

## **The complaint**

Mr I is unhappy that NewDay Ltd, trading as Aqua, provided him with credit which he feels was unaffordable for him and didn't provide appropriate financial assistance to him when he was experiencing financial difficulty.

## **What happened**

In January 2017, Mr I applied for a NewDay administered Aqua credit account. Mr I's application was accepted and NewDay issued Mr I with a credit card with an initial credit limit of £600.

In July 2017, NewDay increased the credit limit on Mr I's Aqua credit account from £600 to £1,500. Further credit limit increases took place in November 2017 and November 2018, to £2,900 and £4,150 respectively.

In April 2018, Mr I applied for a personal loan with NewDay. Mr I's application was accepted, and he received a loan of £6,000 repayable with interest over a 48-month term.

In October 2019, Mr I applied for a new, differently branded NewDay credit account. Mr I's application was accepted, and Mr I was issued a new credit card account by NewDay with an initial credit limit of £900.

Mr I then fell into financial difficulties and his first credit account, the Aqua credit account, fell into arrears. Mr I spoke with NewDay in January 2020 and advised that he was experiencing financial difficulties at that time. NewDay placed a 30-day hold on the account and sent an income and expenditure form to Mr I to complete and return so that NewDay could better understand Mr I's financial position and consider what further forms of financial assistance they could offer. However, Mr I didn't receive the form, and wasn't able to complete and return it as required, and so when the 30-day hold expired NewDay resumed collections activities on that account.

Mr I also contacted NewDay about his second credit account in January 2020 and made a payment arrangement with them. In February 2020, NewDay transferred Mr I's Aqua credit account to a third-party debt collection company who contacted Mr I who agreed to repay £50 per month towards the account. Then, in March 2020, Mr I became unable to meet the monthly loan account repayments which resulted in the loan account falling into arrears, and Mr I spoke with NewDay about this in April 2020 and requested financial assistance.

In July 2020, Mr I raised a complaint with NewDay on the basis that he felt that NewDay had provided him with credit facilities that hadn't been affordable for him, and that this should have been evident to NewDay, had they undertaken reasonable checks into his financial position before offering him such credit. Mr I also didn't feel that NewDay had provided him with reasonable financial support when he'd explained to them that he was experiencing financial difficulty.

NewDay looked at Mr I's complaint. They noted that they had undertaken checks into Mr I's financial position before offering any new or further credit to Mr I, and they felt that there'd

been nothing resulting from those checks that should have given them any cause to suspect that the credit being offered to Mr I might be unaffordable for him at those times. NewDay also felt that they'd offered reasonable financial support to Mr I when he'd requested it, and so, they didn't uphold Mr I's complaint.

Mr I 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 it hadn't been unreasonable for NewDay to have approved Mr I for the Aqua credit account or the loan account, or to have increased the amount of credit available to Mr I on the Aqua credit account, given the information that NewDay had gathered and assessed about Mr I's financial position at those times. And our investigator also felt that NewDay had offered reasonable financial assistance to Mr I when he'd requested it.

However, while liaising with NewDay about the second credit account, NewDay accepted that the amount of existing credit that Mr I already held at the time of the second credit application, when considered against Mr I's annual income, meant that it was likely that NewDay shouldn't have offered that second credit account to Mr I at that time. NewDay therefore offered to reimburse all interest and charges accrued on the second credit account from the point of inception, and our investigator felt that this offer of redress by NewDay represented a fair and reasonable resolution to what had taken place.

Mr I didn't agree with the view of this complaint put forwards by our investigator and remained dissatisfied. 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 1 March 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. Before approving Mr I for a new line of credit they took information from Mr I about his annual income and amount of existing credit, and they obtained information about Mr I from a credit reference agency to gain a better understanding of Mr I's wider financial position.*

*Furthermore, before increasing the amount of credit available to Mr I on an existing line of credit, NewDay reviewed how Mr I had managed that credit account in the months leading up to the credit limit increase, and also obtained updated information about Mr I from a credit reference agency to refresh their understanding of Mr I's wider financial position.*

*And NewDay contend that, for the Aqua credit account and for loan account, there was nothing resulting from any of these checks that they feel should have reasonably given them any cause to suspect that those provisions of credit might be unaffordable for Mr I at those times.*

*Aqua credit account application*

*When Mr I applied for the Aqua credit account in January 2017, he advised NewDay that he was employed with an annual income of approximately £15,000. NewDay then reviewed Mr I's credit file information, which showed that Mr I had existing credit of approximately £2,200 and that he wasn't in arrears on any of his existing credit arrangements. Mr I's credit file also showed that Mr I didn't have any recent defaults or use of payday loans which might be an indication that Mr I was struggling financially at that time.*

*Given Mr I's stated annual income at that time, as well as Mr I's relatively low amount of existing credit and his credit file information, which appeared to demonstrate that Mr I was managing his existing credit commitments responsibly and without issue, it seems fair and reasonable to me that NewDay would conclude that Mr I in all likelihood would be able to afford the Aqua credit account he was applying for with the initial credit limit of £600.*

#### *First Aqua credit account credit limit increase*

*In the months leading up to the first credit increase on the Aqua credit account, which took place in July 2017, it's notable that Mr I didn't appear to be struggling to maintain that credit account. I say this because the account usage confirms that Mr I maintained the balance of that account below the agreed credit limit of £600 and didn't exceed that limit or incur any over-limit fees. It's also notable that Mr I made several large payments towards the credit account in the months leading up to the credit limit increase and cleared the outstanding balance of the account in full on more than occasion.*

*Mr I's credit file did show that Mr I's total amount of credit had increased since the Aqua credit account had been opened, but the total credit amount was still relatively small when compared to Mr I's previously declared annual income. And, while Mr I had taken two payday loans shortly after the Aqua account had been opened, these payday loans appear to have been repaid by Mr I on time and without incident, and indeed Mr I's credit file continued to show that Mr I wasn't in arrears on any of his existing credit facilities at that time. As such, in consideration of all this information, I'm satisfied that it was reasonable for NewDay to conclude that Mr I would most likely be able to afford the credit limit increase from £600 to £1,500 that they offered to him and which he didn't decline.*

#### *Second Aqua credit account credit limit increase*

*The second credit limit increase on the account, from £1,500 to £2,900, took place in November 2017, only four months after the first credit limit increase, meaning that the amount of credit available to Mr I had increased significantly in less than half a year, from £600 in June 2017 to £2,900 in November 2017. And at this time I do feel that there were some indicators that Mr I's financial position might have been deteriorating at that time, most obviously the fact that Mr I's total amount of credit had continued to grow on a monthly basis, rising from approximately £1,500 in February 2017, shortly after the Aqua credit account was opened, to just under £3,000 the month before the first credit limit increase, and then to over £6,000 the month before the second credit limit increase.*

*This could potentially demonstrate a growing reliance on credit on the part of Mr I. But this must be countered by the fact that Mr I's credit file continued to demonstrate that Mr I wasn't in arrears on any of his existing credit commitments at that time.*

*Additionally, Mr I continued to maintain his Aqua credit account largely below the original credit limit of £600 and hadn't utilised the further credit provided to him by NewDay following the first credit limit increase. It's also notable that Mr I continued to make large payments towards the account, clearing the full balance outstanding on the account on several occasions, and I do feel that Mr I's responsible management of his Aqua credit account during this period does mean that it was reasonable for NewDay to conclude that the credit*

*limit increase to £2,900 would in all likelihood be affordable for Mr I at that time.*

*Also, given that Mr I wasn't using the full amount of credit available to him on his Aqua credit account in the months leading up to the credit limit increase, it seems reasonable to me that Mr I would have declined that further credit limit increase, if he'd felt that the further credit might be potentially unmanageable. And it follows therefore that I don't feel that NewDay acted unfairly towards Mr I by offering him this further credit.*

#### *Personal loan application*

*The next event that happened was that Mr I applied for the £6,000 personal loan in April 2018. When Mr I applied for that loan, he stated that his monthly income was £1,500 per month, which equates to £18,000 per annum. Mr I also stated that he was living with parents and as such didn't have any monthly mortgage or rental commitments, meaning that his declared monthly outgoings were relatively low. Considering Mr I's declared income and expenditure here, I feel that it was reasonable for NewDay to have concluded that the potential loan repayment amount of £165 per month would have been affordable for him.*

*Additionally, Mr I continued to display responsible management of his Aqua credit account, and in the months leading up to the loan application continued to maintain the balance of the Aqua credit account below the initial credit limit of £600 and therefore significantly below the actual credit limit at that time of £2,900. And Mr I's credit file continued to confirm that Mr I wasn't in arrears on any of existing credit commitments at that time and appeared to demonstrate that Mr I was managing his existing credit unproblematically and without issue. As such, I'm satisfied that it was reasonable, in consideration of all this information, for NewDay to have concluded that Mr I would be able to afford the loan he was applying for at that time and to have approved his application for it.*

#### *Third Aqua credit account credit limit increase*

*In November 2018, NewDay increased the credit limit on Mr I's Aqua credit account for the final time, from £2,900 to £4,500. Again, in the months leading up to this credit limit increase, Mr I had maintained the balance of the account significantly below the agreed credit limit and made several large payments to clear the full balance outstanding – although in the two months immediately before the credit limit increase this behaviour had changed, with Mr I making payments of £100 in those months, without any new account spending, so as to gradually reduce the outstanding balance amount.*

*Mr I's credit file also continued to show that Mr I wasn't in any arrears on any of his existing credit arrangements at that time, and while Mr I's total amount of credit did now stand at approximately £11,300, that amount was down from a high of over £13,500 several months prior, and I don't feel that this was prohibitively excessive when considered against Mr I's most recently declared annual income of £18,000 per annum. And once again, in consideration of this information, I do feel that it was reasonable for NewDay to have concluded that Mr I would in all likelihood be able to afford the higher credit limit being offered to him and which he didn't refuse, even though he wasn't using the full amount of credit available to him on the Aqua credit account at that time.*

#### *Second credit account application*

*Just under a year later, in October 2019, Mr I applied for a new differently branded NewDay credit account. At the point of application, Mr I declared to NewDay that he was self-employed with an annual income of £16,000. And, while Mr I's credit file continued to show at that time that Mr I wasn't in arrears on any of his existing credit commitments, it also showed that Mr I already had existing debt of over £16,000, and therefore had a greater*

*amount of debt than his declared annual income.*

*It therefore doesn't seem reasonable that NewDay should have offered further credit to Mr I in these circumstances, increasing his level of indebtedness at a time when it's difficult not to conclude that he was already financially overcommitted. And NewDay have accepted that they shouldn't have approved Mr I's new credit application at that time, and have offered to reimburse to Mr I's credit account all interest, fees and charges that were incurred or accrued on the account for the full history of that account.*

*This feels fair to me, and it mirrors the instruction that I would have given to NewDay had they not made this offer themselves, although my provisional decision here will also include the caveat that should these reimbursements result in a credit balance in Mr I's favour that NewDay must pay this credit balance to Mr I along with 8% simple interest – although they may apply that payment to reduce the balance of one of Mr I's other outstanding balances, so long as that other balance remains under administration by NewDay at this time.*

#### *Aqua credit account financial difficulty*

*Around this time, Mr I fell into financial difficulty such that he was no longer able to maintain the payments required on his Aqua credit account, so that the account fell into arrears.*

*In January 2020, with no payments having been made by Mr I towards the Aqua credit account for three months, NewDay contacted Mr I by telephone. NewDay's telephone notes, which I see no reason to not accept, indicate that Mr I informed NewDay that he was experiencing financial difficulty at that time and that Mr I offered to pay £25 per month to NewDay on this account. NewDay's notes also indicate that Mr I was asked about his income and expenditure information at that time so that an assessment of his financial position could be undertaken. Mr I informed NewDay that he didn't have his income and expenditure information to hand, so NewDay advised that they would be sending an income and expenditure form to Mr I in the post for him to complete and return.*

*Mr I has stated that he didn't receive this form, and has questioned why NewDay didn't chase the information from him, rather than simply resuming collections activities when the completed form hadn't been received back to them. I can appreciate Mr I's position here, to a degree, but given that NewDay had asked Mr I for his income and expenditure information and then advised that they would be sending a form to him – which I'm satisfied from the information that NewDay have provided that they did send to Mr I in the post – I feel that it was incumbent on Mr I to have informed NewDay that he hadn't received that form and to have requested a replacement form or to have provided his income and expenditure information to NewDay by other means.*

*And while it would be expected that NewDay would work with Mr I and provide a fair measure of support to him if he was in a position of financial difficulty, it wouldn't be expected that NewDay would accept an offer of low monthly repayment without Mr I providing income and expenditure information to demonstrate why such an offer of low monthly repayment should be accepted. As such, I don't feel that NewDay can be considered to have acted unfairly towards Mr I in how they managed the arrears that had developed on his Aqua credit account at that time, including that NewDay resumed collections activities when Mr I didn't provide his income and expenditure information to them.*

#### *Personal loan financial difficulties*

*In March 2020, Mr I wasn't able to make the scheduled payment that was due on his loan account, and the loan fell one month into arrears. Shortly afterwards, on 16 April 2020, Mr I*

*spoke with NewDay and explained that his work had been severely impacted by the restrictions put in place surrounding the Covid-19 pandemic that was emerging globally at that time. Mr I also asked NewDay if there was any help that they could provide.*

*In response, NewDay once again asked Mr I to provide his income and expenditure information to allow an assessment of his financial position to be undertaken, and NewDay have confirmed that it remained their position that they were unable to offer any form of assistance to Mr I at that time without an income and expenditure assessment being completed.*

*However, on 9 April 2020, a week before Mr I spoke with NewDay, the Financial Conduct Authority (FCA) published temporary guidance regarding the provision of three-month payment holidays to eligible consumers who were experiencing difficulty meeting the payments due on their credit or personal loan accounts because of financial difficulties brought about by the impact of Covid-19. The FCA guidance included that, for these three-month payment holidays only, the reporting of these payment holidays to the credit reference agencies would be suspended, so that an eligible consumer who benefited from such a payment holiday didn't have their credit file impacted by doing so.*

*Not all consumers were eligible to receive these three-month payment holidays, and the FCA explained that the purpose of the guidance was to protect consumers who had been able to meet the repayments on their credit or loan account without incident until that time, but who were at risk of incurring adverse reporting for missed or late payments on their credit files solely as a result of the impact of Covid-19.*

*In this instance, Mr I had been able to meet the repayments due on the loan account without incident until that time, only falling one month into arrears in March 2020, at a time when the Covid-19 restrictions were coming into effect. As such, I do feel that Mr I was eligible to receive one of the FCA prescribed three-month payment holidays in relation to his loan account at that time.*

*As an aside, I must also note that I don't feel that this was the case on the Aqua credit account, where the level of arrears that had already accrued on the account before the FCA guidance came into effect meant that Mr I wasn't an eligible consumer for such payment holidays on that account.*

*Additionally, the FCA also explained that for these three-month payment holidays, there was no expectation or requirement for a business to make enquires, such as an income and expenditure assessment, to validate whether such a payment holiday was warranted. And as such, I find it difficult to conclude anything other than by not providing such a three-month payment holiday to Mr I, that NewDay didn't treat Mr I fairly in this regard.*

*Furthermore, as the Covid-19 pandemic developed, the FCA later issued further guidance which would have enabled Mr I to be eligible for a second three-month payment holiday when the first payment holiday term ended. This meant that Mr I could and should have benefited from a payment holiday on this loan account for the months of April 2020 to September 2020. And the FCA also issued continuing guidance which explained that if Mr I continued to be in a position of financial difficulty because of Covid-19 at the end of the six months of prescribed payment holiday, that NewDay should continue to offer tailored financial support to Mr I at that time.*

*But Mr I didn't receive the support that he should have done from NewDay here, and instead his loan account was passed to a debt collection company, and then ultimately defaulted by NewDay for non-payment with the outstanding balance then being sold by NewDay to a debt purchasing company with whom the outstanding balance currently resides.*

*This doesn't feel fair to me, and I will be provisionally upholding this aspect of Mr I's complaint. However, it doesn't follow from this that I feel that NewDay should remove the default from Mr I's credit file here, and this is because I'm not convinced from the information available to me that Mr I would have been able to make the contractual monthly payments required by the loan when the six months of FCA prescribed payment holiday that he should have received would have ended in October 2020.*

*And, while NewDay would have been obliged to provide continuing financial support to Mr I from that date onwards, if Mr I couldn't make the contractual monthly payments, the arrears on his account would have continued to grow, even while he was being supported, and I feel that it's more likely than not that those arrears would have grown to a degree where the responsible thing for NewDay to have done, to prevent Mr I falling into an unreasonable amount of debt, would have been to have defaulted the account – albeit at a much later date than the account was defaulted by NewDay in actuality.*

*As such, accepting that Mr I's loan account would have defaulted at some stage, it seems beneficial to Mr I to leave the default in place at the time that it currently stands, so that that default will fall off Mr I's credit file sooner than would be the case if it were amended to a later date. However, If Mr I can provide evidence that he could have reasonably afforded to make the contractual payments required on his loan from October 2020 onwards, such as current account statements showing available funds at that time, I may be willing to reconsider my position on this matter.*

#### *Second credit account financial difficulty*

*In regard to Mr I's second credit account, it's evident that Mr I encountered financial difficulty on that account at an early stage and entered into a payment arrangement with NewDay in January 2020. As such, given that Mr I was already in a payment arrangement in January 2020, I don't feel that he was an eligible consumer in regard to the FCA prescribed three-month payment holidays in April 2020 in regard to that account.*

#### *Third credit account application*

*I'm aware that Mr I also applied for another NewDay branded credit account, and that his application for that credit account was approved. However, Mr I closed that other credit account without it ever being used and so I don't feel that any detriment to Mr I can be deemed to have occurred and as such I haven't considered this account further.*

#### *Summary*

*I feel that the information that NewDay gathered before approving Mr I's Aqua credit account application, and before increasing the credit limit on that Aqua credit account, was such that on all occasions it was reasonable for NewDay to offer those credit amounts to Mr I. And I feel that the same applies in regard to Mr I's personal loan application, and so I won't be provisionally upholding these aspects of Mr I's complaint.*

*I do feel that NewDay shouldn't have approved Mr I's application for the second credit account – which NewDay themselves have acknowledged.*

*I don't feel that NewDay acted unfairly towards Mr I in how they managed Mr I's Aqua credit account when it fell into arrears in late 2019, including that NewDay weren't prepared to accept an offer of low repayment from Mr I at that time without obtaining his income and expenditure information from him, or in regard to the payment arrangement that NewDay made with Mr I on his second credit account.*

*But I do feel that NewDay did act unfairly towards Mr I by not providing him with the FCA prescribed three-month payment holiday that I consider Mr I was eligible for following Mr I informing NewDay that his financial position had been affected because of the impact of Covid-19 in April 2020 – although I don't feel that this should result in the default incurred on that loan account being removed or amended by NewDay in this instance, for the reasons explained above.*

#### *Provisional instructions*

*All of which means that I will be provisionally upholding this complaint in Mr I's favour on the limited basis explained above. Consequently, my provisional instructions to NewDay are as follows:*

*NewDay must reimburse to Mr I's second credit account all interest, fees, and charges that have been incurred or accrued on that account since the point that the account was opened in October 2019.*

*If these reimbursements result in a credit balance on that account in Mr I's favour, NewDay must pay this balance to Mr I along with 8% simple interest – although NewDay may apply any such payment to reduce the balance outstanding on one of Mr I's other NewDay accounts so long as that other account remains under administration by NewDay at this time.*

*Finally, NewDay must make a further payment of £650 to compensate Mr I for the distress and inconvenience incurred as a result of his second credit account being approved and also from Mr I not being given the FCA prescribed financial assistance he should have been given by NewDay in relation to his loan account when he contacted them in April 2020.*

*In arriving at this compensation amount, I've considered the impact of NewDay's actions on Mr I, and in regard to his not being given the FCA prescribed three-month payment holidays in particular, I feel that the impact was significant, given that Mr I has confirmed to this service that he did experience severe upset as a result of the considerable financial difficulty he found himself in at that time. This compensation payment may not be applied by NewDay to one of Mr I's outstanding NewDay balances, unless Mr I permits NewDay to do so.*

...

In my provisional decision letter, I gave both Mr I and NewDay the opportunity to provide any comments or new information they might wish me to consider before I moved to issue a final decision. Mr I confirmed that he was happy to accept my provisional decision, whereas NewDay did provide some comments for my consideration.

Specifically, while NewDay accepted aspects of my provisional decision, they felt that £650 compensation that I had provisionally instructed wasn't reasonable and that a lower amount of compensation was merited in this instance.

NewDay reiterated that in regard to the emailed request for a three-month payment holiday made by Mr I in April 2020, that they responded to that request and asked Mr I to contact them to discuss his financial circumstances at that time. NewDay also confirmed that they wouldn't set up a payment holiday without speaking to a customer about their situation first.

I can appreciate NewDay's point here, but the FCA guidance that was published on 9 April 2020 included that:



*“There is no expectation under this guidance that the firm makes enquiries with each customer to determine the circumstances surrounding a request for a payment deferral, or whether this is not in the customer’s interests. We have disapplied CONC 6.7.18R and 6.7.19R to give effect to this.”*

As such, while I understand that it was NewDay’s normal process to discuss a customer’s circumstances with them before providing financial assistance, the need for NewDay to do this had been removed by the FCA guidance in regard to these specific three-month payment holiday requests. This was done by the FCA to enable credit providers such as NewDay to quickly and efficiently apply such payment holidays to applicant customers’ accounts. And Mr I was such an applicant customer in this instance.

And while I can appreciate how NewDay might feel that the £650 compensation amount I provisionally instructed is high, Mr I has reasonably and convincingly explained how the difficult personal and financial circumstances that he was experiencing at that time were significantly exacerbated by his not being provided with the type of financial assistance that I’m satisfied NewDay should have provided him with here. And because of this, and for the other reasons explained in my provisional decision letter, I continue to feel that a compensation amount of £650 is warranted in this instance.

All of which means that my final decision here will be that I am upholding this complaint in Mr I’s favour on the basis as outlined in my provisional decision, and I can confirm that I do uphold this complaint accordingly.

### **Putting things right**

NewDay must reimburse to Mr I’s second credit account all interest, fees, and charges that have been incurred or accrued on that account since the point that the account was opened in October 2019.

If these reimbursements result in a credit balance on that account in Mr I’s favour, NewDay must pay this balance to Mr I along with 8% simple interest – although NewDay may apply any such payment to reduce the balance outstanding on one of Mr I’s other NewDay accounts so long as that other account remains under administration by NewDay at this time.

Finally, NewDay must make a further payment of £650 to compensate Mr I for the distress and inconvenience he’s incurred.

### **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 I to accept or reject my decision before 21 April 2022.

Paul Cooper  
**Ombudsman**