

## **complaint**

Ms P complains about an Aqua branded credit card provided to her by NewDay Ltd. She thinks it was irresponsible of NewDay to increase her credit limit on three occasions from £250 to £1,650 over 16 months.

## **background**

A timeline of NewDay's lending decisions is below:

- June 2013 – Ms P applied for an Aqua credit card. NewDay accepted this and provided a credit limit of £250.
- October 2013 – NewDay offered an unsolicited credit limit increase to £750, which Ms P contacted it to accept.
- September 2014 – NewDay agreed to Ms P's request for a credit limit increase to £1,150.
- February 2015 – NewDay offered an unsolicited credit limit increase to £1,650, which Ms P contacted it to accept.

From March 2015 onwards Ms P exceeded her credit limit every month. Her last payment to the card was in September 2015, after which she was in arrears. The account was recorded as being in default on her credit report from March 2016 onwards. NewDay says that £1,980.18 is still owed on Ms P's credit card account, but that it is not currently attempting to collect the debt.

Ms P has only complained about the credit limit increases, not the initial decision to lend. So, I've only looked at the credit limit increases.

NewDay says it carried out appropriate checks when offering and applying the credit limit increases. It said that it reviewed Ms P's account usage, credit utilisation, and payment history as well as credit reference agency data before deciding whether to offer a credit limit increase or accept Ms P's request to increase the credit limit.

NewDay also acknowledged that it had failed to log Ms P's complaint in June 2018, when she first emailed NewDay to express her dissatisfaction. NewDay has offered £50 compensation in acknowledgement of this.

Our adjudicator upheld the complaint. NewDay disagreed with this, so I've been asked to make a decision on the matter. I issued a provisional decision saying I was planning to uphold the complaint and explaining how I thought things should be put right. NewDay didn't respond to my provisional decision. Ms P asked that I direct NewDay to remove the default from her credit records.

## **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 the responses to my provisional decision.

We've set out on our website the key things we take into account when considering complaints about unaffordable or irresponsible lending. I've also taken these things into account when reaching my decision.

NewDay was required to lend responsibly. When NewDay increased the credit limit it needed to take reasonable steps to understand whether Ms P 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 Ms P's borrowing history.

Having considered what checks were carried out and Ms P's circumstances at the time of applying for the card, I've decided to uphold the complaint. I explain my reasons below, as well as what NewDay must do to put things right if Ms P accepts this decision.

### *October 2013 – credit limit increased from £250 to £750*

At this time Ms P had held the credit card for three full statement periods. Her first statement showed that she'd taken two cash advances, totalling £150, soon after receiving the card, and with other transactions had used a combined £249.28 of her £250 credit limit.

As a result of interest added to her first statement (17 July 2013), Ms P had gone over her credit limit and been charged an over-limit fee of £12. The minimum payment required on her first statement was £19.23.

Ms P's August statement shows that she paid off £50.00, and the over-limit fee was refunded. She made one small transaction, leaving her statement balance at £225.12.

In September Ms P made the minimum payment (£12.35) but didn't use the card. Her statement balance was £220.80.

Ms P's October statement shows that she made the minimum payment again. There were no new transactions and her statement balance was £218.44.

So, in October 2013, when it increased the credit limit, NewDay knew from Ms P's three months using the card that she had:

- Immediately taken two cash advances (a potential sign of financial difficulty according to UK Cards Association guidance).
- Gone over her credit limit (another potential sign of financial difficulty) in the first month.
- Made only the minimum repayment from her second statement onwards (another potential sign of financial difficulty).
- The amount owed on the card was close to her credit limit in every statement period, with no regular payments beyond the minimum required.

It's clear that, despite this, NewDay assessed that Ms P's use of her card didn't preclude her from a credit limit increase. But NewDay has also said it utilised data from credit reference agencies before making its decision.

I've looked at Ms P's credit reference agency data covering that time and can see that Ms P also had another credit card with a different lender. Her credit limit on that card had been trebled from £500 to £1,500 around June 2013 – which was about the same time as she'd obtained a new card from NewDay. This suggests that Ms P may have urgently been seeking additional funds at that time.

*September 2014 – credit limit increased to £1,150 at Ms P's request*

By September 2013, Ms P had utilised, and exceeded that month, her full credit limit on her card with the other lender. This was the third time that she'd exceeded the credit limit on that card in the previous seven months. Before that, she'd consistently utilised more than 94% of her credit limit on that card, with only three months – immediately following the June 2013 credit limit increase – where she'd utilised less than 90% of her credit.

So, in the three months since taking her NewDay card, Ms P's credit card debts had increased from about £500 to about £1,750. She'd used almost her entire available credit within a few months of each new card or credit limit increase. And she'd exceeded her credit limit on four occasions, across two credit cards, over a seven-month period. Ms P's credit file also shows she had a current account which had been in default since at least December 2013, with a debt owed of £207.

I think this information suggests that Ms P was at least at risk of, if not already experiencing, financial difficulties. Her debts were consistently increasing with no sign that she would be able to repay any additional borrowing within a reasonable timeframe. While she was keeping up with her minimum repayments across both cards, I think it was irresponsible for NewDay to provide Ms P with additional credit given what it should've know about her pattern of borrowing at that time.

I think that similar issues ought to have prompted NewDay to decline Ms P's request for additional credit in September 2014. Ms P's credit limit was increased to £1,150 at that time.

Ms P's balance on her NewDay account had been over £700, against a credit limit of £750, from December 2013 onwards. This was within three months of the previous increase. She'd made no significant repayments since opening the account and made no repayment at all in March 2014.

Ms P also had an active County Court Judgement dated 30 April 2014, in relation to a debt of £1,712. So, I think it was especially reckless of NewDay to provide additional credit to Ms P in September 2014. She had a significant debt that she'd been unable to pay. And was showing no signs of being able to pay off her existing credit card debts within a reasonable time. I don't think there was any reason for NewDay to think she'd be able to repay any additional lending within a reasonable time either.

*February 2015 – unsolicited credit limit increase to £1,650*

I don't think NewDay should have offered a further credit limit increase in February 2015.

Ms P had taken two cash advances in November 2014, and one in February 2015 – totalling £270. She'd opened a mail order account in November 2014, which was at or over its credit limit from December 2014 to February 2015. The County Court Judgement was still active, meaning she hadn't repaid that debt. And her pattern of use of her NewDay card hadn't changed – From December 2014 her balance had increased to near its limit, and she wasn't making repayments that were significantly beyond the minimum required.

Considering her circumstances, which I think NewDay ought to have been aware of, its decision to lend her yet more money seems to be especially reckless.

#### *default on Ms P's credit file*

I'm not instructing NewDay to remove the default from Ms P's credit records. It appears she was in financial difficulty, or on the verge of it, before NewDay lent her more money. And I'm mindful that if NewDay hadn't lent her that money she would've had much less available to her. So that could've led to even more problems.

By putting things right as I've said below, Ms P will owe considerably less. That should improve her credit profile. And I hope it will help her to put her finances back onto a more stable footing in the future. If she wants some more help with that, she can ask us for the contact details of debt charities which provide free advice.

#### *summary of my findings*

In summary, I don't think that NewDay had any reasonable basis for concluding that Ms P would be able to repay within a reasonable period of time any of the additional borrowing it agreed to from October 2013 onwards. These decisions to extend additional credit to Ms P seem to be especially reckless given the information on Ms P's 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 that there was a very real prospect Ms P 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 Ms P owing over £1,900, which it appears she cannot pay back. Had NewDay not increased Ms P's credit limit beyond £250, then she would have only been able to borrow up to her original £250 credit limit. While Ms P may have had financial difficulties even if NewDay didn't do anything wrong, I think NewDay's irresponsible lending decisions made things worse than they would've been. And that will have caused her unnecessary distress and inconvenience.

I've set out below what NewDay must do to put things right. This is intended, as far as possible, to put Ms P in the position she would've been in if NewDay had done nothing wrong – and will have the effect of writing off some of the debt that Ms P owes.

I don't think it would be fair to write off the full amount that Ms P owes – because she has had some benefit from using that money. But, given I think NewDay's decisions to lend additional amounts to her were especially reckless, and the effect this had on her, nor do I think she should remain liable for the full amount that she borrowed. I think my proposals below strike a fair and reasonable balance.

### **putting things right**

NewDay should put Ms P in the financial position she'd be in now if it hadn't increased the credit limit beyond £250, by taking the following steps:

- A. From the date of the October 2013 increase, NewDay should work out the interest charged on purchases and cash advances that Ms P made when she owed more than £250, 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 Ms P's account.
- C. Write off 50% of any amount greater than £250 that is still owing after taking the steps in A and B.
- D. Tell Ms P what it's done to work out A, B and C.
- E. Pay Ms P £50 compensation (as previously offered).

### **my final decision**

For the reasons I've explained, I've decided to 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 Ms P to accept or reject my decision before 19 March 2020.

Phillip Lai-Fang  
**ombudsman**