

The complaint

Mr W says NewDay Ltd, trading as Aquacard, irresponsibly lent to him.

What happened

Mr W took out a credit card in March 2014 with an opening limit of £250. As the parties are aware this complaint looks at the limit increases from July 2017 onwards. At that point the limit was increased from £2,100 to £3,150. There were then four further increases in July 2018, February 2019, May 2021 and September 2021 when the limit reached £8,000. Mr W says he suffered financial hardship as a result of this credit.

NewDay says on each occasion it reviewed how Mr W was managing his account and his external debt. It says it carried out adequate checks to ensure the increases were affordable.

Our investigator upheld Mr W's complaint. She said when NewDay increased Mr W's limit in July 2017 it had recently flagged to him that repeatedly making only the minimum payment would prolong his indebtedness. Also six months prior he had a public record added to his credit file. In this context she felt NewDay did not make a fair lending decision. Similarly, she found as NewDay sent further letters about persistent debt to Mr W in May and September 2018 this suggested it was already concerned about how he was managing his finances and therefore all further limit increases were unfairly given.

NewDay disagreed with this assessment and asked for an ombudsman's review. It listed 14 large repayments Mr W made between October 2018 and February 2023 and said this showed he was able to sustainably repay his account.

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.

Our approach to unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - is set out on our website and I have followed it here.

NewDay is required to lend responsibly. It needed to conduct checks to make sure that the credit it offered to Mr W was affordable and sustainable. Such checks need to be proportionate to things like the credit limits it offered Mr W, how much he had to repay (including interest and charges) each month, his borrowing history with it and what it knew about his circumstances. But there is no set list of checks it had to do.

This means to reach my decision I need to consider if NewDay carried out proportionate checks at the time of Mr W's limit increases; if so, did it make fair lending decisions based on the results of its checks; and if not, what better checks would most likely have shown. I also need to think about, bearing in mind the circumstances at the time of each additional advance in credit, whether there was a point at which NewDay ought reasonably to have realised it was increasing Mr W's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit.

I can see when NewDay increased Mr W's limit it considered how he was managing both his Aqua account and his other debt elsewhere. I'm not satisfied these checks were proportionate for the limit increases. I think NewDay needed to take steps to check Mr W's income and outgoings had not changed significantly as it extended his borrowings. I cannot see that it was reasonable that because Mr W seemed to be managing a lower limit it could be assumed he could manage a limit that ended up 32 times higher than when was first approved, which seems to be the last time his income was checked.

However I won't comment further on this as I don't think NewDay made fair decisions when it increased Mr W's limit from July 2017 onwards even based on the information it did gather. I'll explain why.

When NewDay decided to increase Mr W's limit in July 2017 it knew he had made only around the minimum payment for the previous 12 months, was close to his credit limit at 96% utilisation, and in January 2017 a public record had been added to his credit file. So I can't see it had the assurances it needed that there was no risk that increasing Mr W's limit would cause financial detriment. Indeed, it went on to send Mr W a number of letters in November 2017, May 2018 and September 2018 initially expressing its concerns that he was typically only making the minimum payment and then that he was in persistent debt. I cannot see that with that backdrop it was fair or reasonable for NewDay to increase Mr W's credit limit when it did. It seems clearly wrong to offer more credit to an account holder at the same time as flagging they are consistently only making minimum payments on a lower limit - to the extent that they go on to meet the regulator's definition of being in 'persistent debt'.

NewDay said that the letters it sent Mr W ought to have triggered him to consider if he could afford the lending it was offering, but that does not change my finding as Mr W's response to the letters does not alter NewDay's obligation to lend responsibly.

NewDay argues that between October 2018 and February 2023 Mr W made 14 payments significantly in excess of the minimum required showing the credit was sustainably affordable for him. But I disagree with this assertion - firstly these payments were after the lending decisions for the first two increases, and secondly NewDay does not know how Mr W made these increased repayments, and whether he had borrowed from elsewhere to do so. So I do not accept the fact the repayments were made as evidence that NewDay lent responsibly.

It follows I think NewDay was wrong to increase Mr W's credit limit from July 2017 onwards.

Putting things right

As I don't think NewDay should have increased Mr W's credit limit above £2,100, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Mr W has had the benefit of all the money he spent on the account so I think he should pay this back. Therefore, NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £2,100.
- If the rework results in a credit balance, this should be refunded to Mr W along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information recorded after July 2017 regarding this account from Mr W's credit file.
- Or, if after the rework the outstanding balance still exceeds £2,100, NewDay should arrange an affordable repayment plan with Mr W for the remaining amount if needed.
- Once Mr W has cleared the outstanding balance, any adverse information recorded after July 2017 in relation to the account should be removed from his credit file.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mr W a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

I am upholding Mr W's complaint. NewDay Ltd, trading as Aquacard, must put things right as 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 1 January 2024.

Rebecca Connelley
Ombudsman