

## **The complaint**

Mr G complains NewDay Ltd trading as Aqua (“NewDay”) lent to him irresponsibly.

## **What happened**

Mr G applied for a credit card with NewDay in May 2012. His application was approved with a credit limit of £400. Mr G requested a credit limit increase to £750 in October 2012, which was granted by NewDay.

In June 2014 NewDay wrote to Mr G to say it wanted to increase his credit limit to £1,500. It explained it had “looked at how you’ve managed your credit card and believe that the new limit is suitable for you.” It said would be increasing his credit limit to £1,500 unless he opted out. Mr G didn’t opt out and the limit was therefore increased to £1,500.

Mr G had various problems with repayments over the next few years, and the account was terminated in November 2017, although it appears NewDay did not record it as having defaulted until early in 2019. The debt was sold to another company which took Mr G to court for the balance.

I issued a previous decision on this case in which I explained this service had the jurisdiction to consider Mr G’s complaint. The case was then returned to our investigator to look into the merits of Mr G’s complaint of irresponsible lending.

Our investigator thought NewDay’s decisions to agree the initial credit limit was not irresponsible. However, he didn’t think it had been responsible to increase Mr G’s limit as the way the account had been managed at the lower credit limit didn’t suggest he would be able to sustainably manage an increased limit.

NewDay disagreed. It said its credit checks hadn’t shown any cause for concern, and although it accepted Mr G had incurred a lot of charges for going over his credit limit, this was because of how he was timing his repayments, not because he was struggling to maintain them. NewDay asked for an ombudsman to review the case, so the complaint has been passed back to me to decide.

## **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.

We’ve set out our approach to unaffordable or irresponsible lending complaints on our website and I’ve considered this when deciding Mr G’s complaint.

The rules and regulations in place throughout NewDay’s lending relationship with Mr G required it to carry out an assessment of whether he could afford to repay what he owed in a sustainable manner. Any such assessment needed to be “borrower focused”, meaning it should focus on the affordability of repayments and the potential for adverse financial impact on the borrower, rather than on the likelihood the credit would be repaid. Any assessment needed to be proportionate to the circumstances.

### *The initial credit limit*

NewDay hasn't been able to explain what information was considered at the point of Mr G's original application. It appears a copy of the application is no longer available. Given how long ago this decision was made, this is perhaps not surprising.

In any event, I'd have expected NewDay to at least have asked Mr G about his income before lending to him. Mr G has told us he was earning £27,000 at the time. Given the relatively small credit limit granted of £400, and the absence of any other information to suggest it wouldn't have been responsible to grant this to Mr G, I conclude this lending decision was not irresponsible.

### *The increase to £750*

At the time Mr G applied for an increase in his credit limit to £750, he had been running the credit card account for about five months, and this would have given a responsible lender some early insights into how he was managing the line of credit. This is something it could factor into its decision to increase the limit or not, perhaps by helping it to determine what manner of checks would be proportionate before making a decision. And depending on how the account had been managed, it might also be enough on its own to lead a responsible lender to decide that increasing the limit would likely be harmful.

So what had Mr G's account management looked like in the five months he'd had the account? By August 2012 he had exceeded his credit limit, incurring two overlimit fees that month. He went over his limit again in September 2012 before applying for the increase the following month. He was, however, making his minimum repayments. I don't think, on the face of it, that Mr G's account management up to that point suggested he would be able to sustainably manage an increased limit of £750. I note NewDay did carry out checks with a credit reference agency at the time which it appears showed he had no credit card debts or arrears elsewhere. But I do think the way he was managing his account with NewDay should have been a cause for concern that he was struggling financially.

NewDay has said it was the interest being applied to the account which was causing Mr G to go over his limit, rather than (for example) him spending in excess of the limit. This appears to have been correct in some months. But I think the important point is that Mr G had maxed out the card in a short space of time, and he had gone over his limit three times in two months. Regardless of the reason for the account going over the limit, I think the way the account had been managed up to that point suggested increasing the limit could be harmful, and the payments Mr G was making were insufficient to prevent him from being over his limit once interest had been taken into account. I don't think NewDay's decision to increase the limit to £750 was responsible.

### *The increase to £1,500*

Immediately after Mr G's limit increased to £750 in October 2012, he borrowed up to his new limit. Some of the new borrowing took the form of cash withdrawals. He went over his credit limit twice in November 2012, and then once in each of the following three months. He consistently only made his minimum repayments.

The same pattern continued throughout 2013 and 2014, with occasional breaks where Mr G remained within his limit for three to four months. He didn't make any inroads into his balance, as any progress he made tended to be neutralised by overlimit fees and interest. NewDay offered to double Mr G's limit to £1,500 in June 2014, after he had managed to avoid overlimit fees for a period of about four months, and his balance had begun to reduce slightly.

By the time NewDay offered the £1,500 limit, it had the benefit of a longer period of time in which to have gained an understanding of how Mr G was managing the account. In my view, Mr G had managed the £750 limit in more or less the same way he had managed the £400 limit. He had quickly used up the limit, and then spent significant periods of time over it. Once he had made enough repayments to go under his limit, he spent back up to it shortly after. He was making only the minimum repayments throughout. Unlike with his earlier credit limit, Mr G was also occasionally withdrawing cash. And while Mr G had spent four months under his limit when NewDay made the decision to offer the increase to £1,500, I don't think this was enough for an assumption to be made that his situation was improving or that he would find sustainable a credit limit twice as large as his current one. It follows that I don't find the decision to increase the limit to £1,500 was responsible either.

### **Putting things right**

Just because NewDay increased Mr G's credit limit when it shouldn't have, doesn't mean that he should not pay back the capital amounts he's borrowed. However, it wouldn't be fair for him to have to pay any interest, fees or charges on amounts he's borrowed above the initial limit of £400, or have this borrowing affect his credit file adversely.

I note Mr G says he was taken to court after NewDay sold his outstanding debt to another company, and he now has a county court judgment registered against him. I haven't seen evidence of this judgment, or who obtained it, but it seems that it wasn't NewDay. I also don't have powers to set aside court judgments. Mr G would need to take separate advice about that if he is seeking to have the judgment set aside.

### **My final decision**

For the reasons explained above I uphold this complaint and direct NewDay Ltd to take the following actions:

- A) Refund all interest, fees and charges incurred on Mr G's credit card account on any balance over £400, from the point of the first credit limit increase onwards. All refunds should be backdated to the date the interest, fees or charges were originally incurred.
- B) If refunding the amount(s) in A would result in a credit balance on the account, NewDay must pay Mr G that credit balance along with 8% simple interest per year\* calculated from the date a credit balance would have arisen, to the date it would have ceased to exist. If the credit balance would not have ceased to exist, the interest calculation should go up to the date Mr G receives any refunds he is due. If Mr G no longer owes a balance then he must no longer be pursued for the debt.
- C) Remove any negative information it has recorded on Mr G's credit file in relation to the account, from the time of the first credit limit increase onwards.
- D) Work with any company it has sold the debt to, to achieve steps A to C. For example, NewDay will need to obtain up to date statements of the account to properly calculate the refund in A. It may also be necessary for NewDay to buy the debt back to ensure that no further collections activity takes place in the event of a credit balance, or that negative information is removed from Mr G's credit file.

\*If NewDay considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr G how much it's taken off. It should also give Mr G a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 11 February 2022.

Will Culley  
**Ombudsman**