

complaint

Mr C complains that it was irresponsible of NewDay Ltd trading as Aqua to issue a credit card to him with a £300 credit limit and then later to increase that limit to £800.

background

I set out the background to Mr C's complaint in my provisional decision. In that decision I explained why I was intending to uphold Mr C's complaint. Below, I'll summarise the background and my provisional findings, so that all relevant is in this one decision.

Mr C opened a credit card account with Aqua in December 2014. His initial credit limit was £300 and in January 2017 Aqua increased this to £800. Mr C says that during this time he had high levels of debt, he was only making minimum repayments and he was also struggling with a gambling addiction.

Mr C says Aqua acted irresponsibly and shouldn't have provided the credit. So he wants Aqua to refund all interest and charges applied to his account and to remove any late payment markers and default markers from his credit file.

Mr C complained to Aqua but it didn't uphold his complaint. It said that as part of its commitment to responsible lending it regularly reviews the way its customers use their cards and the way they manage their other credit commitments to make risk-based assessments to ensure it lends appropriately. It also said that Mr C was given the opportunity to opt out of the credit limit increase but hadn't done so.

Unhappy with Aqua's response Mr C referred his complaint to our service. Our adjudicator didn't recommend that Mr C's complaint should be upheld. He thought an initial credit limit of £300 was reasonable. In terms of the increase in the credit limit, our adjudicator thought Aqua had fairly addressed the affordability of the increase. He noted that Mr C had made his minimum payments in full and on time since the card was opened and he'd also remained within his credit limit since May 2015. So he thought it was reasonable that an increase in his credit limit was offered.

The adjudicator thought Mr C had been managing his credit card within the terms and conditions and he hadn't made Aqua aware that he was experiencing any financial difficulties or that he was struggling with gambling problems. His other accounts hadn't defaulted so he didn't think this should have prevented Aqua from lending to him. Our adjudicator thought the additional lending was affordable because his credit report showed his facilities were up to date or settled and Mr C hadn't missed a payment to Aqua.

The adjudicator noted that although Mr C had used the card primarily for gambling and cash transactions these sorts of transactions weren't prohibited by the terms and conditions of his credit card account.

And in terms of removing any negative entries on his credit report, our adjudicator couldn't see that Aqua had recorded any adverse information.

Mr C disagreed with the adjudicator's view and the matter has been passed to me for a decision.

In my provisional decision I said:

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

Before agreeing to make credit available to Mr C, Aqua needed to make proportionate checks to determine whether the credit was affordable and sustainable for him. The checks are "borrower" focused – so Aqua needed to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mr C.

There's no prescribed list of checks a lender should make. What constitutes a proportionate affordability check will be dependent upon a number of facts including, the particular circumstances of the consumer – for example their financial history, current situation and any indications of vulnerability or financial difficulty and the amount and cost of the credit.

I haven't seen anything to suggest Mr C told Aqua about his financial difficulties or his gambling problem. I can see that the card was mainly used for cash advances and gambling transactions but these sorts of transactions aren't prohibited and as Mr C generally managed his credit card within its limits I wouldn't expect Aqua to monitor the way Mr C chose to spend on his credit card. Whilst gambling transactions are generally considered by lenders to be higher risk they don't necessarily preclude a lender from making credit or further credit available to a borrower.

Aqua's initial decision to provide Mr C with a credit card

At the time of his credit card application, Mr C declared his income as £23,000 and he declared unsecured debts of £4,500. Aqua confirmed there were no defaults recorded against Mr C and it conducted an affordability check. Based on this I think Aqua's decision to provide a relatively modest credit limit of £300 was fair and reasonable.

Increase in credit limit in January 2017 from £300 to £800

Financial businesses must undertake a reasonable assessment of a consumer's credit worthiness before significantly increasing the amount of credit provided. As Aqua was more than doubling Mr C's credit limit I think this was a significant increase.

Aqua explained to us that in deciding whether to increase a credit limit it will take into account utilisation, account maintenance as well as information from credit reference agencies and its own internal risk strategies. At the time of the increases it said Mr C passed its affordability and financial difficulties checks. It said it also checked for over indebtedness, credit utilisation, arrears, CCJ's and defaults using information from credit reference agencies and these met its requirements.

Aqua also had knowledge of the way Mr C managed his account. I can see that Mr C had remained within his credit limit since May 2015. However, during the time he had the account he only made minimum repayments. On its own I don't think making only minimum payments would necessarily prevent Mr C from being considered creditworthy.

Aqua provided information to our service to show the credit limit increase information it took into account. At the time his credit limit was increased Mr C's overall credit card

indebtedness had increased to more than £20,000. I think this level of debt is high in relation to the salary he'd previously declared.

And the information provided by Aqua also shows Mr C's payday loans increased greatly in the three month period prior to his credit limit being increased.

Taken together, I don't think it was obvious that Mr C could afford the increase in his credit limit. And I therefore think Aqua should have undertaken further checks into Mr C's financial circumstances to ensure the increase in lending was affordable for him.

I don't think the increased credit limit of £800 was affordable for Mr C and Aqua failed to identify this so I think it should refund all interest and charges applied to Mr C's credit card balance above £300. However, as Mr C has had the benefit of the money I don't think it would be fair to ask Aqua to write off his debt.

Finally I've thought about whether or not to award compensation to Mr C for trouble and upset caused. I don't consider it would be appropriate to do so because although he never asked for his credit limit to be increased I think he could have done more to help himself by not using the card beyond the initial £300 limit or by telling Aqua he didn't want the increase because of his financial difficulties.

For the reasons given above, my provisional decision is that I intend to uphold this complaint. I am intending to direct NewDay Ltd to put Mr C in the financial position he would have been in if his credit limit hadn't been increased to £800 as follows:-

- refund interest and charges applied to Mr C's account above the £300 credit limit and rework his credit card account. Any such refund should be applied to reduce Mr C's credit card balance. If NewDay deducts income tax from this it must provide the necessary certificate to Mr C.*
- NewDay should check for any periods when Mr C's payments would have been enough to clear his balance and, if this is the case, it should pay 8% annual simple interest on any periods he would have been in credit up until the date he would have owed money on his credit card account again.*
- reduce Mr C's credit limit to £300 and remove any adverse credit reporting from his credit file relating to the balance above this amount.*
- any remaining balance above the limit of £300 should be held in a separate account and Mr C should be permitted to repay that separately. No interest or charges should be applied to that separate balance.*
- NewDay should explain to Mr C how it has recalculated the above amounts and how he can repay any balance held on the separate account.*

responses to my provisional decision

Both parties acknowledged receipt of my provisional decision but neither party provided any further comments for my consideration.

my findings

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

As neither party has provided any further comments for my consideration I can't see any reason to depart from my provisional decision.

my final decision

My final decision is that I uphold Mr C's complaint and to put matters right NewDay Ltd should act in line with what I've set out in my provisional decision above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 May 2020.

Michelle Hayward
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