

## **complaint**

Mr W 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 13 August 2019 – a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I didn't think Aqua had acted reasonably and fairly in increasing the credit limit on Mr W's credit card from £1300 to £2300. And I outlined the reasons why I was minded to uphold Mr W's complaint.

I invited both parties to send any additional evidence or comments they wished to make. Aqua responded to say it had nothing further to add. And Mr W stated that he thought Aqua should reconstruct his account to refund all interest and charges incurred on any balance above £1300. He felt he should be returned to the position he would have been in had the increases above £1300 not taken place. He also thought any cash advance fees should be included in the refund he receives.

## **my findings**

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

In my provisional decision I explained why I was satisfied that Aqua's decision to approve Mr W's credit card application was fair and reasonable. And I gave my reasons why I thought Aqua had responsibly assessed how much it was prepared to lend Mr W from the date he opened his account until July 2016.

After this date Aqua increased Mr W's credit limit from £600 to £800. In my provisional decision I explained why I thought this increase was fair and reasonable. The second credit limit increase Aqua gave Mr W was from £800 to £1300 and I outlined why I was satisfied that this was also fair and reasonable.

In my provisional decision I explained in detail why all increases beyond £1300 weren't fair or affordable to Mr W. I also stated why I didn't think Aqua had done enough to question Mr W about the way in which he was managing his account – particularly given the cash advances and evidence of gambling I could see on his statements.

Having carefully considered Mr W's response to my provisional decision I'm persuaded that Aqua should reconstruct his account to refund all interest and charges incurred on any balance above £1300. Mr W should be returned to the position he was in had the credit limit increases above £1300 not have taken place. Any refund should be applied to any outstanding balance that Mr W has with Aqua.

I remain persuaded that Aqua should remove any adverse information on Mr W's credit file relating to this account from August 2017 onwards. While Mr W has referred in his response to other steps Aqua should take to put matters right here I'm satisfied that the resolution outlined above is fair and reasonable.

I'm grateful to Mr W for his comments. And I uphold his complaint as outlined in this final decision.

### **my final decision**

My final decision is that I uphold this complaint. NewDay Ltd (T/A Aqua) should do the following to resolve this complaint:

- reconstruct Mr W's account to refund all interest and charges incurred on any balance above £1300 and return him to the position he was in had the credit limit increases above £1300 not taken place;
- apply this refund to any outstanding balance that Mr W has with Aqua;
- remove any adverse information recorded on Mr W's credit file about this account from August 2017 onwards.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 3 October 2019.

Julie Robertson  
**ombudsman**

### ***copy provisional decision 13 August 2019***

#### **complaint**

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

#### **background**

Mr W applied for a credit card with Aqua in July 2016. Based on the information he provided, Aqua accepted his application and gave him a credit limit of £600.

In December 2016 Aqua increased his credit limit to £800 and four months later it increased his limit further to £1300. In August 2017 Aqua gave Mr W a further credit limit increase to £2300. And in July 2018 it increased his credit limit to £3300. So, within 24 months of Mr W opening his account with Aqua it had increased his credit limit four times.

Mr W complained that Aqua acted irresponsibly when it increased his credit limit. He said he was a vulnerable customer and these increases caused him to fall heavily into debt. But Aqua disagreed that it had behaved irresponsibly. It said the increases were given in line with its responsible lending policy. And Aqua said having looked at Mr W's conduct of his account it had no concerns at the time the limits were increased. It stated that Mr W had been given the option to opt out of the increases if he had felt that the credit limit was in any way unmanageable. So, it rejected Mr W's complaint.

But Mr W wasn't happy with Aqua's response so he brought his complaint to us. Our adjudicator empathised with Mr W and thought that Marbles hadn't acted fairly. They thought that all credit limit increases prior to £3300 were reasonable and in line with Aqua's responsible lending policy. But they weren't persuaded that Aqua had lent responsibly when it increased Mr W's credit limit to £3300. And to put matters right they thought Aqua should return Mr W to the position he would've been in had the credit limit increase from £2300 to £3300 not have taken place. But Aqua 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.

The first issue I've considered here is whether Mr W should have been given credit by Aqua. I recognise Aqua offers credit facilities to customers who want to improve their credit rating because they have poor or absent credit history. But it's required to lend responsibly. Before approving Mr W's credit card application, it should have assessed the affordability of credit to ensure that Mr W 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.

Based on what I've seen, before Aqua approved Mr W's application, it made a credit assessment – using its own internal risk strategies and assessing information supplied by Mr W and credit reference agencies. It assessed his application score, bureau risk and affordability. And it said that, after doing so, it was satisfied he met its acceptance criteria. At that time Mr W was up to date with his monthly commitments and his credit file didn't show any defaults or late/missed payments. 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 – even though the amount of unsecured debt he had at the time was high.

Before Aqua changes a customer's credit limit it said it reviews how they're using their card and managing their account. It says it makes risk based assessments to ensure its lending is appropriate to a customer's financial circumstances. Aqua says these checks were undertaken before it increased Mr W's limit. And it said Mr W met the criteria to qualify for all of the increases it gave him. But Mr W disputes this because he feels Aqua acted unreasonably and caused him to go further into debt.

I would expect Aqua to recognise that its customers may get into financial difficulty and act responsibly when considering whether to offer further lending. So, with this in mind I'll consider each credit limit increase separately.

Credit limit increase from £600 to £800

The first increase took place within five months of Mr W's account being opened and it was for a fairly modest amount. Based on what I've seen Mr W was managing his account well before this increase

was offered by Aqua. I say this because while he was withdrawing cash regularly between August and December 2016 he withdrew relatively small amounts. And he was making monthly payments that were above the requested amount. With this in mind, I'm persuaded it was reasonable for Aqua to increase Mr W's credit limit on this occasion.

Credit limit increase from £800 to £1300

Four months later Aqua offered Mr W a further credit limit increase – this time an increase of £500. Having considered Mr W's statements I can see that he continued to make monthly payments above the requested amount and I can see that during April 2017 he made two cash withdrawals totalling £50. Prior to this increase his cash withdrawals were irregular and for relatively small amounts. Based on the evidence I've seen, I can't fairly conclude that there were indicators to suggest that Aqua should have had concerns about the way in which Mr W was operating his account before it increased his limit for a second time. It follows that I'm persuaded that this increase was reasonable.

Credit limit increase from £1300 to £2300

In August 2017 Aqua increased Mr W credit limit to £2300. This was an increase of £1000 from the limit Mr W had had. The result was that Mr W quickly used the new credit availability. And in September 2017, he made eight gambling transactions followed by a further six during November. After this date, Mr W continued to use his card for gambling transactions and cash withdrawals and he incurred over limit fees. I think this should have indicated to Mr W that he was struggling to manage his finances.

By this point I'm persuaded that there was an established pattern of cash withdrawals. I say this because in May 2017, immediately after the previous increase, Mr W withdrew £490 in four separate transactions. The following month he made a smaller withdrawal. Over this short period of time Mr W had withdrawn £520. And in August 2017 Mr W, again, used his card to withdraw money.

Aqua said its customers are entitled to use their card to withdraw money. And it said it doesn't exclude customers from being eligible for a credit limit increase for using that feature of their account. But Mr W was using his card regularly for this purpose. Cash advances incur a very high rate of interest. And the UK Cards Association best practice guidelines on credit card limit increases issued in 2011 points to this sort of behaviour as being a 'risk indicator' that a customer is showing signs of financial difficulty.

With that in mind I think these cash advances and the fact that Mr W used his new credit limit availability as soon as he had been given the increase should have caused concern and triggered exploration by Aqua as to how he was operating his account. I think an income and expenditure assessment would have been appropriate. And I think Aqua should have considered whether it was appropriate to increase his credit limit. I appreciate that Mr W, again, made more than the minimum monthly payments. But I'm not persuaded that Aqua acted reasonably in increasing Mr W's card limit.

Credit limit increase from £2300 to £3300

In July 2018 Aqua increased Mr W's credit limit by a further £1000. By this time Aqua had increased Mr W's credit limit by £2700 in 24 months. Prior to this increase Mr W had incurred five over limit fees – of which two were refunded.

Mr W continued to use his card to withdraw cash and fund gambling prior to this increase. And immediately after Aqua increased his limit to £3300 Mr W spent up to his new credit limit and used his credit card to make five cash advances and gambling transactions. In September and October 2018 Mr W exceeded the new limit. I can also see he continued using his card to withdraw cash and fund gambling.

I think the way in which he was managing his account should've deterred Aqua from increasing his limit further. There was a clear pattern of consistent cash withdrawals set against an ever increasing

balance. And taking all of this into account I can't fairly find that this increase was affordable. I'm not persuaded Aqua acted reasonably in increasing Mr W's credit limit to £3300 – even though he didn't decline that increase.

Aqua said before it made changes to Mr W's credit limit it wrote to him in accordance with the terms and conditions of her credit card account. And, having seen the correspondence Mr W was sent, I can see Aqua 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. So, I'm satisfied Mr W knew he could decline the increases Aqua proposed and how to do so.

But while I appreciate that Aqua gave Mr W the option to decline the increases I think it's easy to see how someone in a difficult financial situation might be unable to make the right decisions. As I outlined earlier, it's the lender's responsibility to check their customer's ability to repay and their overall creditworthiness before offering an increase. And an increase shouldn't be offered if a customer is showing signs of financial difficulties.

Aqua also said its lending policy would only preclude an increase in credit limit if a customer was over the agreed limit at the time of the increase and where they had incurred over limit fees for three out of three months prior to the proposed increase. So, it says the decisions it took to increase Mr W's credit limit each time were in line with that policy. But Mr W was very close to his credit limit each time it was increased by Aqua. And I can see that prior to the last credit limit increase Mr W incurred over limit fees during two of the three months. So, while I'm satisfied Aqua followed this part of its lending policy here, for the reasons previously stated I think following this process resulted in an unfair outcome for Mr W.

I understand Mr W didn't notify Aqua that he was experiencing financial difficulties. But for the reasons outlined, I think it should've recognised Mr W was experiencing financial difficulties. And I think it missed an opportunities to do so from August 2017 onwards when it should've undertaken a more detailed financial review before increasing Mr W's credit limit.

In summary, I find that Aqua acted reasonably and fairly in approving Mr W's application for a credit card with a limit of £600 in August 2016. And I'm satisfied it acted reasonably in increasing his credit limit in December 2016 and April 2017. But, I'm not persuaded it acted responsibly and fairly when it increased his credit limit in August 2017 and July 2018 for the reasons outlined. So, I don't think it would be right for it to apply interest and charges after August 2017. It should also remove any adverse information recorded on Mr W's credit file about this account from August 2017 onwards.

### **my provisional decision**

My provisional decision is that I'm minded to uphold this complaint. NewDay Ltd (T/A Aqua) should do the following to resolve this complaint:

- Refund all interest and charges it applied to Mr W's account on balances over £1300 from August 2017;
- Remove any adverse information on Mr W's credit file relating to this account from August 2017 onwards.

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**