

The complaint

Mr H complains that NewDay Ltd trading as Aquacard lent him money he couldn't afford to pay back, and he was in persistent debt as a result of this.

What happened

Mr H said that NewDay lent to him irresponsibly. He wanted it to refund all charges and interest, and pay him compensation.

NewDay didn't think it had done anything wrong. It said that Mr H's "aqua" brand credit card account was opened in March 2011. It could see that Mr H asked for a credit limit increase in August 2011, from £500 to £750, and in August 2013 from £750 to £1,500. NewDay agreed to both those increases. When NewDay sent this information to us, it said that hadn't reviewed these lending decisions, because they happened more than six years before Mr H complained. It had looked at everything that happened in the last six years.

In May 2016, NewDay had implemented an offered increase from £1,500 to £2,250. In October 2016 it increased Mr H's limit again, from £2,250 to £3,400. And in October 2017 it made an increase from £3,400 to £4,600.

NewDay said when these increases were made, Mr H had no arrears with it or other lenders, hadn't been charged any late or overlimit fees, he hadn't taken any of the lending as cash advances, and the credit reference agencies ("CRAs") showed no concerns about financial difficulty or affordability.

NewDay said Mr H hadn't been using all the lending it had offered until October 2017. And NewDay said even then, there wasn't any cause for concern. Mr H wasn't using the account to pay priority bills, there were multiple retail spends at various retailers during that time. So NewDay didn't think this lending was a mistake.

NewDay said that Mr H had told it he was having financial difficulties in May 2018, but he hadn't responded to NewDay's request for income and expenditure information at the time, so it hadn't been able to offer him further support.

NewDay said it had implemented changes to comply with the new rules on persistent debt in 2018. It wrote to Mr H on 7 September 2018, in line with the guidelines set out by the FCA. But Mr H's account was already in arrears, and it was defaulted and sold to a third party debt collector in December 2018, so no further steps were taken on persistent debt. The account had already been closed before those further steps were triggered.

Our investigator thought this complaint ought to be upheld in part. He explained that our service can't usually consider things that happened more than six years before someone complains. He had looked at everything that happened in the last six years, which covered the two credit limit increases in 2016 and one in 2017, as well as Mr H's complaint about persistent debt. Our investigator thought that Mr H's complaint about the increase in 2017 should be upheld, but the rest of his complaint shouldn't.

Our investigator said that he needed to see if NewDay had done proper checks for each lending decision it had made. And if it hadn't, then he'd need to consider whether NewDay would've reached a different conclusion if it had done.

Our investigator noted that Mr H wasn't working at the time of these increases. He was receiving benefits which totalled around £812 a month. There was no other household income, although Mr H's wife did receive an inheritance at one point.

For the May 2016 increase to £2,250, our investigator said NewDay didn't appear to have assessed Mr H's individual financial situation at the time, but he didn't think things would have been different if it had done so. He said Mr H's account didn't show any signs of a problem, payments were being made, the card was under its limit and there were no charges or fees.

For the October 2016 increase to £3,400, our investigator said that again NewDay hadn't assessed Mr H's financial situation at the time. He said the balance on Mr H's NewDay account had decreased and the account was being managed well. There were no late or overlimit fees.

Our investigator noted that Mr H's external borrowing had doubled, around this time, but he didn't think NewDay could have seen this, when it increased his credit limit. He didn't think this would have shown on Mr H's credit file at the time this increase was made.

For the December 2017 increase to £4,600, again NewDay hadn't considered Mr H's individual financial position. But our investigator noted that his NewDay card balance had increased from around £800 in October 2016 to over £4,000, which is a significant amount in fourteen months. And his external borrowing had increased a further £4,000 to over £18,000.

Our investigator said if NewDay had done reasonable and proportionate checks in December 2017 he thought it would have decided a credit limit increase wasn't sustainable for Mr H. He thought this lending wasn't responsible, and this limit increase shouldn't have been made.

Our investigator thought NewDay should refund all interest and charges (and add interest if appropriate) from December 2017 onwards. And he said any adverse markers on Mr H's credit report should be removed from December 2017 onwards because the increase given then, clearly wasn't sustainable for him.

Our investigator didn't think Mr H's complaint about persistent debt should be upheld. He said NewDay did try to offer Mr H support, but Mr H hadn't given it the information it needed to put him on a payment plan. And it had done what our investigator expected to discuss Mr H's debts with it, once the rules on persistent debt came into force.

Mr H agreed with that, but NewDay didn't. It said it doesn't obtain evidence of income and expenditure, and it doesn't have to. It said that while Mr H's overall debt may have grown by the time of the last limit increase, the whole principle of credit allows customers to pay off a balance over an extended period of time. It said it had considered whether Mr H's payments would be affordable, and it argued that there's no exhaustive list of what reasonable checks should be. It said that it had considered the following - the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well the consumer's personal circumstances. It said it had evidenced that.

Our investigator drew NewDay's attention to what he'd said about the increased lending Mr H had with NewDay, and elsewhere. He said even if NewDay didn't have access to Mr H's personal bank statements, he thought the information it did have showed cause for concern.

So he didn't change his mind.

NewDay wanted this case to be considered by an ombudsman, so it was passed to me for a final decision.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

Firstly, I'd like to set out that our service isn't looking at the lending decisions that NewDay made more than six years before this complaint came to us. And because I'm not questioning the lending decisions made during this time, I don't think it would be appropriate to ask NewDay to refund any fees or interest charged on lending up to the limit of £1,500, which was put in place in August 2013, more than six years before Mr H complained.

Secondly, I think there is other information which is relevant to this case. When this case came to me, I noted that as well as the "aqua" branded card that Mr H has complained about, Mr H also held another card account with NewDay, a "marbles" branded card. The data from that lending, on the marbles card, is further information which was available to NewDay when it made the credit limit increases on this aqua card. So, whilst I can't consider a complaint about Mr H's marbles card here (because he doesn't appear to have complained about that to NewDay yet) I asked NewDay to show me the lending history on this card.

I can see that Mr H applied for this card in July 2017. And he told NewDay then that he had a gross annual income of £14,000. That's rather more than Mr H told us he had in income, and more than his bank statements seem to show. It's possible that Mr H may have inflated this figure. But the application data at the time also told NewDay that Mr H owed £16,100 elsewhere. So even if we assume that NewDay had accepted what Mr H told it about his income, it was still aware then that Mr H's unsecured debt exceeded his annual income.

Taking into account this additional information, as well as the issues our investigator has already raised, I agree that the limit increase in December 2017 on Mr H's aqua card should not have been made.

I'll now look at the earlier limit increases.

I can see that Mr H had stopped using this card for spending after December 2013. He had been paying what looks like the minimum payment consistently every month between then, and when his first credit limit increase took effect in May 2016. So his overall debt had reduced from around the previous limit of £1,500, to a little over £800.

Mr H didn't start using the card again after this May 2016 increase, and by the time of the October 2016 increase his overall debt had gone down to a little under £800.

But Mr H was making only the minimum payments at this time, to bring down his existing balance. In fact, Mr H doesn't seem ever to have paid significantly more than the minimum repayment. And NewDay was obliged, when it decided whether to lend Mr H more money, to assess whether Mr H was able to make the repayments on any revised credit limit sustainably. That means paying back what he owed over a reasonable period.

I know that Mr H wasn't using his whole credit limit, either before or immediately after the credit limit increases that NewDay made in 2016. But that doesn't change the underlying rules - NewDay was required to assess whether Mr H could pay back all the lending it was offering to make him, when it made these increases.

NewDay didn't apparently have any detailed information on Mr H's personal income and expenditure at this time. But it knew he'd only ever paid the minimum monthly payment. So it's not clear to me how NewDay reached the conclusion that Mr H would be able to repay the increased lending that it made to him in May 2016 or in October 2016, within a reasonable period, if he could only afford the minimum payments on a much lower balance.

Because of this, I think that NewDay ought to have considered Mr H's financial position in more detail, before it made this lending. And I think that if it did so, given Mr H's income at the time, it would have been unlikely to reach the view that any increased lending would be affordable for him.

For that reason, I think that NewDay should refund any interest and charges over a balance of £1,500, from the date of the limit increase it made on his aqua card in May 2016. NewDay should use this money to reduce Mr H's debt in the first instance. I don't anticipate that there will be anything left over, but if there is, NewDay should pay that money to Mr H, along with 8% simple interest. And NewDay should remove any adverse data on Mr H's credit file for this card from May 2016, because I don't think that this additional lending should have been made.

Like our investigator, I do think that once NewDay was aware of Mr H's financial difficulties it did try to assist him. And it contacted him about the debt on his card in the way I would expect. So I don't think that Mr H's separate complaint point about persistent debt should also be upheld.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Mr H replied to accept my provisional decision. NewDay didn't reply.

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 haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that NewDay Ltd must refund any interest and charges applied over a balance of £1,500, from the date of the limit increase it made on his aqua card in May 2016. NewDay should use this money to reduce Mr H's debt in the first instance, If there is any surplus, NewDay should pay that money to Mr H, along with 8% simple interest. And NewDay should remove any adverse data on Mr H's credit file for this card from May 2016.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 November 2021.

Esther Absalom-Gough
Ombudsman