

The complaint

Mr B complains that NewDay Ltd trading as Aqua (Aqua) lent to him irresponsibly.

What happened

Mr B applied for a credit card with Aqua in March 2015 and it was agreed with a limit of £250. Increases were then made as follows:

Date	Limit
March 2015 (new card)	£250
July 2015	£650
November 2015	£850
July 2019	£1,600

In March 2018, Aqua increased the interest rate on the card. In March 2020, the debt was passed to a debt collection agency with the balance £1,583.58 debit. Payments were being made at £50 per month.

Mr B complained that the limit increases were wrong. Aqua couldn't have done the necessary checks – as he had a negative credit report. He had other large loans. And – Aqua increased the interest rate on his card, so the interest was very high. He also gambled. He said Aqua should remove the adverse information from his credit file and agree to freeze interest on the debt.

Aqua said Mr B had passed their checks when he applied for the card. He said he had an annual income of £28,000, plus other household income of £14,850. He said he had other unsecured debts of £400. There were no arrears or defaults showing on his credit file. So, Aqua were correct in issuing the card with a limit of £250. The subsequent increases in limits were offered to Mr B on an opt-out basis – he could've told Aqua that he didn't want to borrow more money, but he didn't. Aqua agreed that the final increase to £1,600 – in July 2019 – shouldn't have taken place in view of the other debts then showing in Mr B's records. They could see he'd gone onto a payment plan with another lender and had missed payments to them. So, they refunded interest of £169.47 and fees of £81.06 to his card account. They calculated this to be the interest on the debt over £850 (the previous limit).. They didn't agree to remove any adverse information on Mr B's credit file. The increase in interest rate was a commercial decision they made in the light of Mr B's usage of the account. They'd written to him in advance of this in December 2017 and gave him the option of closing his account. As they didn't hear from Mr B, the increase took place in March 2018.

Mr B brought his complaint to us. Our investigator considered that the issue of the card in the first place was OK. But the subsequent increases in limit were not. He didn't think Aqua had done the necessary checks in line with their obligations under the FCA guidelines. Mr B's limits had increased by 540% in four years – and this wasn't reasonable, given his other credit commitments. He said that Aqua should pay Mr B compensation of £200 for distress and inconvenience. This was in addition to the refund of interest already made.

Aqua didn't agree and asked that Mr B's complaint be looked at by an ombudsman.

I reached a provisional decision where I said:

I disagree with our investigator here. I think the limit increases were OK up to the last increase to £1,600 in July 2019 – which Aqua have already said was wrong. I will explain why. And my proposed actions to out things right are a little different.

All lenders have an obligation to lend money responsibly. We must check whether Aqua acted in line within the Financial Conduct's (FCA) rules on creditworthiness assessment as set out in its handbook, (CONC) section 5.2. These say that a firm must undertake a reasonable assessment of creditworthiness, considering both the risk to it of the customer not making the repayments, as well as the risk to the customer of not being able to make repayments. We look at:

- Whether the lender completed reasonable and proportionate checks to satisfy itself that the borrower would be able to repay any credit in a sustainable way?
- If reasonable and proportionate checks were completed, did the lender make a fair lending decision made bearing in mind the information gathered and what the lender knew about the borrower's circumstances?
- And a reasonable and proportionate check would usually need to be *more* thorough:
 - the lower a customer's income, and the higher amount to be repaid.
 - the greater the number of loans and frequency of loans.
 - the longer the term of the loans

So – I need to make a decision based on this guidance.

When Mr B applied for a new card in March 2015, he said he had annual income of £28,000, plus other household income of £14,850. He said he had other unsecured debts of £400. I can see there were no arrears or defaults showing on his credit file. So, Aqua were correct in issuing the card with a limit of £250. This was a modest limit in comparison with his circumstances and income.

Looking at the increase in limits to £650 in July 2015 and to £850 in November 2015. I can see from Aqua's credit information that Mr B had made the monthly payments when due, and there had been no late fees or over limit fees (which would both have suggested there were problems). There had been three cash withdrawals - which might have indicated some issues that Aqua might have looked at. But equally, there were no other debts showing from other lenders, including payday lenders. Also – I can see that Mr B had the option to tell Aqua he didn't want to take the increases, but didn't. So – I think Aqua were OK to increase the limit to £850 by November 2015.

Looking at the increase to £1,600 in July 2019 – I agree that Aqua were wrong to do this. By then I can see that Mr B had other credit and debts of over £12,000. These had gone up from £3,657 in March 2016 – so Mr B was borrowing a lot more money from that time. There were frequent cash withdrawals, over limit fees and late payments. To be fair to Aqua they've admitted they were wrong to increase the limit to £1,600 and have refunded interest of £169.47 and fees of £81.06 – which they've calculated was the interest on the debt over £850. They've declined to remove any adverse information from Mr B's credit file – which I don't think is fair, and I think they should do that.

Mr B has said that he was using his card to pay for gambling. Our service takes the view that it's up to customers to decide how to spend their money – rather than making a judgement on it. So – we can't necessarily expect Aqua to have taken action solely because of that.

Mr B has said that the increase in interest rate on his account wasn't fair. I have to say that pricing of debts is a commercial decision and we can't get involved with that. I can see though that Mr B was advised in advance of it taking place and could've opted to close his account – by freezing the debt – but he didn't contact Aqua to do this.

I can see that Mr B's debt is now with a debt collection agency and he is paying £50 a month. I assume that this is already at a zero-interest rate – but ask Aqua to confirm this in their response to this provisional decision.

My provisional decision is that the final increase in limit to £1,600 wasn't fair, but the earlier increases were. Aqua have already refunded interest and charges – but they should also remove any adverse data from Mr B's credit file from the time of the July 2019 increase and thereafter. And – because of the distress and inconvenience suffered by Mr B, they should pay compensation of £200.

Responses to the provisional decision:

Mr B agreed, but Aqua didn't. They said:

- They didn't agree that compensation of £200 should be paid, as Mr B had already had a refund of interest and fees
- They didn't agree that the entries at credit reference agencies should be removed as they had a duty to report accurate information. Especially as Mr B didn't contact them until May 2020 about his financial difficulties.
- Aqua confirmed no interest is currently being applied to the debt as it had been passed to a debt collection agency.

So, I now need to make 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've considered what Aqua have said. On the matter of compensation, I still think it's warranted – Mr B did suffer distress – as his debt was passed to a debt collection agency, and there were negative markers put on his credit file. Both of these things may not have happened if the limit hadn't been increased to £1600 in July 2019. On the credit file entries – again, these may well not have happened if the limit increase hadn't taken place. Our aim is to place Mr B back in the position he would've been in had the increase not taken place. So,

I consider that the entries must be removed.

Putting things right

Having considered what Aqua have said, my decision is that the remedies outlined in the provisional decision should remain. I note that Aqua have confirmed that the remaining debt with the debt collection agency is at zero interest.

My final decision

I uphold this complaint, and NewDay Ltd trading as Aqua must:

- Remove any adverse information from Mr B's credit file – since July 2019.
- Pay him compensation of £200 for distress and inconvenience – this to be paid in reduction of the debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 September 2021.

Martin Lord
Ombudsman