

## **Complaint**

Mr L complains that NewDay Ltd lent irresponsibly each time it increased his credit limit on his Aqua credit card.

## **Background**

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 12 December 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 and what should happen to resolve the complaint. I invited both parties to send any additional comments or evidence they wished to make.

Mr L said he accepted my provisional decision but referred to a default that had been recorded on his credit file in September 2019. And he provided a copy of his full credit report to show this. He thought this should be dealt with as a separate complaint. NewDay didn't comment on my provisional decision about the credit limit increases. But when asked about the default showing on Mr L's credit file, it says the default was recorded by the external third-party debt collection agency to whom it sold Mr L's debt in 2017.

## **My findings**

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

Mr L has accepted my provisional decision and NewDay hasn't commented on the part of my provisional decision relating to the credit limit increases. So I see no reason to depart from my findings as set out in my provisional decision in this respect. It remains that I think NewDay should refund the interest and any charges incurred on the balance above £1,250 after the credit limit was increased in September 2016.

Turning now to Mr L's credit report. I've looked at Mr L's credit report which he has sent us. And this doesn't show any adverse information recorded by NewDay. But as mentioned in my provisional decision, I think it's most likely that NewDay would have recorded some adverse information around 2017 as NewDay has told us that it defaulted Mr L's account. But as Mr L's account was sold to a third-party collection agency in 2017, I think it's most likely any adverse data recorded by NewDay has been superseded by data recorded by the third-party debt collection agency. This is because I wouldn't expect two business' to be reporting a default about the same account at the same time.

Credit reports are constantly updated as things change. This means I can't be sure what might previously have been recorded on Mr L's credit file by NewDay. But, as set out in my provisional decision, NewDay has told us that it was approached by a debt advice service in 2017 to tell it Mr L was in financial difficulty. And, as a result it agreed to accept reduced payments from Mr L. As NewDay has a responsibility to treat consumers in financial difficulty positively and sympathetically, this is the type of remedy I would've expected NewDay to agree to in Mr L's circumstances. So, I think it acted fairly in this regard.

But it has also told us that Mr L eventually stopped making payments altogether and, as a result, it defaulted Mr L's account in 2017. And the debt was subsequently sold. Mr L hasn't disputed what NewDay has said following my provisional decision. So, I don't think NewDay did anything wrong when it defaulted the account and subsequently sold it to a third-party. As I have explained previously, the account terms and conditions make provision for this. And I haven't seen anything that would make me think NewDay didn't keep Mr L updated about the action it intended to take. Indeed, NewDay has since provided a copy of the default notice issued in 2017. So, if NewDay reported this to the credit reference agencies, I think it was right to do so.

But as mentioned above, I can't see any adverse data on Mr L's credit file now that might have been recorded by NewDay. So, I don't think NewDay will be able to remove any data that is no longer showing. So, I'm not asking NewDay to take any action in this respect. Should NewDay record any information about this account going forward, Mr L will be able to ask us to look at this as a separate complaint.

I can see Mr L feels strongly that the information recorded on his credit file now is inaccurate. As this is recorded by the third-party debt collection agency, I agree that this should be treated as a separate complaint. And I've asked for one of our investigators to arrange for this to be looked at under a different case reference number.

For clarity, this decision solely relates to Mr L's account before NewDay sold it to the third-party in 2017.

### **My final decision**

For the reasons I've explained above, and in my provisional decision, I uphold Mr L's complaint.

I require NewDay Ltd to refund the interest and any charges incurred on the balance above £1,250 after the credit limit was increased in September 2016, until the debt was sold to the debt collection firm. This is to be sent to the debt collection agency to reduce the balance owing.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 22 February 2020.

Sandra Greene  
**Ombudsman**

## **COPY OF THE PROVISIONAL DECISION**

### **Complaint**

Mr L complains that NewDay Ltd lent irresponsibly each time it increased his credit limit on his Aqua credit card.

### **Background**

Mr L applied for an Aqua credit card with NewDay Ltd and was approved for a £600 credit limit in October 2015.

In April and September 2016 NewDay increased Mr L's limit to £1,250 then £2,450 respectively. NewDay says Mr L's account was reviewed on both occasions before it applied the increases. And it wrote to him offering him the chance to reject them before they were applied. But its records indicate Mr L accepted the increase on both occasions.

In 2019 Mr L complained that NewDay had not acted in his best interests when it increased his credit limit. He said it should have been clear that he couldn't afford the additional borrowing because he was relying heavily on credit, had been late with payments and had exceeded his credit limit.

NewDay didn't uphold Mr L's complaint. It said the limit increases had been approved in line with its lending criteria.

Mr L referred his complaint to our service and an investigator looked at what had happened. He didn't think NewDay had acted wrongly when it initially increased Mr L's credit limit. He noted that apart from one late payment and over-limit charge, Mr L made his payments on time. And he thought the checks NewDay had said it had carried out were proportionate based on the amount of the new limit and what it knew about Mr L.

But he upheld Mr L's complaint about the second limit increase. He noted that Mr L had by now missed more payments and had exceeded the new higher credit limit. So he thought NewDay shouldn't have increased Mr L's limit on this occasion.

He suggested that NewDay should refund the interest and charges applied to Mr L's account from when the second increase was applied. But he said NewDay didn't have to amend Mr L's credit file as this was an accurate reflection of Mr L's payment history.

NewDay didn't accept this reiterating that the limit increase had met its lending criteria. It pointed out that Mr L's late payments were adjusted by Mr L the day after they were due and that he cleared his over-limit position very quickly and before a statement was generated. But the investigator remained of the view that the fact Mr L was exceeding his limit and paying late – even though he was putting things right quickly, should have been enough to indicate to NewDay that a further limit increase was not appropriate. He said this was in line with industry guidance.

As NewDay didn't agree the complaint has been passed to me to decide.

### **My provisional findings**

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

Like the investigator, I haven't found that NewDay lent irresponsibly when it approved Mr L's first limit increase. While Mr L did miss one payment and exceeded his limit – overall, his account was being managed reasonably well. In addition, there doesn't appear to have been any adverse information on Mr L's credit file. So I haven't seen enough that would make me think NewDay should have been

unduly concerned about Mr L's financial situation to say the limit increase was inappropriate at this point.

But by September 2016 – when the second limit increase was offered, Mr L's account had incurred further over-limit and late payment charges. And this increase meant Mr L's credit limit had quadrupled from £600 to £2,450 in just 12 months. As the investigator has said industry guidance says that these types of event are indicators that lenders need to think about before agreeing further lending. And I've seen that – from Mr L's credit file that he was also applying to other lenders for short-term credit between leading up to this limit increase.

NewDay is free to decide how to set its lending criteria but it should complete proportionate checks to ensure borrowing is sustainable. In this case, I don't think the checks NewDay completed went far enough. I understand that NewDay may not have had full details of Mr L's other credit at this time because of the nature of the credit checks it choose to complete. But I think it could've completed other more proportionate checks, like asking to see his full credit file or completing a new income and expenditure assessment for example.

Taking everything I've seen into account, I don't think the decision to approve the increase to £2,450 in September 2016 was reasonable. If NewDay had completed better checks I don't think it would have approved this limit increase.

From what I've seen, I think NewDay failed to complete proportionate checks to ensure the second limit increase was sustainable. I think it's likely that if NewDay had done better checks it wouldn't have offered Mr L this increase. As a result, I agree this complaint should be upheld and NewDay should refund the interest and charges applied to Mr L's account from when the second credit limit increase was applied.

Our investigator didn't recommend that NewDay should remove any adverse data from Mr L's credit file. But generally, when we think a business acted incorrectly in agreeing new lending, we would expect the business to remove any adverse data recorded from the date the new lending was provided. This is because the adverse data wouldn't have been recorded but for the lending being provided.

But NewDay has told us about other events which have happened since the second limit increase was approved. NewDay has told us that it was approached by a debt advice service in 2017 to tell it Mr L was in financial difficulty. And, as a result it agreed to accept reduced payments from Mr L. As NewDay has a responsibility to treat consumers in financial difficulty positively and sympathetically, this is the type of remedy I would've expected NewDay to agree to in Mr L's circumstances.

But it has also told us that Mr L eventually stopped making any payments altogether and as a result it defaulted Mr L's account and the debt was subsequently sold to a third party. As it seems that Mr L had stopped making payments to the account, I don't think NewDay did anything wrong when it applied the default and subsequently sold the debt to a third party. The account terms and conditions make provision for this. And I haven't seen anything that would make me think NewDay didn't keep Mr L updated about the action it intended to take. But if Mr L has any further comments or evidence in relation to this, I will consider this further.

But based on what I've seen, I've thought carefully about the information recorded on Mr L's credit file. And having done so, I think NewDay Ltd should remove any adverse data it recorded following the credit limit increase in September 2016 up to the point a reduced payment plan was agreed in 2017. But as NewDay was approached by a debt advice organisation on Mr L's behalf, I think it's most likely that Mr L had wider financial problems than just his Aqua credit card. And this is supported by the information about other borrowing on the credit file Mr L has provided us with. NewDay says it accepted reduced payments towards repayment of the credit card – but Mr L stopped making these payments. So I think it's most likely that Mr L would've defaulted on his Aqua credit card even if the second credit limit increase hadn't been given. So I think a default would've always been applied and the debt sold to a third party.

### **My provisional decision**

My provisional decision is that I intend to uphold this complaint and direct NewDay Ltd to settle in line with following:

- Refund the interest and any charges incurred on the balance above £1,250 after the credit limit was increased on in September 2016, until the debt was sold to the debt collection firm. This is to be sent to the debt collection agency to reduce the debt.
- Remove any adverse data recorded on Mr L's credit file from September 2016 to when a reduced repayment plan was agreed in 2017.

I'll consider matters further if further evidence/comments are received by 26 December 2019.