

complaint

Mr G complains that NewDay Ltd (trading as Aqua) was irresponsible when it increased the credit limit on his credit card account.

background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 29 March 2019 – a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I thought this complaint should be upheld in part and how I thought Aqua should put things right here. I invited both parties to send any additional evidence or comments they wished to make before I made my final decision.

Mr G has confirmed that he accepts my provisional decision and has no further comments to make.

Aqua has responded setting out why it disagrees with my provisional decision. I have taken its comments into account and I'll summarise Aqua's response to my provisional decision.

Aqua has said it felt that when it increased Mr G's credit limits his financial situation was improving and it also said it managed his account sufficiently. It stated that while there were a high number of cash advance fees charged on Mr G's account his actual cash usage was relatively low. So it said the charges it applied weren't because he had borrowed large sums. Rather, they were because Mr G had made a number of smaller cash advance transactions instead – with each transaction incurring a separate fee.

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 have considered Aqua's additional comments and whether these change my provisional decision.

In my provisional decision I explained why I thought the increases in credit limit that Aqua gave Mr G up to January 2015 were reasonable. But after this date I addressed in detail why Aqua shouldn't have increased Mr G's credit limit from £1,000 to £2,350. As I stated in my provisional decision, these increases were requested by Mr G in quick succession – namely within four months of each other. They were also for higher amounts than any of the previous increases that Aqua had authorised. And this meant that within eight months Mr G's credit limit was almost two and a half times what it had been at the start of 2015.

In my provisional decision I also outlined the pattern of frequent cash advances that Mr G was making – especially those in February, May, September and October 2015. I've thought about what Aqua has said in its response to my provisional decision about Mr G's cash advances. But I remain persuaded that, given the timing of the credit limit increases, Aqua ought to have reasonably had concerns about Mr G's financial situation. Even though Mr G may have been making relatively small cash advances there was a pattern of consistent cash withdrawals set against an ever increasing balance. So, as I explained in my provisional decision, Aqua had good reason to question Mr G about the 2015 cash advances in particular and the way in which he was managing his account.

I remain satisfied that the way in which Mr G was managing his account Aqua should've prompted it to ask him about his financial situation and query why he wanted such large credit limit increases. And I believe that if Aqua had undertaken proportionate checks and a full financial review it would've presented a picture of someone in clear financial difficulties. I've already explained in my provisional decision why I think this would've most likely deterred Aqua from increasing Mr G's credit limits in May and September 2015.

While I've carefully considered what Aqua has said in response to my provisional decision this doesn't alter my view that it acted unreasonably in approving the increases Mr G requested in May and September 2015. It follows that it would be unfair for it to apply interest and charges after May 2015.

In view of the above, I see no reason to depart from the view I set out in my provisional decision. And so I adopt the reasoning set out in my provisional decision as my final decision.

my final decision

For the reasons set out above and in my provisional decision, my final decision is that I uphold Mr G's complaint in part.

To resolve this complaint NewDay Ltd (trading as Aqua) should do the following:

- Refund all interest and charges it has applied to Mr G's account since May 2015;
- Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*.

*HM Revenue & Customs requires NewDay Ltd (trading as Aqua) to take off tax from this interest. NewDay Ltd (trading as Aqua) must give Mr G a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 29 May 2019.

Julie Robertson
ombudsman

Copy provision decision of 29 March 2019

complaint

Mr G complains that NewDay Ltd (trading as Aqua) was irresponsible when it increased the credit limit on his credit card account.

background

Mr G applied for a credit card with Aqua in early 2014. Based on the information he gave it, Aqua accepted his application and gave him a credit limit of £250. One month later Aqua increased his credit limit to £500. In September 2014 it increased his credit limit further to £600. In January, May and September the following year there were further credit limit increases to £1,000, £1,600 and £2,350. Aqua said Mr G had requested the 2015 increases.

Ms G said he was using up the available limit each time it was increased for cash advances and to fund gambling. He said Aqua increased his credit limits irresponsibly because these increases led to financial difficulties.

When Mr G complained to Aqua about its decision to increase his credit limit it rejected his complaint. It said that, each time it had offered Mr G a credit limit increase, he'd been given the option to decline the increase. And it said it was satisfied he could afford the borrowing so it didn't think it had done anything wrong.

Mr G wasn't happy with Aqua's response so he brought his complaint to us. In its final response letter Aqua suggested there'd only been two increases of Mr G's credit limit. But our adjudicator dealt with this in their view and it's accepted there were more increases than this – three of which Aqua said were at Mr G's request. While our adjudicator empathised with Mr G, they thought Aqua had acted fairly and reasonably. But Mr G disagreed and asked for the matter to be referred to an ombudsman.

my provisional findings

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, I'm departing from what our adjudicator has said. I'll explain why.

Mr G said he shouldn't have been given credit by Aqua because he was in debt with a number of companies when he opened his account. But this wouldn't necessarily mean Aqua's decision to approve his credit card application was wrong. It offers cards to people who want to improve their credit rating because they have poor or absent credit history. So it wouldn't be unusual for a customer to have debts pre-existing elsewhere.

Aqua was required to lend responsibly. Before agreeing to do so, it should've assessed the affordability of credit to ensure that Mr G could afford to repay what he was borrowing. It's up to Aqua which checks it carries out. But, they must be proportionate to things such as the amount borrowed, the cost of repayment and a customer's lending history. We can't say a lender should've done any particular check and there isn't a set list of checks needed.

Before approving Mr G's application Aqua said it made a credit assessment. It said it used its own internal risk strategies and reviewed information supplied by Mr G and credit reference agencies. It said that, after doing so, it was satisfied he met its acceptance criteria. Given this, and the relatively small amount of credit Aqua offered him, I think it was reasonable for it to have accepted his initial application with a relatively small credit limit.

Before it changes a customer's credit limit Aqua said it reviews how they're using their card and managing other credit commitments. It says it makes risk based assessments to ensure its lending is appropriate to a customer's financial circumstances. It says these checks were undertaken before it increased Mr G's limit in May by £250 and September 2014 by a further £100. And it says Mr G met the criteria to qualify for an increase on each occasion. These increases were small. And, I don't think Aqua acted unreasonably in increasing Mr G's card limit in May and September 2014.

I've seen the terms and conditions of Mr G's credit card account. These state that Aqua will decide the credit limit and "may change it at any time". It's clear from these terms that a customer can tell Aqua not to increase their credit limit and that they don't want to be considered for any future increases. It's also clear that a customer can ask Aqua, at any time, to reduce their credit limit.

Aqua said before it made changes to Mr G's credit limit it wrote to him in accordance with these terms. Mr G says he doesn't recall Aqua writing to him before each credit limit increase. But I'm satisfied it did, on the balance of probabilities, because I've seen copies of the letters Aqua say were sent to him on 14 April and 14 August 2014. I can see that these letters told him it was going to increase his limit and advised him to think about whether the proposed increases were affordable to him. He was also told what to do if he didn't want the increase or wanted to opt out of future increases. I understand he didn't reject the increases Aqua proposed in 2014.

Aqua says its policy is to offer customers a credit limit increase even where they are close to their limit. It says customers are only excluded if they are over their credit limit. Mr G says Aqua shouldn't have kept increasing his credit limit because it should've noticed he was regularly using his full limit and known his debt was increasing. Having looked at Mr G's credit card statements I can see that he was very close to his credit limit each time it was increased by Aqua. But he hadn't exceeded it and by January 2015 his limit had increased to £1,000. I think the increases Aqua made up to this point were reasonable for the reasons previously outlined.

After January 2015, though, Mr G's limit increased much more significantly from £1,000 to £2,350. Aqua said the credit limit increases in January, May and September 2015 were at Mr G's request. And it also said it made a credit assessment prior to each increase and found no adverse information to suggest unaffordability or financial difficulties. But while I've seen evidence that it did undertake the credit assessments it said it did, I don't think it undertook proportionate checks to satisfy itself that these credit limit increases were affordable to Mr G. I'll explain why.

The credit limit increase requests were made in quick succession by Mr G - namely within four months of each other. And they were for higher amounts than any of the previous increases Aqua had authorised. So, within eight months Mr G's credit limit was almost two and a half times what it had been at the start of 2015.

From May 2014 Mr G made frequent cash advances. And in 2015 this pattern increased with up to six cash advances in February, May, September and October 2015. So, I think that's enough - given the timing of the credit limit increases - for Aqua to have reasonably had concerns about Mr G's financial situation. I think Aqua had good reason to question Mr G about the 2015 cash advances in particular. And I think it should've asked him about the way in which he was managing his account.

While it's clear that Mr G wanted and requested the 2015 increases I think these should've prompted Aqua to ask Mr G about his financial situation and query why he wanted such large increases. I consider a full financial review would've been proportionate and appropriate by this point. And I think if Aqua had looked at the way in which Mr G was maintaining his account it would've, most likely, noticed he was experiencing financial difficulties and falling further into debt from his gambling transactions and cash withdrawals.

Mr G had a large amount of unsecured debt - including, but not limited to at the time of the limit increases - another credit card, several loans, several catalogue accounts and, in May, June and August 2015 - advances against his income from other lenders.

Had Aqua undertaken proportionate checks and a full financial review on Mr G's expenditure and borrowing elsewhere, I think this would've presented a picture of someone in clear financial difficulties. And I believe this would've most likely deterred Aqua from increasing Mr G's credit limits in May and September 2015. I'm not persuaded that a reasonable lender, even one that targeted the same customer demographic as Aqua, would've made the same decision to increase Mr G's credit

limit post January 2015 in such circumstances. So, I don't think Aqua acted reasonably in approving the increases Mr G requested in May and September 2015.

The UK Cards Association best practice guidance on credit card limit increases at the time points to this sort of behaviour as being possible indicators that a customer is showing signs of financial difficulty. Taken as a whole, rather than reassure Aqua that Mr G was in a good position to have his credit limit more than doubled from January 2015 to September 2015, I think these factors presented reasonable cause for Aqua to have got further information about Mr G's finances. It didn't do this. So, I can't reasonably conclude it acted fairly in giving Mr G the increases he'd asked for in May and September 2015.

Irresponsible lending isn't just about whether Mr G could afford to repay the credit or not. It's also about whether there's another reason he shouldn't have the credit. For example, it could be irresponsible to lend money to someone who's in a debt spiral or who's using the money to fund a gambling habit.

Here there was a pattern of consistent cash withdrawals set against an ever increasing balance. Mr G regularly spent up to his credit limit and he quickly maxed out his credit card after Aqua increased his credit limit in May and September 2015. In January, June and July 2015 he incurred over-limit fees. So, based on what I've seen of how Mr G was conducting his account I think Aqua ought reasonably to have been aware that he was experiencing difficulties.

I understand Mr G didn't notify Aqua he was experiencing financial difficulties until a debt charity set up a repayment plan on his behalf in December 2015. When Mr G told Aqua about his financial difficulties, I think it treated him positively and sympathetically as we'd expect it to. I say this because it worked with him to assess the affordability of his monthly payments. I can also see the interest on Mr G's account was waived while he made reduced payments. A lender doesn't have to do this. So I think, in doing so, Aqua acted fairly and reasonably.

But for the reasons outlined, I also think Aqua should've recognised Mr G was experiencing financial difficulties before December 2015. It missed an opportunity to do so in May and September 2015 when Mr G requested further increases of his credit limit. And I don't think it would be reasonable for it to apply interest and charges to Mr G's account after May 2015 in the circumstances.

In summary, I find that Aqua acted reasonably and fairly in approving Mr G's application for a credit card with a limit of £250 in early 2014. And I'm satisfied it acted reasonably in increasing Mr G's credit limit in May and September 2014 and in January 2015. But, I'm not persuaded it acted responsibly and fairly when it approved Mr G's requests to increase his credit limit in May and September 2015 for the reasons outlined. So, I don't think it would be right for it to apply interest and charges after May 2015.

My provisional decision

My provisional decision is that I'm minded to uphold this complaint in part. NewDay Ltd (trading as Aqua) should do the following to resolve this complaint:

- *Refund all interest and charges it has applied to Mr G's account since May 2015;*
- *Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*.*

**HM Revenue & Customs requires NewDay Ltd (trading as Aqua) to take off tax from this interest. NewDay Ltd (trading as Aqua) must give Mr G a certificate showing how much tax it's taken off it he asks for one.*

I'll wait two weeks to see if either party has anything further to add – before considering my decision on this complaint once more.

Julie Robertson
ombudsman