

## **The complaint**

Mr P is unhappy that NewDay Ltd, trading as Aqua, approved him for increasing amounts of credit, all of which he feels were unaffordable for him at those times.

## **What happened**

Mr P had a NewDay credit account with a credit limit of £600. In August 2016, NewDay increased the credit limit on Mr P's account from £600 to £1,350. Further credit limit increases followed in March and August 2018, to £2,150 and £3,150 respectively. Mr P requested another credit limit increase in April 2019, but NewDay declined that request.

In January 2020, Mr P applied for a different NewDay branded credit account. Mr P's application was approved, and NewDay issued Mr P with a new credit account with a £900 credit limit. In October 2020, NewDay increased the credit limit on this second credit account to £1,900.

In March 2021, Mr P raised a complaint with NewDay on the basis that he felt that all the provisions of credit from August 2016 onwards hadn't been affordable for him at those times. Mr P also stated that NewDay should have been aware that he was making large numbers of gambling transactions during the period in question, which should have provided additional cause for NewDay not to have given him any further credit.

NewDay looked at Mr P's complaint. They noted that before offering further credit to Mr P, that they'd undertaken checks into Mr P's financial position, and that there'd been nothing resulting from those checks that NewDay felt should have given them cause to suspect that Mr P might not be able to afford the credit being offered to him. Additionally, NewDay noted that Mr P hadn't made them aware of any financial difficulty that he might have been in, or that he might have been struggling with issues surrounding gambling, and as such they hadn't been aware that Mr P was in a position of difficulty at any time.

Mr P wasn't satisfied with NewDay's response, so he referred his complaint to this service. One of our investigators looked at this complaint. They felt that the information that NewDay had available to them should have given them reason to consider that Mr P might be experiencing financial difficulty, such that the provision of further credit in August 2016, and all subsequent provisions of credit, shouldn't have been provided to him. Our investigator therefore recommended that this complaint be upheld in Mr P's favour on that basis.

NewDay didn't agree with the recommendation put forwards by our investigator, so the matter was escalated to an ombudsman for 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 issued a provisional decision on this complaint on 17 February 2022 as follows:

*It's for a business to decide whether it will offer credit to a customer, and if so, how*

*much and on what terms. What this service would expect would be, that before approving a customer for a new line of credit, or before increasing the amount of credit available to a customer on an existing line of credit, the business would undertake reasonable and proportionate checks to ensure that any credit being offered to a customer is affordable for that customer at that time.*

*NewDay say that they did that here, and note that before offering further credit to Mr P they reviewed how he managed his credit account to that time and obtained information from a credit reference agency to gain a better understanding of Mr P's wider financial position. And NewDay maintain that, in all instances, there was nothing resulting from these checks that should have given them cause to suspect that Mr P might not be able to afford the further credit being offered to him.*

*However, it's notable that for the two months immediately prior to the first credit limit increase in August 2016, Mr P hadn't maintained the balance of his credit account within the agreed credit limit of £600 that was in place at that time, and had incurred over-limit fees on the account in both instances as a result.*

*And, while the information that NewDay obtained from a credit reference agency didn't suggest that Mr P was struggling with his other credit commitments at that time, it's also notable that Mr P's amount of existing credit had increased significantly, from approximately £2,250 to £4,200, the month before NewDay approved him for further credit on his NewDay account.*

*Considering this information – that Mr P's total amount of existing external credit had recently doubled and that Mr P was struggling to maintain the balance of his NewDay account within the agreed credit limit and was incurring fees as a result – I find it difficult to reach any conclusion other than NewDay should have had concerns about Mr P's ability to be able to afford and repay any provision of further credit, given that it appeared apparent that Mr P was struggling to afford the existing amount of credit he had with NewDay at that time.*

*I therefore feel that it was incumbent on NewDay, if they wished to provide further credit to Mr P, to have undertaken further checks into Mr P's financial position before doing so, to ensure that any provision of further credit wouldn't lead to an exacerbation of any potential financial difficulties that Mr P might have been experiencing.*

*Furthermore, it seems reasonable to me that any further checks that NewDay may have undertaken on this basis should have included a review of Mr P's current account statements. And it's clear from the current account statements that Mr P has provided from this period that Mr P was engaging in large numbers of gambling transactions such that any review of these statements by NewDay could only have reasonably led to their concluding that any further provisions of credit to Mr P at that time would have led to a worsening of the difficult financial position that Mr P appeared to be in, and so shouldn't have been offered.*

*As such, I'm satisfied based on the information detailed above that by providing Mr P with further credit in August 2016, NewDay were providing credit to Mr P irresponsibly, and I will be provisionally upholding this complaint in Mr P's favour on that basis.*

*It follows that I feel that all future provisions of credit on this account also shouldn't have been offered to Mr P, and I note that Mr P's continuing financial struggles appear to be evidenced by his exceeding the credit limit on this account in ten of the*

*following nineteen months, and incurring over-limit fees on all occasions as a result.*

*It's notable that NewDay themselves did decline Mr P for further credit on this account in April 2019, but that they then approved Mr P for a new, differently branded credit account in January 2020. However, it's also notable that in the months leading up to this new account application, Mr P's management of his existing NewDay credit had improved, with Mr P maintaining the balance of the account within the credit limit and not incurring any over-limit fees during that time.*

*Additionally, the information that NewDay gathered from Mr P at the time of the new application, including that Mr P was employed with an annual income of £27,500, as well as the information that NewDay obtained from a credit reference agency, which included that Mr P wasn't in arrears on any of his existing credit commitments, wasn't suggestive that Mr P might be in any form of financial difficulty at that time. As such, I'm satisfied that it was reasonable for NewDay to conclude that Mr P would most likely be able to afford this second credit account and that NewDay didn't act unfairly towards Mr P by providing him with the second credit account with an initial credit limit of £900.*

*Furthermore, in the months leading up to the credit limit increase on this second account, from £900 to £1,900, which took place in October 2020, Mr P's management of both of his older and newer NewDay credit accounts continued to appear unproblematic, with Mr P maintaining the balance of both accounts within the agreed credit limits and not incurring any over-limit fees on either account.*

*And, while the information that NewDay obtained from a credit reference agency did show that Mr P's total amount of existing credit had increased since the time that he opened the second credit account, it also showed that Mr P wasn't in arrears on any of his other credit commitments and appeared to be managing those commitments without notable issue.*

*As such, I don't feel that there was compelling indication that Mr P might have been struggling to manage his financial position at the time of this credit limit increase such that NewDay shouldn't have provided the further credit to him that they did.*

*All of which means that while I do feel that the indicators of potential financial difficulty that were present when NewDay offered further credit to Mr P on his first credit account were such that NewDay shouldn't have offered that further credit, I'm satisfied that NewDay didn't act unfairly by approving Mr P's application for his second credit account, or by later offering Mr P further credit on that second account, given that I feel that the indicators of potential financial difficulty that should have influenced NewDay in regard to the first credit account were no longer present at those times.*

*My provisional decision will therefore be that I uphold this complaint in Mr P's favour in respect of the provisions of further credit on the first credit account only.*

*As a result, my provisional instructions are that NewDay must reimburse to Mr P's first credit account all fees and charges incurred on the account from the point of the credit limit increase in August 2016 onwards, as well as reimburse all interest accrued on the account relating to the balance of the account above £600 from that same point onwards.*

*If these reimbursements result in a credit balance in Mr P's favour, NewDay must pay this balance to Mr P along with 8% interest calculated to the date of payment. NewDay must also make a further payment of £200 to Mr P to compensate him for*

*the upset and inconvenience this ongoing matter has caused, which given the difficult circumstances Mr P was in at the time of the provisions of further credit I acknowledge were incurred.*

*However, as mentioned, I am not provisionally upholding Mr P's complaint as it relates to the second NewDay account and so there are no instructions to NewDay in relation to that account.*

In response to my provisional decision letter, both NewDay and Mr P provided further comments for me to consider. This led to me issuing a second provisional decision letter on 17 March 2022 as follows:

*NewDay didn't agree with my provisional decision and said that while it was correct that Mr P had exceeded the credit limit on his account in the months immediately preceding the credit limit increase in August 2016, the reason that Mr P had exceeded the credit limit on those occasions was because Mr P had mis-managed the account, rather than as a result of Mr P being unable to afford the payments due on the account at that time.*

*I find it difficult to understand NewDay's position here, and the fact remains that in the two months immediately preceding the credit limit increase in August 2016, Mr P had exceeded the credit limit on his account and did incur over limit charges. And while NewDay may believe that Mr P could afford to keep his account within the credit limit, I feel that the fact that he didn't keep the account within the credit limit strongly suggests otherwise.*

*NewDay have also referenced that, while Mr P's amount of external credit did increase in the months immediately preceding the credit limit increase in August 2016, his amount of external credit then decreased the following month, in September 2016, which NewDay believe gives credence to their position that Mr P could afford the further credit being provided to him at that time. However, any affordability assessment that NewDay undertook in August 2016 wouldn't have included any information about Mr P's then unknown future financial position in September 2016.*

*Ultimately, upon consideration of the points brought forwards by NewDay, it remains my position that the information available to NewDay about Mr P's financial position in August 2016 should, at the very least, have given NewDay cause to suspect that Mr P might not be able to afford the credit limit increase such that further checks into Mr P's financial position should have been undertaken by NewDay before implementing that credit limit increase.*

*It also remains my position that the further checks which I remain satisfied NewDay should have undertaken should have reasonably included NewDay asking to review Mr P's current account statements. NewDay have stated that there is no requirement for them to review such statements.*

*However, while I agree with NewDay that there isn't a requirement for a credit provider to review a customer's current account statements as a part of the initial affordability assessment, I do feel that in these specific circumstances, where further checks are required, it is reasonable to have expected NewDay to have asked to review Mr P's current account statements, in order for NewDay to have ensured that they were providing credit to Mr P responsibly. And conversely, I struggle to understand how NewDay could have reasonably performed the additional checks into Mr P's financial position which I'm satisfied were required here by other means.*

*Mr P also provided some comments, and felt that if I was finding that one provision of credit had been unaffordable for him then it should be the case that the other provision of credit should be considered as being unaffordable also. Indeed, Mr P specifically stated that he didn't think that the two accounts should be looked at in isolation.*

*I can appreciate Mr P's position here, but I can confirm that every individual provision of either new or further credit is looked at individually. This is because a person may be able to afford new credit at one time, but a few years later their circumstances may have changed such that they can no longer afford further credit.*

*In this instance, I'm satisfied that the information about Mr P's financial position in August 2016 was such that I don't feel that Mr P should have been provided further credit by NewDay at that time. However, I feel that the information available about Mr P's financial position in January 2020, when he applied for the second NewDay credit account, showed an improved financial position, such that I'm satisfied that it was reasonable for NewDay to have approved Mr P's application and provided that new credit account to Mr P at that time.*

*Mr P has also provided new information in relation to the credit increase that was implemented on the second account in October 2020. Specifically, Mr P has provided a letter sent by NewDay on 21 October 2020 advising that they're increasing the credit limit on his second account, and also a letter sent by NewDay two days later, on 23 October 2020, explaining that they're increasing the interest rates on Mr P's first NewDay account because of factors in how he'd managed his credit with NewDay and with other lenders.*

*Mr P therefore questions how NewDay could have reasonably increased his credit limit on the second account, given that they had stated concerns about how he was managing his credit with them, as per the letter sent in relation to the first account.*

*Having reviewed these two letters, it's difficult not to reach the same conclusion as Mr P here, and given that NewDay are effectively stating in the letter dated 23 October 2020 that they have concerns over how Mr P was managing his credit, it doesn't seem fair or reasonable to me that they would provide further credit to Mr P on his other NewDay administered account only two days earlier.*

*As such, this letter will be a second provisional decision, amending my original provisional decision to also include that I will be upholding Mr P's complaint as it relates to the credit limit increase that took place on his second NewDay credit account in October 2020.*

*Finally, Mr P has referred to an extended period in the time leading up to his application for the second NewDay credit account where he was utilising the large majority of the credit available to him on his first NewDay account, which Mr P feels suggests he couldn't reasonably afford the second credit account that he applied for.*

*While I can appreciate Mr P's point here, a customer can choose to use as much as their credit limit as they would like, and I wouldn't consider that the use of a credit account even up to 99% percent of the available credit limit should be considered as an indicator of potential financial difficulty. Importantly, during that time period, Mr P didn't exceed the credit limit of his first NewDay account, and didn't incur any over-limit fees which I feel would have been indicators of potential financial difficulty, and*

*so I remain satisfied that it was reasonable for NewDay to have approved Mr P's application for that second credit account at that time.*

*All of which means that my provisional decision here is that I am upholding Mr P's complaint as it relates to the credit limit increase on the first account that took place in August 2016 and also as it relates to the credit limit increase on the second account that took place in October 2020.*

In my second provisional decision letter, I gave both Mr P and NewDay the opportunity to respond and to provide any comments or new information they might wish me to consider before I moved to a final decision. Both Mr P and NewDay confirmed that they had no further comments or submissions they wished to provide.

As such, I see no reason not to issue a final decision upholding this complaint in Mr P's favour on the basis as outlined above, and I can confirm that my final decision will be that I am upholding this complaint accordingly.

### **Putting things right**

NewDay must reimburse to Mr P's first credit account all fees and charges incurred on the account from the point of the credit limit increase in August 2016 onwards, as well as reimburse all interest accrued on the account relating to the balance of the account above £600 from that same point onwards.

If these reimbursements result in a credit balance in Mr P's favour, NewDay must pay this balance to Mr P along with 8% interest calculated to the date of payment.

NewDay must also remove all adverse credit reporting from Mr P's credit file relating to this first credit account from August 2016 onwards.

NewDay must reimburse to Mr P's second credit account all fees and charges incurred on the account from the point of the credit limit increase in October 2020 onwards, as well as reimburse all interest accrued on the account relating to the balance of the account above £900 from that same point onwards.

If these reimbursements result in a credit balance in Mr P's favour, NewDay must pay this balance to Mr P along with 8% interest calculated to the date of payment.

NewDay must also remove all adverse credit reporting from Mr P's credit file relating to this second credit account from October 2020 onwards.

Finally, NewDay must make a payment of £200 to Mr P to compensate him for the upset and inconvenience this ongoing matter has caused.

### **My final decision**

My final decision is that I uphold this complaint against NewDay Ltd, trading as Aqua, on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 17 May 2022.

Paul Cooper  
**Ombudsman**

