DRN-3729190

## The complaint

Mr W says NewDay Ltd trading as Aqua ("NewDay Ltd") irresponsibly lent to him. He has requested that the interest and late payment charges he paid be refunded.

## What happened

This complaint is about a credit card taken out on 24 August 2013 with an initial credit limit of £500. This limit was increased on 17 March 2016 to £1,200, to £2,200 on 29 September 2016 and to £3,100 on 29 May 2017.

Mr W says he's unhappy that NewDay Ltd increased his credit limits on the account when he was in financial difficulties.

The complaint about the initial lending in 2013 has been brought too late. But the complaint about the credit limit increases was assessed by our adjudicator and the complaint was upheld. Our adjudicator thought that the credit increases were examples of unreasonable lending, as the existing pattern of lending ought to have shown NewDay Ltd that Mr W wasn't in a position to sustainably repay any further credit by the time it raised the credit limits.

NewDay Ltd has not responded to our adjudicator's assessment, so, the complaint has therefore passed 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 general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website.

NewDay Ltd needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr W could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that NewDay Ltd should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);

- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the frequency of borrowing, and the longer the period of time during which a customer has been indebted (reflecting the risk that prolonged indebtedness may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I've looked at the overall pattern of NewDay Ltd's lending history with Mr W, with a view to seeing if there was a point at which NewDay Ltd should reasonably have seen that further lending was likely unsustainable, or otherwise harmful. If so, that would mean NewDay Ltd should have realised that it shouldn't have provided further credit. Our adjudicator thought that there was such a point on 17 March 2016. Having considered all the submissions in this case, I agree. I will explain why I say that.

NewDay Ltd should not have provided new credit limits on the Aqua card, because the credit it provided already had led to the full credit limit being used and Mr W had exhibited a pattern of late payments and of being over his credit limit. In the two years before the credit increase, I have noted overlimit fees were paid in eleven of the 24 months and over limit fees were paid in a further six months. And whilst there weren't so many fees paid in the four months before the credit limit increase, I have noted the balance at the time of the credit increase was £498.81. The balance two years earlier was £513.37.

So, in the two years before NewDay Ltd increased Mr W's credit limit, there were 17 monthly charges attributable to Mr W not managing his account well, and the balance had not reduced in any discernible way. Mr W had been unable to make any headway into repaying his balance. The pattern of lending demonstrates that in the two years before the credit increase in March 2016, Mr W was not managing his account well and was unable to pay down the credit he had access to. And NewDay Ltd's solution to Mr W's inability to manage his existing credit was to increase his access to credit.

I think the pattern of lending on the account should have suggested to NewDay Ltd that it was likely that Mr W would have been unable to reduce the increasing debt on the account whilst at the same time having to meet his daily living expenses and other credit commitments, most likely.

So, I think that proportionate checks would likely have shown NewDay Ltd that Mr W was in difficulty with managing his account alongside his other debts and day-to-day living expenses. I also think there was a significant risk that further increases to his credit could have led to his indebtedness increasing unsustainably, such that he had no funds available to meet his debts and regular outgoings.

It follows that I think that Mr W lost out because NewDay Ltd provided him with further credit from 17 March 2016 onwards. In my view, NewDay Ltd's actions unfairly prolonged Mr W's indebtedness by allowing him to use credit he couldn't afford over an extended period of time and the interest being added would only have the effect of putting him into further debt.

It follows that NewDay Ltd should put things right.

**Putting things right**

- rework the account to ensure that all interest, fees and charges that have been applied to balances over £500 are removed. and

- If an outstanding balance remains on the account once these adjustments have been made NewDay Ltd should contact Mr W to arrange suitable repayment plans. If NewDay Ltd considers it appropriate to record negative information on Mr W's credit file, it should backdate this to 17 March 2016.

Or

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr W, along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of settlement†. If no outstanding balance, or balances, remain after all adjustments have been made, then NewDay Ltd should remove any adverse information recorded after 17 March 2016 from Mr W's credit file.

As NewDay Ltd sold the outstanding balances on the account to a third party debt purchaser, it either needs to buy the account back from the third party and make the necessary adjustments; pay an amount to the third party so it can make the necessary adjustments; or pay
Mr W an amount to ensure that it fully complies with this direction.

†HM Revenue & Customs requires NewDay Ltd to take off tax from this interest. NewDay Ltd must give Mr W a certificate showing how much tax it's taken off if he asks for one. If NewDay Ltd intends to apply the refund to reduce any outstanding balance, it must do so after deducting
the tax.

**My final decision**

For the reasons set out, I'm upholding Mr W's complaint. NewDay Ltd trading as Aqua should put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 November 2022.
Douglas Sayers
**Ombudsman**