

complaint

Mr W complains about an Aqua branded credit card provided to him by NewDay Ltd. He thinks it was irresponsible of NewDay to lend to him and that it shouldn't have done so.

background

In 2013 Mr W applied for the credit card online. He says that at the time of applying for the card he had numerous payday lending accounts with a repeat pattern of borrowing, plus a number of credit card accounts that had defaulted or were at or over their credit limits. And he says his current account was in an unauthorised overdraft.

As well as the decision to provide him a credit card in the first place, Mr W also complains about a number of unsolicited credit limit increases which occurred between 2014 and 2016. These saw his credit limit increase from its initial level of £250 to over £3,500.

NewDay says it carried out appropriate checks when considering Mr W's application and when offering credit limit increases. It says the credit card Mr W applied for is designed to assist customers in building or improving their credit profile. The credit limit was reviewed every three or four months. And Mr W was free to decline any of the increases. Our adjudicator didn't think NewDay had done anything wrong in relation to accepting Mr W's initial application for the credit card, or the first credit limit increase. But they thought the second and later credit limit increases were unaffordable. NewDay disagreed with this, so I've been asked to make a decision on the complaint.

Mr W currently owes over £3,500 on his NewDay account. He's in a payment arrangement which – if he continues to make the agreed repayment – will take him over five years to pay off the debt.

I issued a provisional decision to give Mr W and NewDay a chance to respond to my proposals. To put things right I said I was planning to direct NewDay to refund interest and charges on Mr W's spending and cash purchases when he owed more than £400, and to refund half of any remaining balance that was more than £400.

Mr W responded to say that he accepted my findings and agreed with my provisional decision. He pointed out that the interest rate had been increased and he wasn't sure how much balance would remain for NewDay to write off.

NewDay replied to say that it disagreed with writing off any amount once the interest and charges had been refunded. NewDay argued that Mr W had the benefit of the money he spent, so it feels he should still have to repay it.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint, including Mr W's and NewDay's responses to my provisional decision. Having done so I've decided to stick with the proposals I set out in my provisional decision.

NewDay was required to lend responsibly. When NewDay initially provided the card to Mr W (as well as each time it increased his credit limit) it needed to take reasonable steps to understand whether Mr W would be able to repay what was being lent within a reasonable period of time. It

was up to NewDay to decide exactly what checks it carried out, but they had to be proportionate to things such as the amount borrowed, the cost of repayment and Mr W's borrowing history.

Having considered what checks were carried out and Mr W's circumstances at the time of applying for the card and each credit limit increase, I've decided that:

- It was fair and reasonable for NewDay to accept Mr W's application for a credit card and offer the initial credit limit of £250.
- NewDay made a reasonable decision when offering the first credit limit increase – which increased it to £400.
- The later credit limit increases were irresponsible, and I'm upholding the complaint in relation to these.

I explain my reasons below.

offering the credit card

I'm satisfied that NewDay was aware of the main information on Mr W's credit file and that, although there had been some defaults – the most recent one was over two years before his application. There had been some payday loans, but overall there wasn't anything to suggest that Mr W wouldn't have been able to repay £250 within a reasonable period of time.

the first credit limit increase – to £400 in March 2014

When the first credit limit increase was offered in early February 2014, it's unclear exactly what information NewDay was provided by the credit reference agency it used. But it says it considered that information alongside looking at how Mr W had managed his NewDay credit card account. The increase didn't take place until March 2014 – and I've considered what information was most likely available to NewDay at that time.

Mr W had kept his account up to date at that point. On one occasion he'd slightly exceeded his credit limit. But he'd often paid more than the minimum payment due on the account. So, I don't think NewDay had any obvious cause to be concerned about how Mr W was managing his account.

The credit report provided by Mr W (from 2017) shows that in February 2014 he had a current account on which he'd exceeded his overdraft limit and was at least three months in arrears. And another credit card account on which he went into arrears in January 2014 and entered a debt management plan the following month. This suggests he was beginning to struggle with his debts.

However, these issues had only just begun – albeit his overdraft had first gone into arrears in December 2013. I think it's unlikely that the more serious issues (being at least three months in arrears and in a debt management plan) would have been shown on the credit file information available to NewDay when it applied the credit limit increase in mid-March. This is because there's likely to have been a delay in this information being reported to the credit reference agencies and appearing on the information provided to NewDay. So, I don't think the information NewDay is likely to have been able to see on Mr W's credit report would more likely than not have shown that Mr W wouldn't have been able to repay £400 within a reasonable period of time.

So, overall, I don't think NewDay did anything wrong in offering him the credit limit increase or applying it to his account.

the later credit limit increases – July 2015 onwards

In June 2015 NewDay offered a credit limit increase from £400 to £1,150, which it applied in July 2015. This was a significant increase – almost trebling the amount Mr W could borrow. Based on the credit report provided by Mr W, his credit report at that time is likely to have shown the following information that should've been of concern:

- Mr W's current account was in default since May 2014.
- A second current account was also in default since April 2015, having been in arrears or subject to a debt management plan since March 2014.
- His other credit card was subject to an arrangement to make reduced monthly payments (less than the contractual minimum) since January 2015 following a debt management plan that ran from February 2014 to December 2014.

I think this suggests that Mr W had been struggling with repaying his existing debts since at least March 2014. I appreciate that he'd not gone into arrears on his NewDay credit card. And he was regularly making more than the minimum contractual repayment. But his statement balance had been near to or over his credit limit since May 2014 – just two months after the previous increase. He'd also taken four modest cash advances since the last increase. And I don't think that acceptable management of his NewDay credit card meant that NewDay could overlook the other issues highlighted on his credit report.

I think that the active defaults and inability to keep up with his contractual repayments on other accounts should've been sufficient for NewDay to realise that Mr W was unlikely to be able to manage a significantly higher credit limit. And that he may struggle to repay any additional borrowing that he took out. I think it was unreasonable for NewDay to pro-actively make available significantly more credit to Mr W when he had, for over a year, been unable to meet the repayment terms on three other accounts.

I don't know if NewDay was aware of the information on Mr W's credit report or if it decided to increase his credit limit despite this information. But I think NewDay should've been aware of it, and that it shouldn't have increased his credit limit in July 2015.

I also think it was unreasonable of NewDay to offer and apply the credit limit increases that followed this – in November 2015 to £2,050, April 2016 to £2,800 and August 2016 to £3,550.

Throughout this time Mr W's original current account was still in default. He was still paying less than his contractual repayments on his other credit card. And he was in long term arrears on a hire purchase agreement (since 2014). He'd also been using payday loans from various sources, some of which he'd defaulted on, albeit I understand NewDay may have had limited or no information about his payday loan accounts in the data it was using to make lending decisions during those times.

So, I don't think that NewDay had any reasonable basis for concluding that Mr W would be able to repay any of this additional borrowing within a reasonable period of time. These decisions to extend additional credit to Mr W seem to be especially reckless given the information on his

credit file at those times. And as NewDay took such reckless risks when lending (in other words lending when it was aware or it ought reasonably to have been aware there was a very real prospect Mr W wouldn't be able to repay any capital advanced, let alone the interest), I think that this needs to be reflected in what NewDay does to put things right.

NewDay's irresponsible lending decisions have left Mr W owing over £3,500 – which it will take him more than five years to pay off. Had NewDay not increased his credit limit beyond £400, then he would owe significantly less than this. His overall repayments would've been less, and his financial difficulties are unlikely to have been so great.

While, as NewDay points out, Mr W has had some benefit from using those additional funds, I think this is an exceptional case where it would be fair and reasonable for NewDay to write off some of the additional capital Mr W owes as a result of what NewDay did wrong. That is, of course, assuming that Mr W still owes more than £400 after NewDay has taken the action I've described below under A and B.

My reason for deciding that NewDay should write off some of the capital is that I think NewDay's decisions were especially reckless in light of Mr W's financial position when it increased his credit limit beyond £400.

Mr W should keep making the repayments that he's agreed with NewDay. If he accepts my decision, then once NewDay has taken the action below (which may take some time) then Mr W can speak to NewDay about whether or not the agreed repayments are still appropriate.

putting things right

To put things right, NewDay should do the following:

- A. From the date of the July 2015 increase, NewDay should work out the interest charged on purchases and cash advances that Mr W made when he owed more than £400, plus any charges that were caused by that and any interest added to those charges.
- B. Deduct the amount in A from the outstanding balance on Mr W's account.
- C. Write off 50% of any amount greater than £400 that is still owing after taking the steps in A and B.
- D. Tell Mr W what it's done to work out A, B and C.

my final decision

For the reasons I've explained, I uphold this complaint. NewDay Ltd should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 February 2020.

Phillip Lai-Fang
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