

complaint

Mr T complains NewDay Ltd (trading as Aqua) lent to him irresponsibly.

background

Mr T entered into an agreement for an Aqua credit card in 2013. At the time his credit limit was £500. Aqua has explained that his credit limit was increased four times:

- in January 2014 to £600;
- in June 2014 to £800;
- in October 2014 to £1200; and
- in February 2015 to £1800.

Mr T feels his credit limit shouldn't have been increased.

The adjudicator issued two views. In the first she noted that a default was registered on Mr T's credit file by another lender on an account on 30 June 2014. She felt there was no reason to believe this default wouldn't have been visible by the third increase in October 2014. And in the absence of evidence of the affordability checks Aqua carried out prior to each credit increase she concluded that the credit increases in October 2014 and February 2015 weren't in line with the guidance at the time.

The adjudicator noted that Mr T was frequently overdrawn and his debts left him with minimal disposable income. She concluded the evidence shows that the increases were unaffordable.

In her view the complaint should therefore be upheld and Aqua should refund interest and charges on all purchases after the third credit increase in October 2014.

I asked the adjudicator to take a second look at her view as I thought she needed to clarify whether the refund should be applied to Mr T's account with Aqua or whether it should be paid directly to him as he wanted. I also thought she needed to be clear what recommendations she was making regarding Mr T's credit file.

In her second view the adjudicator said she thought the refund should be offset against Mr T's account with Aqua. She also said she thought it was fair that any adverse information regarding the two increases should be removed.

Following her second view Aqua agreed to refund the interest and charges recommended and apply the refund to Mr T's Aqua account. But it wouldn't agree to remove the adverse information from Mr T's credit file. It also stated Mr T hadn't made any payment towards his account since 10 July 2015.

Mr T thought Aqua should remove the adverse information as increasing the limit was irresponsible. And that he was happy to arrange a payment plan.

my provisional decision

I came to some different conclusions from the adjudicator. I set these out in a provisional decision to allow both sides to comment.

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I agreed with the adjudicator that based on the evidence I'd seen I wasn't satisfied Aqua properly assessed Mr T when it increased his credit limit. I also thought that those increases were unaffordable. I noted that Aqua had agreed to refund interest and charges on all purchases after the third credit increase in October 2014. I thought this was fair.

I noted it was difficult to arrive at a fair solution when lending has occurred that we think shouldn't have happened. Aqua had reported – amongst other things – that Mr T owed £1999 when his account was defaulted. For the reasons I'd already stated I didn't think Mr T should have been in a position of owing £1999 to Aqua. So I didn't think it was fair that this was reported.

But the adjudicator had said all adverse information should be removed. And I didn't think that reached a fair outcome either as I thought it should be clear to any future lender that Mr T had – again amongst other things – failed to make payments for many months and to repay money he borrowed.

So subject to further comments by the parties I thought what would be fair would be for Aqua to reconstruct Mr T's account with the charges and interest applied since October 2014 removed and to report the new figures to credit reference agencies. It should also report the payments it received and the fact that the account was defaulted in February 2016.

responses to my provisional decision

NewDay agreed to my provisional decision and indeed said it had implemented it already.

Mr T agreed with the part of my provisional decision regarding refunds. But he felt that if the lending was unaffordable then it should not show on his file. He pointed out that other cases he has brought to this service have been upheld. He also said that he sent Aqua three budget plans and it didn't contact him.

my findings

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

All cases brought to this service are accessed on their individual merits and having looked at the other cases Mr T has brought here there are significant differences from this case. For example, in some cases the first lending occurred after the first recorded default. In other cases the ombudsman who looked at the case thought the pattern of borrowing was such that it should have caused the business to question the information Mr T had supplied.

In this case I thought the irresponsible lending didn't occur at the start of the relationship but when the borrowing was increased in October 2014 and I based my provisional decision on this.

When a business makes a mistake we look to put the consumer in the position he would have been in had the mistake not occurred. I think that had the credit limit not been increased in October 2014 Mr T would have still stopped making payments and any payments he made after October 2014 would have been no more than the payments he did make. I also think the account would have been defaulted. And I think it is fair that his credit report reflects all of this.

Mr T has said that the business has failed to contact him. I don't think this means that Mr T's failure to make any payments towards his debt for many months should go unreported. Going forward I hope Mr T and the business can agree a repayment plan.

my final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 3 August 2017.

My decision is that I order NewDay Ltd - if it hasn't already done so - to:

- refund all charges and interest applied to Mr T's credit card account since October 2014; and
- report to credit reference agencies the reconstructed balances (that is with the charges and interest applied since October 2014 removed) together with the actual repayments and the actual date of default.

Nicola Wood
ombudsman