

## **complaint**

Miss R complains that NewDay Ltd (trading as Aqua) repeatedly raised her credit limit on her credit card account, although she couldn't pay the money back.

## **background**

Miss R said that Aqua repeatedly raised her credit limit, although she couldn't afford it. Miss R said that Aqua had been irresponsible when it lent her money. She wanted Aqua to refund all the interest and charges it had applied to her account since July 2013. And she wanted all the adverse entries removed from her credit file.

Aqua said that it had offered increases to Miss R's credit limit based on how she had managed the credit card, and information provided by credit reference agencies. It didn't think it did anything wrong when it offered those increases. It said that it didn't know she was having financial difficulties until April 2017.

Aqua sent us a lot of information on Miss R's credit limit. Her card limit as at July 2013 was £2,600. Aqua said it didn't have any information on any credit limit raises before then. Her limit had been raised three times since then. She was offered the following increases, which all took effect just over a month after they were offered

- June 2014, from £2,600 to £3,400,
- February 2015, from £3,400 to £4,150,
- August 2015, from £4,150 to £5,400

Miss R went over her credit card limit in most of the months when she had the card. The over limit fee for this card was £12. Each of her annual statements shows that she was charged this fee many times during the past year. Aqua told us that her individual statements weren't available before July 2013, but her annual statement for that year, which was produced in October 2013, shows that Miss R was over her credit card limit in 11 out of the previous 12 months. The annual statement produced in October 2014 shows that Miss R was over her credit card limit in 10 out of the previous 12 months. She had had two sizeable increases in her credit card limit during the year covered by the next annual statement, but the statement for October 2015 shows that she was still over her credit card limit in 6 out of the previous 12 months. But Miss R hasn't defaulted on her payments.

Our adjudicator looked at this complaint, and said that she could see that Miss R wasn't managing her card well, and that there were other signs of financial problems on Miss R's credit report. She told Aqua that she was thinking about upholding the complaint.

Aqua pointed out that Miss R had always made her minimum payment. There was one month where it looked as if she hadn't paid anything, but Aqua said that was Aqua's fault. It was a technical problem with its systems.

Aqua said that Miss R did exceed her credit limit, but never by more than the minimum payment due, so she always brought the account back into credit when she made her monthly payment. And Aqua thought that raising her credit limit was a way to help Miss R with that.

And Aqua said that Miss R had made some additional payments, above the minimum amount. Miss R said that one of these was a loan from her father, and the other was a settlement of a complaint made about a payday lender. Aqua said that it didn't have any way

of knowing where that money had come from, and it pointed out that after the payment in February 2015 that Miss R said came from her father, Miss R then made a number of purchases of luxury items. Aqua didn't think it could've been expected to know that Miss R was in financial difficulties at that time. Aqua also said that the payday lenders that Miss R used would only have shown up as unsecured lending on her credit record at the time the increases were made.

Aqua said that it appreciated that Miss R had been over her account limit in many of the months when she had the card, and it was reviewing its lending policy in line with this. It said because of that, it would offer to return to Miss R all the over limit fees applied to her account from the date of the last credit limit increase, in April 2015. That would total £240. Finally, it pointed out that Miss R continues to use the card and make payments each month. And it showed us a selection of the letters it had sent to Miss R to tell her about the risks of only making the minimum payment, or using the card for cash advances.

Our adjudicator said that she had considered whether Aqua knew, or should have known, that Miss R was in financial difficulty when it offered her the credit limit increases. She said that for a number of reasons, including that Miss R always made the minimum payment, she didn't think Aqua knew about Miss R's financial difficulties. She thought that Aqua had followed The UK Cards Association's guidelines on raising credit card limits when it increased Miss R's credit limit. And she said that she thought that Miss R's credit rating had dropped recently. She didn't think it was as bad when Aqua offered to loan her more money. So she thought that Aqua's offer was fair.

Miss R didn't agree with that. She said that she was complaining about credit limit increases which happened well before she made an overpayment. She said her limit had gone up in July 2013. The overpayment she made was almost two years later. Her credit report showed late payments before the 2013 credit limit increase. She didn't think her credit score had been better previously, she said she'd been a high user of payday loans since 2011. She had taken a number of cash advances on the card. And she drew our attention to parts of The UK Card Association's guidance on risk indicators, which she said should've warned Aqua that she was in financial difficulties.

### **my provisional decision**

I issued a provisional decision on this complaint and explained why I proposed to uphold it. This is what I said then:

- Miss R took this credit card out in 2007. Miss R didn't complain about what happened then, and this service can't ordinarily consider complaints that far back in time. So I didn't look at what happened then.
- Aqua raised Miss R's credit limit for the first time in July 2013. Aqua hasn't told us anything about this increase. I couldn't tell exactly when it happened, as I only had information from Miss R's credit record about this limit. But I could see that the limit changed from £1,850 to £2,600 about then. Aqua says that it raised Ms R's limits in line with its own guidance, and it has made a number of references to what it could or couldn't see on her credit record at the time. I looked at Miss R's credit report carefully, and I thought it was more likely than not that Miss R had a poor or very poor credit score at that time.

- Aqua said that it wouldn't have been able to tell before 2014 that Miss R was using payday lenders, as they only showed up as unsecured lending at the time. But Aqua would've been able to see in 2013 that Miss R did have a number of unsecured loans. In addition, at the time that Aqua made the first increase to Miss R's credit limit, Miss R had a total of six other credit cards, all of which were either just under their credit limits, or slipping over their credit limits. And she had a number of missed payments on a catalogue credit agreement and on loan with a bank shortly before that first increase was made. I thought those were warning signs that Miss R wasn't in control of her finances.
- Aqua also says that it considered how Miss R was managing her credit card account. But it didn't seem to have been concerned that Miss R was regularly exceeding her credit card limit. Between October 2012 and October 2013 Miss R went over her credit card limit in 11 out of 12 months. I didn't think it was responsible for Aqua to increase Miss R's credit limit from £1,850 to £2,600 in July 2013.
- I'd explained that this service can't consider whether it was irresponsible for Aqua to offer Miss R a card account with a credit limit of £1,850 in 2007. But I did think it was irresponsible for Aqua to increase that amount subsequently. I could see that Miss R had managed to keep up with her payments until recently. And I knew that Aqua said that it wasn't aware of Miss R's financial difficulties until recently. But the purpose of The UK Cards Association guidelines is to make sure that the card has been used responsibly and that other data indicates that the cardholder would be able to manage a higher limit before the limit is increased. I didn't think this card had been used responsibly, or that other data indicated that Miss R would be able to manage a higher limit. So I didn't think these credit limit increases were responsible. Because I thought they weren't responsible, I thought that Aqua should rework Miss R's credit card so that all over limit fees paid since her credit limit increase in July 2013 were returned. And it should return any interest charged since July 2013 on amounts over the £1,850 that it originally lent her. Aqua should pay interest on that refund at 8% simple per annum.
- I said that Aqua should use this money to reduce Miss R's debt. I didn't anticipate that there will be any money remaining once that is done, but if there was, then Aqua should pay that money to Miss R.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Miss R asked whether it would be possible to remove the adverse information from her credit file which was recorded after Aqua increased her credit limit. And Aqua wrote to disagree with my provisional decision.

### **my findings**

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

Aqua wrote in detail to disagree with my provisional findings. It said that I should bear in mind that this card is designed for people who are either new to credit or who have had problems with high street banks in the past. It says that many of its customers have poor credit ratings. So Aqua said that it's not uncommon for its customers to miss payments or to exceed their credit limits. It wanted me to bear that in mind. But I don't think that this means that Aqua could ignore those problems when it was deciding whether it was appropriate to increase Miss R's credit limit.

Aqua said it had looked in detail at Miss R's credit history. It said that it just couldn't find any details of the credit issues that I'd listed in my provisional decision for the first two times that it increased Miss R's credit limit. Aqua didn't use the same credit reference agency as the one that Miss R used when she sent us her credit history. But we have sent Aqua the credit record that she supplied to us, and that I based my provisional decision on. That shows Miss R's credit history as I very briefly summarised it. Aqua doesn't seem to have commented on that.

I don't think there's any reason to suspect that the credit report Miss R sent us isn't accurate. That credit report does show what still seems to me to be a very considerable amount of other lending, including six other credit card accounts, and recent reliance on payday loans, at the time when Aqua first increased Miss R's credit limit. And it does seem to me that at least two of the risk indicators identified in the UK Card Association's guidance on unsolicited credit limit increases were present in this case. There were multiple instances of Miss R being over her credit limit on her Aqua account. And she was only paying the minimum payment on her Aqua account and on other credit card accounts. Given this, I remain of the view that Aqua hasn't been able to show us that Miss R's card had been used responsibly and that other data indicated that Miss R would be able to manage a higher limit. So I still don't think her limit should've been increased in July 2013.

Miss R wrote to ask if I would also tell Aqua to remove all of the negative markers from her credit record, from the date when the contested increases were agreed. I've considered that, and I don't think that would be appropriate in this case. There are only a few negative markers against this credit card account on the credit record that Miss R sent us. I can see one for January 2012. That is before the credit limit raise that Miss R complained about, so it's not related to this complaint. And there are two in early 2017. But those seem to me to be a long time after Miss R's last credit limit increase, so it's not clear that they are related to this complaint either. Because of that, I don't think it would be fair to ask Aqua to remove those markers.

### **my final decision**

My final decision is that NewDay Ltd (trading as Aqua) should refund all over limit charges applied to Miss R's account after her credit limit was raised in July 2013. And it should refund any interest charged after her credit limit was raised in July 2013 on amounts over the £1,850 that it originally lent her. Those refunds should be calculated up to the date of this decision. NewDay Ltd (trading as Aqua) should pay interest on these refunds at 8% simple per annum<sup>1</sup>.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 1 March 2018.

Esther Absalom-Gough  
**ombudsman**

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<sup>1</sup> HM Revenue and Customs requires NewDay Ltd (trading as Aqua) to take off tax from this interest. NewDay Ltd (trading as Aqua) must give Miss R a certificate showing how much tax it's taken off if she asks for one.