

The complaint

Miss A complains NewDay Ltd trading as Aqua ('NewDay') gave her credit card lending that was unaffordable.

What happened

In September 2014 Miss A applied for a NewDay 'Aqua' credit card. NewDay initially gave Miss A a £300 credit limit, but her 'Aqua' credit limit increased as follows over the next few years:

- January 2015 – increased to £950 by NewDay
- June 2015 – increased to £1,200 by NewDay
- December 2015 – increased to £1,800 at Miss A's request
- May 2016 – increased to £2,700 by NewDay
- October 2016 – increased to £3,550 by NewDay
- March 2017 – increased to £4,750 by NewDay

By 2018 Miss A's 'Aqua' account was in arrears and NewDay passed it to a separate debt collector. In October 2019 the debt collector applied to court for a judgement in relation to this debt. Miss A admitted the claim and the court made a judgment against Miss A.

In July 2020 Miss A complained to NewDay about her 'Aqua' account, as she thought it shouldn't have lent to her because her credit record showed other debts and missed payments. NewDay didn't give a final response to Miss A's complaint, but did give Miss A the right to refer her complaint to our service. Miss A contacted us, saying NewDay's 'Aqua' lending financially affected her and resulted in a court judgment being made against her.

Our investigator considered Miss A's complaint but didn't uphold it, as he thought NewDay had carried out reasonable and proportionate lending checks for Miss A's 'Aqua' account. Miss A disagreed, saying NewDay should have seen her debt had started to spiral and shouldn't have increased the credit limit. Miss A provided evidence of payday loans and a copy of her credit report.

Our investigator reconsidered Miss A's complaint, and asked for more information regarding the court judgment. After considering this information, our investigator ultimately thought this was a complaint our service shouldn't consider, as it was more suitable for court. He said a court awarded a judgment against Miss A and our service didn't have the power to overturn it. And Miss A ought to have raised her lending affordability concerns with the court at that time.

Miss A said she didn't know she could defend the court judgment on grounds of affordability and couldn't afford the cost of that in any case. She understood our service couldn't overturn the court judgment but still thought NewDay shouldn't have lent her so much given her financial circumstances. Miss A asked for her complaint to be passed to an ombudsman for a decision. She added that the Financial Conduct Authority's Consumer Credit Sourcebook ('CONC') meant NewDay should have done further creditworthiness assessments. Miss A explained she'd had payday loans, as well as other short term, credit card and store card

lending across during the time she had her 'Aqua' account. And she'd immediately spent any repayments she made to her 'Aqua' account.

As Miss A requested, her complaint was passed to me to decide whether it was a complaint our service should consider. I contacted Miss A and NewDay to say I thought our service should consider it. I said this was because while a court judgment was later made against Miss A for debt related to the 'Aqua' lending, that judgment wasn't sought by NewDay but instead by the separate debt collector. So I didn't think it would be fair or reasonable to say Miss A ought to have known she could raise an issue about her 'Aqua' account as a defence to court action brought by a separate business.

Miss A accepted this. NewDay didn't provide any further comments. As I thought this was a complaint our service should consider, I went on to consider the merits of Miss A's complaint against NewDay. On 17 December 2021 I issued my provisional decision, in which I said:

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

Miss A complains NewDay's initial lending and the credit limit increases were unaffordable. Broadly speaking, when a business is lending or increasing lending, it's required to carry out checks which are reasonable and proportionate to the amount being lent. And it should show it considered that the borrower would've been able to sustainably repay the credit provided, without causing undue difficulty and without having to borrow further to meet other financial commitments. Sustainably repay means the borrower should be able to repay the full amount of credit within a reasonable time.

NewDay says its 'Aqua' card is for customers who are new to credit or trying to rebuild their credit, so it's not unusual to see customers with a poor credit history open this credit card account. From the credit card application, NewDay considered Miss A's income and expenditure at that time. Miss A said she had a gross income of £15,000, with access to other household income of £3,000, and unsecured debt of £800. NewDay also considered Miss A's credit record and saw she had two defaults, the last one being about two years prior to the application, and the value of the defaults was £200. And that Miss A had no adverse public records, no pay day loans and no accounts in arrears at that time.

Miss A's application passed NewDay's lending criteria, and it gave her a relatively small credit limit of £300. Taking all this into account, I'm satisfied NewDay carried out reasonable and proportionate checks when Miss A applied for an 'Aqua' account, and that it made a fair lending decision.

NewDay says that each time it offered Miss A a credit limit increase, it looked at various factors including how Miss A had managed her 'Aqua' account and how much of her credit limit she was using, her pay day loan history, and how she was managing her other lending. I'll consider each of the credit limit increases NewDay decided to apply to Miss A's 'Aqua' account separately.

January 2015 – credit limit increased to £950 by NewDay

Miss A used her account's cash advance facility in October 2014 and made a slightly late payment in December 2014. But set against this, she stayed well within her credit limit and paid significantly more than the minimum monthly payment. And while this increase came only four months after Miss A's 'Aqua' account opened and tripled her credit limit, the increased credit limit of £950 was still a relatively small amount compared to the income Miss A had told NewDay about not long previously. Given all this, I think NewDay made a reasonable lending decision when it increased Miss A's credit limit to £950.

June 2015 – credit limit increased to £1,200 by NewDay

Miss A's spending on the account rose to close to her credit limit and stayed there, with Miss A making only the minimum monthly payments or a small amount more than this. Nonetheless, Miss A did stay within her credit limit. The screenshots Miss A has provided shows she had missed or made late payments to other lender(s) in both January and February 2015 and took out a payday loan in June 2015. But I think the timescales for updating credit records means that payday loan wouldn't have been visible to NewDay in June 2015. And NewDay increased Miss A's credit limit by £250, a relatively small amount.

Taking all this into account, I don't think it would be fair for me to say there was enough information here for NewDay to reasonably conclude Miss A was struggling with her credit limit or that she wasn't able to sustainably repay the 'Aqua' credit card NewDay had already provided, without undue difficulty and without further borrowing. Therefore, I think it was reasonable for NewDay to increase Miss A's credit limit to £1,200.

December 2015 – credit limit increased to £1,800 at Miss A's request

Miss A hadn't exceeded her NewDay credit limit – she'd kept her account balance significantly below the credit limit, and generally lower than it was in the period before the previous credit limit increase. However, Miss A had continued only to make either the minimum or just above minimum monthly payments. NewDay would also at this time have been able to see Miss A's June 2015 payday loan. I know the information Miss A has provided shows she had two more missed or late payments to other lenders in November and December 2015, but I think it's likely at least the one in December 2015 wouldn't yet have been visible to NewDay at this time.

Regardless, by December 2015 I think NewDay should have seen that since opening her 'Aqua' account just over a year earlier, Miss A had taken a payday loan and had three missed or late payments to NewDay and other lenders. And that overall, her 'Aqua' account balance had increased significantly with only minimum or close to minimum monthly payments being made. Taking all these things together, I'm intending to say there was enough here for NewDay to have reasonably seen Miss A wasn't able to sustainably repay her 'Aqua' borrowing within a reasonable time, and without causing undue difficulty and having to borrow further to meet other financial commitments. Therefore, I'm intending to say NewDay should have decided not to offer Miss A another credit limit increase that would potentially lead her into further debt.

May 2016 – credit limit increased to £2,700 by NewDay

Miss A kept her account balance within her credit limit. However, she was only repaying a small amount over her minimum payment each month, and her account balance had overall increased so that by April 2016 it stood at £1,323.81. Miss A had a further three missed or late payments to other lenders in January, February and March 2016. She also took a further payday loan in February 2016.

So, by this point, Miss A had taken two payday loans and had several missed or late payments for this and other lending since opening her 'Aqua' account. And her account balance had increased significantly overall, with Miss A not make any meaningful reduction in her account balance at any time and making only the minimum or close to the minimum monthly payments. I'm intending to say NewDay should have put these things together and seen that Miss A was struggling with the lending she already had, and should have decided not to offer her another, significantly large, credit limit increase that would potentially lead her into further debt.

October 2016 – credit limit increased to £3,550 by NewDay

Miss A remained within her credit limit and maintained her monthly repayments, on two occasions repaying significantly more than the minimum amount due. But Miss A had another payday loan in August 2016. And overall her NewDay 'Aqua' balance had increased so that it stood at £2,562.23 in September 2016, with no significant or lasting reduction in the balance. So, this was a picture of increasing indebtedness involving payday loans and many missed or late payments by this point. Given this, I'm intending to say it was unreasonable for NewDay to have decided to again significant increase Miss A's 'Aqua' credit limit in October 2016.

March 2017 – credit limit increased to £4,750 by NewDay

Miss A's 'Aqua' account balance rose quickly and stayed very close to her credit limit. She generally paid more than the minimum amount due each month, but nothing that meaningfully reduced her balance. Miss A also had two further payday loans in December 2016, plus others in January and February 2017, with three more in March 2017. Some of these later payday loans may not have been visible to NewDay, giving the timings. However, the picture here remained one of Miss A's increasing indebtedness and difficulty in sustainably repaying her 'Aqua' lending, without causing undue difficulty and without having to borrow further. Given this, I'm intending to say it was unreasonable for NewDay to again significantly increase Miss A's credit limit in March 2017.

I note NewDay says Miss A herself asked for one of these credit limit increases and didn't have to accept the others it offered her. But what matters here is that NewDay shouldn't have given Miss A increases which effectively increased her debt to a level she couldn't sustainably repay.

To put things right, I'm intending to say NewDay should remove any adverse information NewDay recorded on Miss A's credit record regarding her 'Aqua' credit card account from the date of the credit limit increase in December 2015. And that it should refund all interest and any charges it applied to Miss A's 'Aqua' credit card account from the date of the credit limit increase in December 2015. NewDay may offset this against the amount which is now with a separate debt collection agency, if it repays the debt. If there remains a positive balance after doing so, NewDay should add 8% simple interest to this balance and pay it to Miss A.'

Miss A accepted my provisional decision and didn't provide any further comments or evidence for me to consider.

NewDay provided further comments. In summary it said:

- Miss A had complained too late - her 'Aqua' account opened on 9 September 2014 and she ought to have known she had cause for complaint when it defaulted in 2018. But Miss A didn't complain until 15 July 2020.
- NewDay reiterated the 'Aqua' card was for customers who had difficulty obtaining credit. It said it lent responsibly to Miss A, in line with its own affordability and eligibility assessments, and based on data provided by Miss A and credit reference agencies. And the account terms and conditions said the interest rate and credit limit may increase or decrease.
- Miss A managed her 'Aqua' account very well until May 2017, with only one instance of a late payment in December 2014. It couldn't see a June 2015 payday loan.
- At the time of the increases, Miss A was managing her 'Aqua' account well with no indicators of financial difficulty or affordability and no active payday loans. Making

minimum monthly repayment wasn't necessarily a sign of financial difficulties. NewDay couldn't see any external indicators of financial difficulty until October 2017, and Miss A had never told it about any such difficulties.

- NewDay is obliged to accurately record how a customer managed their account and wouldn't amend adverse credit record information unless it had made an error when reporting it. NewDay said the information it had recorded for Miss A's 'Aqua' account was correct.

I'm now in a position to make 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.

Having done so, the further comments provided by NewDay don't change the conclusions I reached in my provisional decision. I'll explain why.

NewDay says Miss A has complained too late and has referred to the Dispute Resolution: Complaints rules set out by the Financial Conduct Authority. These are known as the DISP rules, and DISP 2.8 sets out the time limits that apply. DISP 2.8.2 says that, unless the business consents, our service can't look at a complaint if it was made:

'more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint.'

The lending Miss A complains about happened when her 'Aqua' account opened on 9 September 2014 and the credit limit was subsequently increased in January 2015, June 2015, December 2015, May 2016, October 2016 and March 2017. I've seen Miss A complained to NewDay about this on 15 July 2020. As Miss A complained within six years of her initial 'Aqua' lending, I'm satisfied Miss A had brought this complaint within the six year time limit rule. So, there is no need for me to consider the rest of the DISP time limit rule.

I acknowledge NewDay's other comments. However, Miss A has provided our service with evidence of the high-cost short-term lending she took out, including in June 2015. And while I accept Miss A didn't tell NewDay she was having financial difficulties and that making minimum monthly payments isn't in itself necessarily a sign of financial difficulties, my provisional decision explained that by December 2015, NewDay should have seen that since opening her 'Aqua' account just over a year earlier, Miss A had taken a payday loan and had three missed or late payments to NewDay and other lenders. And that overall, her 'Aqua' account balance had increased significantly with only minimum or close to minimum monthly payments being made. It's still my opinion that taking all these things together, there was enough information by December 2015 for NewDay to have reasonably seen Miss A wasn't able to sustainably repay her 'Aqua' borrowing within a reasonable time, and without causing undue difficulty and having to borrow further to meet other financial commitments.

I also acknowledge NewDay's comments about amending adverse credit record information. But as I say, I'm satisfied NewDay has made an error by providing Miss A with credit limit increases on her 'Aqua' account, from December 2015, that it shouldn't have provided her with.

Putting things right

For these reasons, it's fair that NewDay should remove any adverse information it has

recorded on Miss A's credit record regarding her 'Aqua' credit card account from the date of the credit limit increase in December 2015. And it should refund all interest and any charges it applied to Miss A's 'Aqua' credit card account from the date of the credit limit increase in December 2015. NewDay may contact the debt collection agency and offset this against the debt which is now with it, if it repays the debt. If there remains a positive balance after doing so, NewDay should add 8% simple interest to this balance and pay it to Miss A.

My final decision

For the reasons set out above, and contained within my provisional decision, I uphold this complaint. NewDay Ltd trading as Aqua should:

- Remove any adverse information NewDay recorded on Miss A's credit record regarding her 'Aqua' credit card account from the date of the credit limit increase in December 2015.
- Refund all interest and any charges it applied to Miss A's 'Aqua' credit card account from the date of the credit limit increase in December 2015. NewDay may contact the debt collection agency and offset this against the debt which is now with it, if it repays the debt. If there remains a positive balance after doing so, NewDay should add 8% simple interest to this balance and pay it to Miss A.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 18 February 2022.

Ailsa Wiltshire
Ombudsman