

## The complaint

Mr P has argued that NewDay Ltd trading as Aqua gave him a credit card and subsequent limit increases, he couldn't afford to repay.

## What happened

In January 2014 NewDay agreed a credit card with an initial £100 limit. The limit was then increased on the following occasions:

- May 2014 – increase to £200
- August 2014 – increase to £500
- December 2014 – increase to £1,100
- May 2015 - increase to £1,900
- October 2015 - increase to £2,850
- June 2016 - increase to £4,100
- November 2016 - increase to £5,600
- March 2017 - increase to £7,100

Mr P has complained that the lending was irresponsibly lent. With specific reference to some of the later increases, Mr P and his representatives have said that he was overindebted and spending more than his income on essential expenditure. So he couldn't afford to sustainably repay the limit increases.

NewDay considered Mr P's complaint but didn't uphold it. It considered all lending decisions given and concluded that it completed proportionate checks and as a result of these checks, it was reasonable to lend.

Unhappy with NewDay's response, Mr P referred his complaint to our service. One of our investigators considered the complaint. They upheld it in full, concluding that from the initial credit search results it ought to have been clear that Mr P would have been unable to sustainably repay the account. NewDay didn't agree with the investigator's assessment, but it did offer to uphold the complaint from the June 2016 increase and onwards. Mr P didn't accept this offer and so the complaint has been passed to me to consider.

I issued a provisional decision where I said:

*The main basis of Mr P's complaint has been in relation to the May 2019 limit increase and subsequent increases after this point. However, I have noted that NewDay provided a response to all lending decisions and in the complaint form provided to this service, Mr P has given January 2014 as the date the events complained about took place (which is the start of the account). In addition, the investigator addressed all lending decisions in their assessment and Mr P hasn't disputed this. So I think it's fair to consider this complaint from the granting of the initial limit. If either party dispute this they should respond to this provisional decision with reasons by the date detailed above.*

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*We've explained how we handle complaints about unaffordable and irresponsible lending on our website. I have used this approach to help me decide Mr P's complaint. NewDay needed to make sure it lent responsibly to Mr P. It therefore needed to complete sufficient checks to determine if Mr P could*

*afford to sustainably repay the lending. Our website sets out our approach to what we typically think when deciding if a lender's checks were proportionate. There is no set list of checks a lender should do, but there is guidance on the types of checks a lender could complete. However, these checks needed to be proportionate when considering things like the amount and term of the lending, what the lender already knew about the consumer, etc.*

*Generally, we think that earlier in a lending relationship it would be reasonable for a lender's checks to be less extensive. However, we might expect a lender to do more, for example, if a borrower's income was low or the amount lent was high.*

*Given how long ago the events in question took place, there's limited evidence about what NewDay's checks revealed. I can see it has said it completed a credit search before each lending decision and where applicable it considered the running of the account prior to the increase. In relation to the granting of the initial credit limit I can also see it asked Mr P for details of his income, and it appears it estimated his key living expenses. I have limited information about the results of the credit searches. For the initial limit given I have a high level summary and for the subsequent limit increases I have limited information about his existing credit card accounts. In addition, the information I have doesn't suggest NewDay went on to ask him for income information for any of the subsequent increases.*

*Looking at the initial limit given, I think the types of checks completed proportionate given the credit limit of £100 which was given. I can see Mr P gave an income declaration and NewDay estimated some basic living expenses. And it completed a credit search. However, NewDay can't provide the full details of the credit search so I can't conclude the checks were proportionate as I don't know what they revealed.*

*Turning to the increase to £200 and £500, these were shortly after the initial limit was granted in January 2014. So although it doesn't look like NewDay asked for income information or estimated his regular expenditure, it wouldn't be unreasonable for NewDay to have relied on the previous declaration and estimate. And given the relevantly low limits and the credit search NewDay completed, these types of checks were again likely to have been proportionate. However, as explained above, I don't have the full credit search results it completed.*

*In December 2014 NewDay increased Mr P's limit to £1,100. This is substantially higher than the initial limit of £100 he was given and it had increased to this level in a period of just under a year. I think that by this time NewDay should have taken additional steps to explore Mr P's income and regular expenditure. I don't think it would have been reasonable at this time to have relied on the income information declared in January 2014. Additionally, although NewDay completed a credit search, I think it's reasonable that it would have wanted to have gathered at least high-level information about Mr P's other regular expenditure. So I don't think the checks it completed before agreeing this lending decision were proportionate.*

*As NewDay didn't gather information about Mr P's income or other regular expenditure for any of the other increases, I don't think the checks were proportionate before agreeing any of the other limit increases still in dispute.*

#### *Initial £100 limit*

*As explained above, I have limited information about the results of the credit search completed. These suggest that Mr P didn't have any defaults at the time but that there is one account with a payment overdue. However, it indicates that this is a mortgage account as it says "worst mortgage status" "1". NewDay has said it doesn't show Mr P was behind on his mortgage, so I asked NewDay for more information about what this does show which hasn't been provided<sup>1</sup>. I also asked Mr P if he had a mortgage at this time and he confirmed he did and had struggled with repayments at certain times, but he couldn't recall if this was at that time. And he's said it wasn't until 2019 that he sold the property, having gotten into difficulties.*

*I also have some limited information about Mr P's credit file at the time the limit was increased to £200 in May 2014. It states Mr P had around £13,000 in credit card debt and that he was up to date with his credit card repayments. So I think his credit results in January 2014 would have likely shown he had quite a high level of credit card debt as I think it's unlikely he would have accrued that debt in four months.*

*Even if I accept that the limited credit file results from January 2014 are an accurate reflection and he*

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<sup>1</sup> This has now been provided in response to my provisional decision, and I've addressed it below.

was a month behind in his mortgage payments, I'm also mindful that he was being given a £100 limit. The results also suggest that he had no defaults or payday lending at this time, and I can see in the results around four months later that although his credit card debt was high, he was up to date with it. And Mr P had declared an income of around £1,400 net per month. So on balance I think the low limit was sufficient to take into consideration the potentially adverse information on his credit file. And I don't think proportionate checks should have suggested to NewDay that it shouldn't have lent. I therefore think NewDay made a fair lending decision at this time.

*Limit increases - £200 and £500*

*I think for largely similar reasons, proportionate checks would have also suggested that it was reasonable to agree these limit increases. I don't have evidence of what happened with Mr P's mortgage at this time, but given the property wasn't sold (and so the mortgage wasn't redeemed) until 2019 it seems he was unlikely to have continued to build up arrears on the account. Especially since the limited credit file information I have suggests he was up to date on his credit card repayments at the time of both these limit increases. And I think it's unlikely he would be up to date on his credit card repayments, but continued to fall behind on his mortgage given the repercussions of not paying a mortgage.*

*I'm mindful that his earlier declared income was relatively modest, and he had quite large credit card debt. However, again the limits being agreed were still relatively low at these points, and whilst there's a small amount of cash withdrawals, the credit card account appears to be running without repayment issues. So on balance I think NewDay made fair lending decisions in relation to these limit increases.*

*Increase to £1,100*

*As explained above, NewDay didn't ask about Mr P's income at this time and I don't think it was still reasonable to rely on his earlier income declaration.*

*I don't know what declaration Mr P would have made if asked, especially given his earlier declaration doesn't seem to be accurate. However, I think that by this stage NewDay should have wanted to take steps to verify the information being given about his income. Mr P had held his credit card for almost a year and in that time his limit had increased from £100 to £1,100 which is a substantial increase. As explained above Mr P has provided a copy of his bank statements showing a more modest income of around £800 per month in November and December 2014.*

*In terms of his regular expenditure, I can't see the living expenses I'd expect from someone with a mortgage. Mr P has said that his mortgage was paid from his wife's account due to his low income, and he is unable to get statements for this account. So it's clear the bank statements I have don't give a full picture of his circumstances at this time, including how he was meeting his essential living costs and what funds he was using to do this. And what he's now told us about his regular expenditure at the time, isn't consistent with what I can see on the statements. It's therefore unclear what information NewDay would have gathered about his regular outgoings.*

*I accept Mr P had a large credit card debt shown on the limited credit results I have. However, it appears he was up to date with his repayments and on the account in question. And taking everything into consideration, I don't think that at this stage I have sufficient information to conclude that proportionate checks would have most likely shown that Mr P couldn't have afforded to repay his credit card.*

*Increase to £1,900*

*By the time of this increase, in May 2015, I think the balance had shifted and it should have been clear to NewDay that Mr P was overindebted and unable to sustainably repay this borrowing.*

*Whilst I don't have complete information about Mr P's regular income and expenditure, NewDay was aware that Mr P had consistently been in over £13,000 of credit card debt in the 14 months he'd held this credit card. This had increased to over £14,000 by the time of this lending decision (I suspect at least in part due to having a balance of around £1,000 on this credit card at the time). However, this is despite Mr P making regular payments towards his credit card debts during this period, so it's clear at the very least that his overall circumstances weren't getting better. And I think that by this time enough of a pattern had emerged to suggest that Mr P had now become over reliant on this type of high-cost credit and wasn't able to sustainably repay his borrowing. During the full time he'd been borrowing from NewDay he had maintained a significant debt on his existing credit card account and his overall indebtedness has deteriorated rather than improving.*

*So, I think that by this time NewDay should really have begun to question how sustainable it was to*

*continue to increase Mr P's limit, particularly in the context of the other debts it was aware of. And I don't think it made a fair lending decision to increase his limit to £1,900.*

*Limit increase to £2,850*

*Shortly after this increase, in October 2015 NewDay increased Mr P's limit again to £2,850 and I can't see his circumstances had materially improved at this time. Although Mr P's overall credit card balance had dropped slightly by around £3,000 just after the May 2015 limit increase, it quickly increases to almost £13,000 by the time of this lending decision. And I don't know how Mr P was able to reduce the balance or if a different type of credit such as a loan was used (the limited credit information I have only shows his overall credit card debt balance). I'm also mindful that just prior to this limit increase he had been charged overlimit fees so he was showing signs that he was starting to struggle with the £1,900 limit he'd had agreed just five months earlier.*

*And so I also don't think NewDay made a fair lending decision in relation to this credit limit increase.*

*NewDay has already offered to uphold the complaint from the next increase onwards, so I don't need to consider the subsequent limit increases.*

*Other considerations*

*I've also considered if NewDay acted unfairly or unreasonably in any other way which would impact the findings I've reached. I've thought about whether considering this complaint more broadly as a complaint about an unfair relationship would impact the findings I've reached. Having done so, I don't think I can.*

*In the context of this complaint, the law relating to unfair relationships is described in Section 140 of the Consumer Credit Act 1974 (Section 140). It says a court may make an order under Section 140 if it determines a relationship between the creditor and the debtor is unfair. The consumer is the debtor and Section 140 defines the creditor as "the person to whom his rights and duties under the agreement have passed by assignment or operation of law."*

*So where a debt has been sold as it has in this complaint, it follows that the debt purchaser is now the creditor for the purpose of the credit agreement. So a claim about an unfair relationship can't be brought by the consumer against the original lender as they are no longer the creditor. So this doesn't impact the outcome I've reached.*

In response Mr P's representative confirmed he accepted the decision.

NewDay didn't provide a response to my provisional decision. However, it did respond, after the deadline, to an earlier information request. I had requested clarification about "1" being recorded in relation to "*worst mortgage status*" on Mr P's credit file results. NewDay had previously said this doesn't suggest the account was in arrears, but didn't provide clarification of what it did mean. It has since said it means "*that the account is up to date, dormant or queried. (0, D, U)*".

### **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.

Having done so, given neither party have disagreed with my provisional decision (which forms part of this decision), I am reaching the same outcome as set out in my provisional decision and for the same reasons.

To briefly summarise, I think NewDay made fair lending decisions in relation to the initial lending decision and all increases up to and including the £1,100 limit in December 2014. However, from this point, I don't think NewDay made fair lending decisions in relation to the £1,900 limit increase or the £2,850 limit increase. In response to the investigator's assessment NewDay offered to uphold all the subsequent lending decisions after the £2,850 limit increase.

I note NewDay has now provided a response to my earlier information request. I'm not entirely persuaded by NewDay's explanation (set out in full above) as it suggests "0" would be the correct recording. However, even if Mr P was a month behind on his mortgage, my provisional decision sets out why I don't think this changes the outcome reached (which was not to uphold this lending decision). And in response, Mr P accepted my provisional decision. So I don't think I need to consider this further.

### **Putting things right**

As I don't think NewDay should have increased Mr P's credit limit above £1,100, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Mr P has had the benefit of all the money he spent on the account so I think he should pay this back. Therefore, Mr P should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £1,100 after the May 2015 increase to £1,900.
- If the rework results in a credit balance, this should be refunded to Mr P 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 the May 2015 limit increase to £1,900 regarding this account from Mr P's credit file.
- Or, if after the rework the outstanding balance still exceeds £1,100, NewDay should arrange an affordable repayment plan with Mr P for the remaining amount. Once Mr P has cleared the outstanding balance, any adverse information recorded after the May 2015 limit increase, in relation to this account should be removed from his credit file.

As NewDay has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

\*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Miss P 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**

For the reasons explained, I uphold this complaint against NewDay Ltd trading as Aqua.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 25 July 2025.

Claire Lisle  
**Ombudsman**