

## **complaint**

Mr R complains that NewDay Ltd (trading as Aqua) irresponsibly gave him a credit card in 2016 given his circumstances and that it subsequently sold his account to a third party. He wants to deal with NewDay not the third party, wants the debt written off and his credit file amended.

## **background**

NewDay said in its final response that as a responsible lender it carries out checks when deciding to offer credit. It considered the information Mr R gave and credit reference agency information. Mr R met its acceptance criteria and he was given a card with a limit appropriate to his circumstances. It'd later assisted by putting him on an affordable repayment plan. And in line with its terms and conditions it'd subsequently sold the account to a third party in March 2017.

Our investigator felt this complaint shouldn't be upheld. She said:

- It doesn't appear Mr R told NewDay of his personal health issues. And we wouldn't expect it to ask about health issues in the online application.
- But when he told it of other problems it agreed a reduced payment plan. NewDay subsequently defaulted the account and said it might sell the account. But it said the new owner would allow the payment plan to continue. Mr R made some payments but then broke the repayment plan. It was his responsibility to maintain the repayment plan. As Mr R didn't meet his contractual minimum payments, NewDay was entitled to default the account.
- NewDay must treat a consumer in financial difficulties positively and sympathetically. It did so in Mr R's case. And it has an obligation to accurately report to credit reference agencies how his account has been managed. So, she can't suggest it should remove the default and won't be asking NewDay to do any more.

Mr R doesn't agree and has asked for an ombudsman review. He says he was known to NewDay as a vulnerable customer. It didn't contact him when he failed to make payments. He remains unhappy the debt was sold to a third party. He's also unhappy that his account has continued to be defaulted while this complaint is ongoing.

## **my findings**

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

It's up to NewDay to decide who it deals with and gives credit to. That's a matter of it making a commercial decision which we wouldn't normally interfere with. But we'd expect it to carry out proportionate checks before doing so.

Here NewDay says it carried out checks and considered what Mr R had said in his application together with information from credit reference agencies. I think this was proportionate and appropriate. I also agree with the investigator that we wouldn't expect NewDay to have specifically asked about health issues in the application process.

What was asked and the lending criteria used to assess Mr R's application are matters for NewDay to decide upon. And its decision to give him a card with what it considered was an appropriate limit is an example of it exercising its commercial judgement in which we wouldn't normally interfere.

Once NewDay subsequently became aware of Mr R's financial and other difficulties I think it also acted positively and sympathetically by agreeing a reduced repayment plan. It was Mr R's responsibility to ensure he kept to the plan or contacted NewDay again. And I don't think NewDay did anything wrong in the way it communicated with Mr R or by selling his account to the third party, as it said it could do and was in line with the account's terms and conditions.

NewDay also acted reasonably by registering the default as Mr R hadn't kept to the minimum required payments under the original agreement. And it also had an obligation to ensure the information recorded on Mr R's credit file accurately reflected the conduct of his account.

Taking everything into account I think NewDay has acted fairly throughout and I don't think it's done anything wrong. As a result I don't think I can fairly or reasonably ask it to refund anything to Mr R or amend his credit file as he'd like.

Mr R also now complains that his credit record is still being affected while this complaint is ongoing. But as his account and debt were sold to a third party in 2017, I can't hold NewDay responsible for what's happened since then. If Mr R remains unhappy he will need to contact the third party directly.

Overall, although I sympathise with the problems Mr R has experienced and recognise his strength of feeling, I don't think I can fairly or reasonably ask NewDay to do anything more as he'd like. And I don't see any compelling reason to change the proposed outcome in this case.

### **my final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 June 2019.

Stephen Cooper  
**ombudsman**