDay sold the outstanding balance on this account to a third-party debt purchaser. So, it either needs to buy the account back from the third party and make the necessary adjustments, pay an amount to the third party in order for it to make the necessary adjustments, or pay Miss R an amount to ensure that it fully complies with this direction.

Finally, NewDay should arrange a suitable repayment plan with Miss R if an outstanding balance remains on the account after all adjustments have been made.

### **My final decision**

My final decision is that I uphold Miss R's complaint against NewDay Ltd. I direct it to put matters right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 30 August 2021.

Alison Gore  
**Ombudsman**