

complaint

Mrs M has complained that NewDay Ltd (trading as “Aqua” card) provided her with a credit card irresponsibly. She’s said that Aqua would have seen she was already in debt if it had carried out checks and it was unreasonable for Aqua to then increase the credit limit.

background

I attach my provisional decision of 11 October 2019, which forms part of this final decision. In my provisional decision, I set out why I was intending to uphold Mrs M’s complaint and invited both parties to make any final comments ahead of my final decision.

Following this, despite being chased for a response and having been provided with a further copy of my provisional decision, Aqua didn’t respond or ask for any additional time to do so.

Mrs M also didn’t provide anything further for me to think about.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I set out in some detail why I intended to uphold Mrs M’s complaint in my provisional decision. I have to say that it’s incredibly disappointing Aqua chose not to even acknowledge my provisional decision let alone provide a response. However, in the absence of anything further from either party, I see no reason to change my conclusions.

So having carefully considered everything, I’m upholding Mrs M’s complaint.

fair compensation – what Aqua needs to do to put things right for Mrs M.

In order to put things right for Mrs M, Aqua should:

- return Mrs M’s account balance back to what it was at the time of her October 2016 statement; and
- rework the account to ensure that from July 2014 until October 2016 interest is only charged on the first £850.00 outstanding to reflect the fact that no further credit limit increases should have been provided. All late payment and over limit fees should also be removed; and
- the payments Mrs M made from July 2014 onwards (including the ones made after October 2016) should then be deducted from the reworked account balance. Any extra that was paid should be treated as overpayments and refunded to Mrs M; and
- add interest at 8% per year simple on any overpayments, if they were any, from the date they were made to the date of settlement †

†HM Revenue & Customs requires Aqua to take off tax from this interest. Aqua must give Mrs M a certificate showing how much tax it’s taken off if she asks for one.

From what I've seen it appears as though Aqua sold the outstanding balance on this account to a third party debt purchaser. So it either needs to buy the account back from the third party and make the necessary adjustments, pay an amount to the third party in order for it to make the necessary adjustments, or pay Mrs M an amount to ensure that it fully complies with this direction.

Finally Aqua should arrange a suitable repayment plan with Mrs M if an outstanding balance remains on the account after all adjustments have been made.

my final decision

For the reasons set out above and in my provisional decision of 11 October 2019, I'm upholding Mrs M's complaint. NewDay Ltd should put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs M to accept or reject my decision before 28 November 2019.

Jeshen Narayanan
ombudsman

Copy of Provisional Decision

complaint

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background

Aqua provided Mrs M with a credit card, with an initial credit limit of £300, in May 2013. This information provided in Aqua’s file indicates that Mrs M was offered credit limit increases to the following amounts on the following occasions:

Date	Amount of additional credit	New limit
September 2013	£350.00	£650.00
January 2014	£200.00	£850.00
July 2014	£800.00	£1,650.00
December 2014	£850.00	£2,500.00
July 2015	£750.00	£3,250.00
November 2016	£1,000.00	£4,250.00

One of our adjudicators looked into Mrs M’s complaint. He didn’t think that Aqua had done anything wrong or that it had treated her unfairly. So he didn’t uphold the complaint. Mrs M disagreed with our adjudicator and asked for an ombudsman’s decision.

the regulations in place at the time of the respective lending decisions

Aqua gave Mrs M her Credit Card when it was regulated by the Office of Fair Trading (“OFT”). In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending (“ILG”).

Section four of the ILG is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

'Assessing affordability', in the context of this guidance, is a 'borrower-focussed test' which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences.

Section 4.2 of the OFT guidance says:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

"In a sustainable manner" is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe "undue difficulty" and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.*

At the time of Mrs M's third credit limit increase in July 2014 (and all of the subsequent ones) the regulation of Consumer Credit providers – like Aqua – was now the responsibility of the Financial Conduct Authority ("FCA"). And the relevant regulatory rules in place at the time were set out in the Consumer Credit Sourcebook ("CONC") section of the FCA Handbook of rules and guidance.

Section 5.2.1(2) of CONC set out what a lender needed to do before agreeing to give a consumer borrowing of this type. And it says a firm had to consider "*the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation*" as well as "*the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement (like Mrs M's credit card), to make payments within a reasonable period.*"

CONC 5.2 also includes some guidance on the sorts of things a lender needs to bear in mind when considering its obligations under CONC 5.2.1. Section 5.2.4(2) says *“a firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer’s financial situation.”*

And CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1(1) says *“In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer’s ability to repay the credit.”*

CONC 5.3.1(2) then says *“The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer’s ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.”*

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. We’ve set out our approach to unaffordable/irresponsible lending complaints on our website and I’ve considered this while provisionally deciding Mrs M’s complaint.

Having carefully considered everything provided, I think that there are three overarching questions that I need to consider in order to provisionally decide what’s fair and reasonable in all the circumstances of Mrs M’s complaint. These questions are:

- Did Aqua carry out reasonable and proportionate checks to satisfy itself that Mrs M would be able to repay what she borrowed in a sustainable way at the time of each lending decision (in other words - when initially providing the card and then each time it increased the credit limit)?
 - If not, what would reasonable and proportionate checks more likely than not have shown?
- Bearing in mind the circumstances, at the time of each credit limit increase, was there a point where Aqua ought reasonably to have realised it was increasing Mrs M’s indebtedness in a way that was unsustainable or otherwise harmful and so shouldn’t have provided further credit?
- Did Aqua act unfairly or unreasonably towards Mrs M in some other way?

I’ll consider each of these questions in turn.

Did Aqua carry out reasonable and proportionate checks to satisfy itself that Mrs M would be able to repay what she borrowed in a sustainable way at the time of each lending decision?

The rules and regulations throughout Aqua’s lending relationship with Mrs M required it to carry out a reasonable and proportionate assessment of whether she could afford to repay

what she owed in a sustainable manner. This assessment is sometimes referred to as an “affordability assessment” or “affordability check”.

The checks had to be “borrower” focused – so Aqua had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences *for Mrs M*. In practice this meant that Aqua had to ensure that making the payments to the credit wouldn’t cause Mrs M undue difficulty or adverse consequences. In other words, it wasn’t enough for Aqua to simply think about the likelihood of it getting its money back, it had to consider the impact of any repayments on Mrs M.

Checks also had to be “proportionate” to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer’s income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should’ve been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I’ve kept all of this in mind when thinking about whether Aqua did what it needed to before initially agreeing to Mrs M’s credit card and each time it increased her credit limit.

Aqua’s initial decision to provide Mrs M with a credit card

Aqua says that before agreeing to provide Mrs M with a credit card it asked Mrs M to confirm her annual income. It also says that it carried out a credit check which indicated that she wasn’t in arrears on any accounts and defaults. It says that based on the information it had it was reasonable for it to have provided Mrs M with an initial credit limit of £300.

Mrs M was given a credit facility where there was an expectation that she’d repay what she borrowed plus the interest due within a reasonable period of time. The ILG doesn’t set out what a reasonable period of time is. So I think it’s important to note that a reasonable period of time will always be dependent on the circumstances of the individual case.

That said, I do think that Mrs M’s self-declared income together with there not being anything too concerning on her credit file leads me to think that it was reasonable and proportionate for Aqua to conclude Mrs M would be able to repay £300 within a reasonable period of time. So I don’t think that Aqua did anything wrong when it initially provided Mrs M with a credit card that had a £300 limit.

the first credit limit increase in September 2013

Aqua offered Mrs M a credit limit increase to £650 in September 2013. In my view, this was a significant increase and Aqua needed to ensure Mrs M could sustainably repay a balance of £650 within a reasonable period of time. Aqua's correspondence appears to suggest that its decision to increase the credit limit on Mrs M's account was based on her account management. I have significant concerns with the principle of this approach.

It is not clear to me why a borrower who is able to successfully manage a given credit limit can then automatically be deemed, without further checks, to be able to successfully manage a higher limit. It seems to me that this logic would likely lead to continually increasing limits, unless or until problems arise. And for reasons I'll go on to explain later on in this decision, that's precisely what ended up happening further down the line in this case.

Notwithstanding this, at the time of the first limit increase I can see that Mrs M had made a couple of large payments to her account and the balance was kept under the limit for the six months or so since the account had been. So I can to some extent see why this may have given Aqua the impression that Mrs M was managing the account well. And although I don't think that this is, in itself, means that Mrs M was in a position to sustainably repay the balance within a reasonable period I find that the decision to increase Mrs M's credit limit to £650 wasn't unreasonable.

the second credit limit increase in January 2014

The second credit limit increase increased Mrs M's credit limit by £200 from £650 to £850. It took effect in March 2014. I accept that as the limit was only increased by £200, there is an argument for saying that this wasn't a significant increase to the credit limit and so there wasn't a need for a further affordability assessment. But £200 was almost a third of the previous £650 limit. So I'm not necessarily persuaded by this argument. I don't know what checks, if any at all, Aqua carried out before deciding to offer the credit limit increase to £850. Aqua's submission on this point can only be described as being sketchy at best.

But, in any event, the information I have leads me to think that it's more likely than not that reasonable and proportionate checks would not have shown that Mrs M wouldn't have been able to sustainably repay the additional £200 within a reasonable period of time. So I don't think that it was wholly unreasonable for Aqua to have offered and then provided this credit limit increase to Mrs M.

That said, I do think that there was a pattern beginning to emerge in Mrs M's management of her account. Mrs M's was only just within her existing credit limit when the first limit increase was granted in November 2013. And she immediately exceeded her limit once the March 2014 limit increase took place.

Furthermore while Mrs M's payments, after the card was first provided, were making inroads into the outstanding balance, Mrs M pretty much only made the minimum payment due from November 2013. So Mrs M's payment history was beginning to suggest that she might not have been able to repay her account balance within a reasonable period of time. But even though I think that there were some warning signs that Aqua ought reasonably to have been alert to, I don't think I can say that the emerging pattern in the management of Mrs M's account, in itself, demonstrated that the borrowing had become unsustainable or harmful – such that I could reasonably say that the facts spoke for themselves.

the third and subsequent credit limit increases from July 2014 onwards

Aqua increased Mrs M's credit limit by £800 to £1,650 in July 2014. This clearly was a significant increase. So Aqua needed to carry out further checks to understand whether Mrs M could sustainably repay a balance of £1,650 within a reasonable period of time. Aqua hasn't said exactly what it was it relied on in order to conclude that Mrs M would be able to sustainably repay a credit limit of £1,650.00. It simply provided a generic response saying:

"Since June 2014, when making a decision to increase a credit limit we will consider things such as utilisation, account maintenance as well as Bureau data and our own internal risk strategies. Prior to this, increases were given based on how the account was maintained. At the time of the increases there were no concerns."

Aqua appears either unable or unwilling to tell us precisely what it did to ascertain Mrs M's ability to sustainably repay the extra credit it offered. Indeed Aqua appears to be relying heavily on its "internal risk strategies". Given Aqua insists that Mrs M's credit was responsibly provided, it ought to know – and explained – exactly what information it gathered, how it interpreted this information and how its internal risk strategies led to responsible lending decisions being made in this particular case.

Indeed it appears as though Aqua expects me to simply accept its standard process (and internal risk strategies) always leads to fair lending decisions. Without such an explanation from Aqua, I cannot and will not take it as read that its decisions to lend to Mrs M were fair simply because its – internal risk strategies – approved these increases. In any event, even if I were to leave my concerns about Aqua's checks to one side, for reasons I'll go on to explain in the next section of this provisional decision, I don't think that it was fair and reasonable for Aqua to have offered the further increases from the £850 credit limit onwards.

Bearing in mind the circumstances, at the time of each credit limit increase, was there a point where Aqua ought reasonably to have realised it was increasing Mrs M's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?

I'm mindful that the relevant rules and guidance – referred to earlier in this decision - makes it clear that a lender shouldn't continue offering credit where the borrowing is unsustainable or otherwise harmful and/or where it's apparent the borrower may be experiencing financial difficulties. So in addition to assessing the circumstances behind each *individual* lending decision, I also think it's fair and reasonable to look at what unfolded during the course of Mrs M's account history with Aqua – especially how it was managed.

I've already explained why, at present, I think that reasonable and proportionate affordability checks weren't completed from the second credit limit onwards. And that based on the evidence on file, I can't say that proportionate checks would not have shown that the first and second limit increases when considered individually were unsustainable.

I also explained that while I was concerned with the direction of travel of the account after the first limit increase and I think that there were some clear warning signs that Aqua ought to have been alert to, I don't think I can say that Mrs M's account history, in itself, demonstrated that any further credit would be unsustainable or harmful for her – such that I could reasonably say that the facts spoke for themselves – when Aqua offered the second limit increase in to £850 in November 2013. But looking at what happened after January

2014 (when the second limit increase came into effect), I think that what had, up until that point, been an emerging pattern of Mrs M's being unable to manage her account and her existing debt became established.

I've already said that there was an emerging pattern, after the first limit increase, of Mrs M only making the minimum payments each month and that this was coupled with Mrs M utilising all of the available funds straight after the limit was increased. But this worsened in the period after this. Indeed Mrs M exceeded her limit immediately after being given the second credit limit increase in March 2014. Mrs M then once again exceeded her exceeded her existing credit limit in July 2014, which was the month that she was offered her third limit increase. And I think that the account was never really able to recover from this point.

The graph below shows Mrs M's credit limit, her outstanding balance and the payments she made on a monthly basis throughout the period that she had the account. The credit limit increases are included from the month they took effect.

This graph illustrates – in a much clearer way than words alone ever could - just how Mrs M's account was being managed after each limit increase. It clearly shows that Mrs M immediately utilised all of the funds available after a limit increase took effect on every occasion. The graph also shows that the monthly payment made never increased in proportion with the limit increases either. So Mrs M never made any real inroads into what she owed Aqua.

In my view, this showed that Mrs M may well have been struggling financially (her account statements showing her spending on the card days after making around the minimum payment due supports this) and, at the very least, it was a clear indication that she wasn't managing her account well. Aqua will also be aware that it was required to monitor Mrs M's repayment record and offering assistance where it appeared that she might have been experiencing financial difficulty.

I don't think that nearly quadrupling Mrs M's credit limit – in the period between July 2014 and November 2016 and therefore offering substantially more credit at an APR of 29.9% - when Mrs M was already struggling to manage her existing debt was offering assistance. In my view, Aqua increasing Mrs M's credit limit in this way and in these circumstances was adding to any potential financial difficulty rather than offering assistance.

I'm also astounded by Aqua's decision to offer Mrs M a credit limit increase in the circumstances that it did in November 2016. Aqua says that it wouldn't necessarily decline to offer an increase just because a borrower exceeded their credit limit as long as the account was immediately brought up to date. But Mrs M was charged over limit fees (and so was over her limit) in August 2016, September 2016 and October 2016. So her account clearly wasn't immediately brought back within its limit. And it also looks like she was also charged late payment fees too.

And leaving aside my concerns at Aqua appearing to have failed to follow its own lending policy, the November 2016 increase clearly took place after a sustained period of Mrs M proving herself unable to manage her account and being over her limit. I can't see any reasonable basis for Aqua concluding that this payment record meant that Mrs M would be able to sustainably repay a further £1000 within a reasonable period of time.

In my view, Aqua increasing Mrs M's credit limit in this way - while she was demonstrating an inability to manage her existing debt - unfairly increased and prolonged her indebtedness. I think that Aqua ought fairly and reasonably to have realised that Mrs M's existing debt may well have become a problem and taken steps other than continuing to provide more and more expensive credit. Instead, its actions mean that Mrs M paid Aqua high amounts of interest for the privilege of it allowing her to delay dealing with her unsustainable debt.

I've seen what Aqua has said about it sending Mrs M letters offering her the opportunity to opt out of the proposed limit increases. But I don't see how this makes a difference as to whether it was fair and reasonable to offer these limit increases in the first place. It seems to me that Aqua is trying to outsource its responsibility to assess whether Mrs M was able to sustainably make the payments to an increased credit limit onto Mrs M. And I don't find this argument persuasive.

Furthermore Aqua says that its product is:

"typically marketed towards (but not restricted to) customers that may find it difficult to get credit and thus gives them the opportunity to rebuild their credit rating, this aligns with our manifesto of being a welcoming company and giving those with previous financial difficulties a second chance".

I don't see how continually increasing Mrs M's debt to an unsustainable level provided Mrs M with a second chance. Instead it made it more likely that she might once again experience financial difficulty. And it arguably unfairly trapped her into a cycle of only being able to access high-cost credit because her failure to manage this account made it less likely mainstream lenders would provide credit to her.

Given all of Aqua's obligations and what I think is fair and reasonable taking into account the circumstances and everything I've covered in this section, I'm minded to find that Aqua ought fairly and reasonably to have realised it was increasing Mrs M's indebtedness in a way that was unsustainable or otherwise harmful. And so it shouldn't have provided any further credit limit increases after it increased Mrs M's credit limit to £850 in March 2014.

Did Aqua act unfairly or unreasonably towards Mrs M in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Aqua acted unfairly or unreasonably towards Mrs M in some other way.

So I find that Aqua didn't act unfairly or unreasonably towards Mrs M in some other way.

Conclusions

Overall and having carefully thought about the three overarching questions, set out on pages two and three of this decision, I'm intending to issue a final decision which finds that:

- Aqua *did* complete reasonable and proportionate checks on Mrs M to satisfy itself that she was able to sustainably repay the initial credit limit of £300 (in May 2013) and £650 at the time of the first credit limit increase (of £350) in September 2013;

- Aqua *didn't* complete reasonable and proportionate checks on Mrs M to satisfy itself that she was able to sustainably repay what she owed for any of the credit limit increases offered from January 2014 onwards;
- reasonable and proportionate checks *would not* more likely than not have shown Mrs W was unable to sustainably repay what she owed within a reasonable period of time when her credit limit was increased to £850 in March 2014;
- Aqua ought fairly and reasonably to have realised that the credit limit increases *after* March 2014 (in other words the ones from July 2014 onwards) were unsustainable or otherwise harmful for Mrs W and were unfairly and excessively increasing her overall indebtedness;
- Aqua didn't act unfairly or unreasonably towards Mrs W in some other way.

The above findings leave me minded to reach the overall conclusion that Aqua unfairly and unreasonably provided Mrs M with the credit limit increases from July 2014 onwards.

Did Mrs M lose out as a result of Aqua's shortcomings in relation to her account?

As Mrs M had to pay a significant amount of interest and charges as a result of her credit limit unfairly being increased from July 2014 onwards, I think that she lost out because of what Aqua did wrong. So Aqua should put things right.

fair compensation – what I'm intending to tell Aqua to do to put things right for Mrs M

I've given a lot of careful thought to what fair compensation should look like in this case.

I want to start by saying that in most cases, where credit has been provided when it shouldn't have been, it would be fair and reasonable for the lender to refund any interest and charges paid by the borrower (if they were) plus interest. And the borrower would be expected to repay any remaining amount of the funds they were given. So ordinarily I'd expect Mrs M to pay back the funds she was lent – when she used her card – but not the interest.

That said, I'm mindful of the particular circumstances of this case and I don't think that a simple refund of the interest and charges goes far enough. I've already said that I was especially concerned about the November 2016 limit increase. Aqua increased Mrs M's credit limit by a further £1,000.00 at a time when it clearly would have seen that she was proving unable to repay a lower amount. In my view, Aqua advanced credit in circumstances where it ought reasonably to have realised that there was a significant risk it wouldn't get what it was advancing back without this causing Mrs M financial difficulty.

As Aqua's decision to advance a substantial amount of additional credit in these circumstances was so egregious and Mrs M has clearly been unable to pay these funds back, I'm intending to say that Aqua needs to do more to put things right here. Aqua provided further funds in circumstances where it ought to have known there was realistic possibility it would see those funds and it, in any event, chose to take that risk. That loss went on to materialise and I think that it's Aqua that should bear that loss.

So to start with, I'm intending to say that Aqua should write off everything accrued on Mrs M's account from November 2016 onwards – in other words, to start with, Aqua needs

to return Mrs M's account to the balance it was at when it issued her October 2016 statement.

Once that is done, Aqua should then rework Mrs M's account to remove the effect of any interest and charges accrued on the account as a result of the unfair credit limit increases which took place in July 2014, December 2014 and July 2015. In other words, for the period from the July 2014 statement up until October 2016 statement (which is now the end date for the account), Aqua can only add any interest due on the first £850 of the balance (of course any capital spend on the card can be included as this isn't being written off) – all late payment and over limit fees also need to be refunded irrespective of what any reconstructed final balance may show.

The payments Mrs M made from July 2014 onwards – including the ones made after October 2016 - should then be applied to the reworked balance. Any extra that was paid should be treated as overpayments and returned to Mrs M. Aqua should also add interest, at 8% simple per year, from the date any overpayment was made to the date of settlement.

Aqua should also remove any adverse information recorded on Mrs M's credit file as a result of this account.

All of this means that in order to put things right for Mrs M, I'm intending to tell Aqua to:

- return Mrs M's account balance back to what it was at the time of her October 2016 statement; and
- rework the account to ensure that from July 2014 until October 2016 interest is only charged on the first £850.00 outstanding to reflect the fact that no further credit limit increases should have been provided. All late payment and over limit fees should also be removed; and
- the payments Mrs M made from July 2014 onwards (including the ones made after October 2016) should then be deducted from the reworked account balance. Any extra that was paid should be treated as overpayments and refunded to Mrs M; and
- add interest at 8% per year simple on any overpayments, if they were any, from the date they were made to the date of settlement †

†HM Revenue & Customs requires Aqua to take off tax from this interest. Aqua must give Mrs M a certificate showing how much tax it's taken off if she asks for one.

From what I've seen it appears as though Aqua sold the outstanding balance on this account to a third party debt purchaser. So it either needs to buy the account back from the third party and make the necessary adjustments, pay an amount to the third party in order for it to make the necessary adjustments, or pay Mrs M an amount to ensure that it fully complies with this direction.

Finally Aqua should arrange a suitable repayment plan with Mrs M if an outstanding balance remains on the account after all adjustments have been made.

my provisional decision

For the reasons explained, I'm intending to partially uphold Mrs M's complaint and say that NewDay Ltd should put things right in the way I've set out above.

So unless the comments and evidence I get by 25 October 2019 change my mind, that's what I'll tell Aqua to do in my final decision.

Jeshen Narayanan
ombudsman