

The complaint

Mr E, represented by a third party, complains that NewDay Ltd trading as Aqua was irresponsible in its lending to him.

What happened

Mr E applied for an Aqua credit card in April 2013, and this was provided with an initial credit limit of £250. The credit limit was increased on six occasions bringing the credit limit in November 2016 to £6,150. Mr E says that the lending was unaffordable, and it made his already poor financial situation worse.

NewDay issued a final response letter dated 28 March 2023. It said that Mr E had brought his complaint too late as the last lending decision had been made more than six years before he raised his complaint. However, following Mr E's referral of his complaint to this service, NewDay consented to this complaint being considered.

NewDay said that Mr E's account was mainly used for retail spend with only a few instances of cash advances. It said his payments were generally more than the minimum amount required and there were no signs of financial difficulty reported at the credit reference agencies when the limit increases were offered. It said that Mr E's account was closed in March 2023 with the full balance being paid in April 2023.

Our investigator explained that consumer credit became a regulated activity on 1 April 2014 and that he could only consider the lending decisions from that date. He said that there was limited information available in regard to the credit limit increases that took place between August 2014 and December 2015 and so he couldn't say whether the checks carried out before these were reasonable. But he said that before these increases there were signs that Mr E wasn't managing his account as he should.

Our investigator noted the information gathered before the fifth credit limit increase but said there was no detailed information about Mr E's credit position and noted that Mr E was making more use of the cash withdrawal facility and incurring over limit charges. Before the final credit limit increase Mr E's account still showed he was reliant on cash withdrawals.

Based on the information available, our investigator upheld this complaint in regard to the credit limit increases from 31 August 2014.

Mr E accepted our investigator's view. NewDay didn't respond. As a response wasn't received from NewDay, this case was passed to me, an ombudsman, to issue a decision.

My provisional conclusions

I issued a provisional decision on this complaint the details of which are set out below.

Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website. I've had this approach in mind when considering what's fair and reasonable in the circumstances of this complaint.

Our investigator explained that providing consumer credit became a regulated activity on 1 April 2014. However, between 2007 and 2014, consumer credit was overseen by the Office of Fair Trading which provided guidance on irresponsible lending which included the need to carry out proportionate affordability checks. NewDay was authorised and fell under our jurisdiction from 2011. I have therefore considered this complaint in regard to the initial provision of the credit card and all the credit limit increases.

Given the time that has passed since the account was opened and credit limit increases applied, there is limited information available to say what checks NewDay carried out and whether these were proportionate. But as the initial credit limit provided was £250, it is likely that this would have appeared affordable and without evidence to the contrary I do not find I can say it was wrong to provide the credit card with this initial credit limit.

The credit limit was increased in September 2013 to £1,050. Before this increase, Mr E was managing his account within its limit, was making his repayments and hadn't made any cash withdrawals. So, while this was a substantial increase to Mr E's credit limit, without further evidence, I do not find I can say that proportionate checks would have shown this to have been unaffordable.

A year later, in August 2014, Mr E's credit limit was increased to £1,850. Again, the only available information I have to assess whether it was reasonable to consider that this additional lending would be affordable to Mr E is his account management to that date. This shows that Mr E's balance had increased to near the new limit around three months after the previous credit limit increase had occurred. He then exceeded the credit limit on three occasions in December 2013, February 2014 and March 2014. The balance then stayed at just under the limit for the months leading up to the August 2014 credit limit increase. I think proportionate checks would have shown signs that Mr E might be becoming dependent on the borrowing but as he was making his repayments at this time and I have nothing else to show that NewDay should have been aware that he might be struggling financially, I do not find I have enough at this point to say NewDay was wrong to provide the credit limit increase.

The third credit limit increase took place in January 2015. This took Mr E's credit limit to £2,800. This limit was now more than ten times the size of the initial credit limit provided less than two years before and was a large increase only a few months after the previous limit increase. In the four months leading up to the limit increase, Mr E had exceeded his credit limit twice and while he was making his monthly payments his balance was remaining close to his limit. Given his history of borrowing, I think proportionate checks at this time would likely have shown that Mr E had become dependent on the debt and that it wasn't reasonable to provide further credit.

Further credit limit increases took place in December 2015, June 2016 and November 2016. This took Mr E's credit limit to £6,150. During this period Mr E continued to go over his limit on occasions and his balance would increase to near the new limit a few months after the limit increase suggesting he continued to be reliant on the debt and that this reliance increased with each credit limit increase. Mr E has provided copies of his bank statements from 2015 and these show that he was operating in his overdraft for a substantial part of each month. Given this I do not find that providing more credit was reasonable.

While there has been limited information available in this case due to the timing of the issues, on balance, I find it more likely than not based on what I have seen that proportionate checks would have suggested the credit increases from January 2015 shouldn't have been considered reasonable.

Mr E accepted my provisional decision and NewDay said that it had nothing further to add.

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.

As no new information was provided in response to my provisional decision, my conclusions haven't changed. I have set out my reasoning above but in summary, I do not find I have enough evidence to say that NewDay was wrong to provide Mr E with a credit card account with an initial credit limit of £250 or that the first two credit limit increases shouldn't have been provided. However, I think that had proportionate checks been undertaken before the third credit limit increase in January 2015, NewDay would likely have realised that Mr E had become dependent on the debt and that it wasn't reasonable to provide further credit.

Therefore, I uphold this complaint in regard to the credit limit increase in January 2015 and the subsequent increases.

Putting things right

As I don't think NewDay Ltd trading as Aqua should have increased Mr E's credit limit above £1,850, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. I understand that Mr E's account has been repaid.

To settle this complaint, NewDay Ltd trading as Aqua should:

- Rework the account removing all interest, fees, charges, and insurances (not already refunded) that were applied to balances above £1,850.
- Any credit balance resulting from this should be refunded to Mr E along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement.
- To the extent relevant, any adverse information recorded on Mr E's credit file after 31 January 2015 in relation to the account should be removed.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mr E a certificate showing how much tax has been taken off if he asks for one.

My final decision

My final decision is that I partially uphold this complaint. NewDay Ltd trading as Aqua should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 14 November 2023.

Jane Archer
Ombudsman