

complaint

Mr T complained that NewDay Ltd, trading as Aquacard, shouldn't have increased his credit limit. He said he was using it for gambling, and thinks Aquacard should have noticed and done something about it.

Mr T wants Aquacard to refund all interest and late fees, and remove all negative markers on his credit file.

background

In April 2015, Mr T took out a credit card with Aquacard.

In July 2015, Aquacard sent Mr T a letter saying it would like to increase his credit limit from £900 to £1,500, as it believed the new limit was suitable for him. The letter said that if Mr T was happy with the new limit, he didn't have to do anything. But if he didn't want the increase, he should ring Aquacard to let it know. Mr T didn't contact Aquacard and his limit went up.

In January 2016, Aquacard sent Mr T another letter, this time suggesting an increase to £2,700. The letter again offered Mr T the chance to opt out, but he didn't and the limit went up.

In July 2016, Mr T rang Aquacard. He said he was in financial difficulties because he was over-committed on credit. He said he was getting advice from a debt charity. Aquacard put a block on transactions, and the debt charity arranged with Aquacard what Mr T would pay towards the outstanding balance each month.

In July 2018, Mr T complained to Aquacard. He said Aquacard shouldn't have increased his credit limit twice, as it had done.

Aquacard's final response said that its card was aimed at customers with a poor credit history, and was designed to help them improve their credit rating. So it wasn't unusual for customers with a poor credit history to open an account. It said that as a responsible lender, it had assessed the information on Mr T's application, and regularly reviewed how customers use their cards. It said it had reviewed Mr T's account before offering him the increases. And it pointed out that the letters had given him the opportunity to opt out of the increase. So it didn't agree that it had lent irresponsibly.

Mr T wasn't satisfied and complained to this service. He said he'd been over the limit most months in 2015 and 2016, and had been paying over limit and late payment fees. He'd been using the account for gambling so he'd been paying fees for that as well. He said he didn't think he'd used it much for buying anything from a shop, so Aquacard should have noticed and done something about it. Mr T explained he had other unsecured loans and payday lending. He said that help from Aquacard could have changed things for him.

So Mr T wanted a refund of all the interest and late payment fees, and all negative markers removed from his credit file.

The adjudicator didn't uphold Mr T's complaint. She said that Aquacard's increase letters had given Mr T the chance to opt out, but he hadn't. She explained that when lenders increase a credit limit, they have to assess whether it's affordable.

Looking at the first increase, Mr T's credit file hadn't shown any defaults at that time. He'd taken out payday loans, but only afterwards. And the credit card statements showed he'd been managing the account well. The June 2015 statement showed he'd been slightly above his £900 limit, but he'd then made a payment of £150 which brought the balance down. He'd also been making more than the minimum payment each month.

Looking at the second increase, Mr T's credit file didn't show any defaults at that time either. The payday loans were being settled very quickly and without any adverse information on the credit file. Mr T had gone over his limit from September to December 2015, but he'd made the minimum payments, and in January 2016 he'd made a payment of £1,582.70 which had reduced his balance to £32.03.

The adjudicator recognised that the statements showed that Mr T had used his card for gambling. But she said it's up to a customer to decide what they want to spend their money on. Mr T had run his account well overall, and the account hadn't been referred to Aquacard's collections department before Aquacard took its decisions about the credit increases. And Mr T hadn't told Aquacard he was in any financial difficulties until July 2016. So she didn't think Aquacard had done anything wrong in giving him the increases in July 2015 and January 2016.

Mr T didn't agree. He said the increases had happened in a very short time. He didn't believe appropriate checks could have been done, because he was never asked anything about his income or expenditure. Mr T explained that in the month when he'd made a large payment, he'd taken out a loan intending to pay off all his credit – but within the month he was near the limit again. He said he was relying on payday loans, and his gambling addiction was taking hold of him.

Mr T believed that alarm bells should have rung with Aquacard, in the month when his balance went from £32.03 to near the limit. He said the gambling transactions were also being charged more as cash advances, which he felt should have flagged up to Aquacard. He felt any company had a duty to make sure an account wasn't being used for lots of cash advances and gambling transactions. Mr T also explained that his gambling had been an addiction, and he'd just put a lot of letters in the bin. So he felt Aquacard should have looked at what he was spending and phoned him.

A different adjudicator looked into Mr T's points. But he too didn't uphold Mr T's complaint. He explained that it isn't appropriate to disclose how Aquacard calculates its credit limits. But it had worked out Mr T's increases on a significant number of indicators, which were checked every month. The adjudicator had looked at these, and felt Aquacard's assessments had been enough to assess Mr T's limits fairly.

The adjudicator accepted that an addiction to gambling was serious, but he said he didn't think Aquacard had reason to understand Mr T's problems at the time of the increases. Mr T hadn't told Aquacard about his situation until July 2016. He'd met Aquacard's criteria for the increases before that, and Aquacard had given Mr T the chance to opt out.

Mr T was still unhappy. He said that if AquaCard would have looked at any of his statements, it would have seen they were full of gambling companies, and that Aquacard was charging him an extra £3 for every gambling transaction. He felt it was a duty of a credit card company to make sure he was using the card the proper way. And Aquacard hadn't.

my findings

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

I appreciate that Mr T's had a difficult time with his gambling addiction. He's told us that it's meant he hasn't always seen things properly, and I recognise he must have been under significant pressure.

I've looked first at Mr T's belief that Aquacard should have looked at his statements, where it would have seen it was full of gambling companies. I agree that the statements do show a history of gambling, and Mr T's right in saying that he didn't spend much on his card on other things.

But lenders don't have to tell customers what they should and shouldn't spend their money on. Aquacard didn't have a responsibility to look at Mr T's transactions and tell him he shouldn't be gambling. It's up to customers to decide how they want to spend their money. So I don't agree that Aquacard should have acted when it saw Mr T was spending money on gambling.

It's true that Aquacard was charging Mr T £3 for every gambling transaction, but that's not because it was gambling, but because it counted as a "*cash advance*". Section 5.1 of the terms and conditions of Mr T's account says:

"We charge a cash fee of 3% (at least £3) for cash advances made in the UK or abroad."

This would apply to any cash advance, and looking at the transactions I see that Aquacard applied it in line with the terms and conditions of Mr T's account. So it was entitled to make these charges.

I've gone on to look at the two credit limit increases which Aquacard offered Mr T, in July 2015 and January 2016. It's important to say that the decisions Aquacard took were based on Mr T's management of his account up to the times when it took those decisions. It couldn't have based its decisions on Mr T's subsequent financial difficulties. And, looking at Mr T's account, and his credit file, up to those points, I don't find that there was anything which meant Aquacard shouldn't have offered credit limit increases. Lenders make assessments on a large number of factors, and I've seen the many factors which Aquacard took into account. As the adjudicator explained, I can't disclose how Aquacard's methods worked. But I don't find that Aquacard was wrong to offer Mr T the increases it did in July 2015 and January 2016.

I find that there were two other key factors. First, Aquacard's letters offering Mr T the increases made it very clear that he could refuse the increases. And Mr T didn't tell Aquacard that he was in financial difficulties until July 2016, some months after Aquacard had taken its decisions to offer Mr T the credit limit increases.

So I don't find that Aquacard was wrong to offer Mr T the credit limit increases it did in July 2015 and January 2016. And it didn't have a duty to check what Mr T was spending the money on, and try to stop him from gambling.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 31 January 2019.

Belinda Knight
ombudsman