

The complaint

Mr W complains NewDay Ltd trading as Aqua have irresponsibly lent to him.

What happened

Mr W was accepted for a NewDay branded credit card in October 2014, with a £900 credit limit. The credit limit was later increased to;

- £1,900 in February 2015
- £2,500 in July 2015
- £3,600 in January 2017
- £5,100 in June 2017

Mr W complained to NewDay that they had irresponsibly lent to him. NewDay did not uphold his complaint. They said that Mr W told them as part of his application, he was employed with gross earnings of £30,000 and he had unsecured debt of £1,300. They also said that their checks with credit reference agencies showed that he had no defaults or County Court Judgements (CCJ's), he had no accounts in arrears and he had four accounts in total, so they accepted Mr W's application and gave him an initial £900 credit limit.

NewDay said that when they increased Mr W's credit limit, they gave him the chance to opt out of an increase and they also looked at several factors before increasing his credit limit such as instances of him exceeding his credit limit and any late or missed payments, the payments he made, the proportion of the credit limit he used, internal and external payment plans, pay day loan history, arrears status of external accounts and the overall external credit he had access to and utilised. NewDay said that when Mr W had informed them of financial difficulty in late 2020, they applied a three month payment holiday, which they extended for a further three months in February 2021.

Mr W brought his complaint to our service. Our investigator partially upheld Mr W's complaint. She said that while the initial credit limit and the first credit increase to £1,900 was proportionate, the credit increase to £2,500 was not proportionate as Mr W was using the majority of his credit limit, Mr W was charged an overlimit fee at the time his credit limit was increased and he was typically making minimum monthly repayments. She said that when Mr W had been making larger repayments, he had then been taking cash withdrawals in the same month.

Our investigator said that as she had already concluded the credit limit in July 2015 was granted irresponsibly, the subsequent lending decisions should be upheld without making a finding on reasonable and proportionate checks, as if matters had played out as the evidence suggested they should have done in July 2015, she wasn't persuaded that Mr W would've been able to add to the credit granted at that time. She also said she'd seen no improvement to Mr W's financial situation between July 2015 and the last credit limit increase of June 2017.

Our investigator said NewDay should refund all interest and charges occurred since the credit limit increased in July 2015. If this showed he'd paid too much, NewDay should refund

him any overpayments, adding 8% simple interest. And NewDay should work with Mr W to maintain a suitable repayment plan. She also said that NewDay should remove any adverse information that had been recorded on Mr W's credit file from the date of the July 2015 increase.

NewDay asked for an Ombudsman to review the complaint. They said our investigator stated she thought they should uphold Mr W's complaint from the second credit limit increase because, in the months shortly before the increase, he was near his credit limit, and he was making some cash withdrawals. NewDay did not think this was sufficient information to say they should not have increased the credit limit, and they noted he was not charged overlimit fees or late payment fees at this time, and he had no accounts in arrears and no financial difficulty markers. They said this is the case for the third and fourth increase too.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

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

Before agreeing to approve the credit limit for Mr W, NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable for him. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to; the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances.

As the initial credit limit and the first credit limit increase were granted more than six years before Mr W made his complaint, I've asked NewDay if they consent to us looking into these events. NewDay said they consent to me considering whether the initial credit limit and the first credit limit increase were irresponsible for Mr W.

Initial credit limit

I've looked at what checks NewDay said they did prior to accepting Mr W's application. They said at the time of Mr W applying for the credit card, they considered the information that he had gave them, such as being employed, with income of £30,000 and they looked at the information they were provided by the credit reference agencies. NewDay said that this showed Mr W had unsecured borrowings of £1,300.

But that's not all the information from the credit reference agencies showed. It showed that from his open accounts, there were no arrears. He also had no defaults or CCJ's.

So I've considered if the checks that NewDay carried out were proportionate to the level of credit that Mr W was given. I'm persuaded that the checks were proportionate as the initial credit limit approved for Mr W was relatively low, given his external unsecured borrowings of £1,300 at the time and his salary of £30,000.

February 2015 credit limit increase - £900 to £1,900

I've looked at the information that NewDay had available to them when they increased Mr W's credit limit for the first time. I can see that in the months leading up to the credit limit increase that the external unsecured borrowings data NewDay had was limited, although it showed Mr W had no payday loans and no accounts in arrears.

I've considered that NewDay had more than doubled Mr W's credit limit here, however, as

the initial credit limit was relatively low based on his declared income, the increase was also relatively low (£1,000). So the £1,900 credit limit would be a small amount of his salary of £30,000. Mr W was at least maintaining his minimum monthly payment here and occasionally paying more than the minimum payment.

As the increase was only four months from when the account was opened, I'm not persuaded it would be unreasonable for NewDay to rely on some of the information they obtained from his account opening in addition to how Mr W managed his NewDay account. And they saw he had no arrears elsewhere. So, I'm satisfied the checks that NewDay conducted prior to increasing Mr W's credit limit were proportionate to the increase in the credit they provided here.

July 2015 credit limit increase - £1,900 to £2,500

I've looked at the information that NewDay had available to them when they increased Mr W's credit limit to £2,500. They increased the credit limit by £600, a relatively small amount compared to Mr W's declared income. But I'm conscious that the new credit limit was nearly three times the initial credit limit that NewDay approved for Mr W. And it was in a short period of time (nine months) from when the initial credit was approved, to his second credit limit increase. So, I would need to see that the data NewDay had available to them would support the increase. I'm not persuaded that it did and I'll explain why.

I've looked at Mr W's NewDay information in the months leading up to the increase. I can see in March 2015, Mr W makes a relatively large repayment to his credit card. He always pays at least the minimum repayment on time and he occasionally paid more than the minimum payment. Mr W had not exceeded his credit limit either, prior to the increase. And when the credit was previously increased in February 2015, Mr W did not instantly use the majority of the increase, which may indicate he was not hungry for credit – but he did utilise the majority of the credit limit in the last three months before NewDay increased his credit limit to £2,500.

Mr W incurred cash transaction charges also. It's not clear whether he was withdrawing cash from a machine or whether he was making transactions which attracted a cash transaction fee (for example gambling transactions). It appears that he made four transactions in March 2015, which attracted a cash transaction fee and five transactions in April 2015, which attracted a cash transaction fee (based on a £3 cash transaction fee).

I would expect this information to prompt NewDay to make some additional enquiries before increasing the limit. While a customer is perfectly entitled to use NewDay's card as they see fit, including withdrawing cash, it's possible this could be masking a different issue, such as why Mr W would rather incur nine cash transaction fees over a short period of time as opposed to using his own money on a debit card which would be unlikely to incur a cash transaction fee. This may be because Mr W does not have sufficient disposable income to do so. It could also be a result of Mr W servicing his debt by using debt.

So, what I would expect NewDay to do here is to conduct further checks to ensure Mr W's financial standing was sound before increasing his credit limit again in a short period of time. One of the ways they could have done this for example, is to look at his bank statements. I'm satisfied that this would be proportionate based on the reasons I've previously given.

So I asked Mr W if he would be able to provide his bank statements for around the time his credit limit was increased to £2,500. But despite Mr W being asked for these on several occasions he could not provide me with his bank statements.

So on the face of it, it does look like NewDay should've looked more closely into this. My role

requires me to be impartial. That means I have to be fair to both sides and although I'm satisfied that NewDay should've done more checks here – I can't say whether that would've revealed further information which means they shouldn't have lent. As Mr W hasn't provided me with his bank statements, that means that it wouldn't be fair to me to say that NewDay shouldn't have lent here, because I don't know what further checks would have revealed.

January 2017 credit limit increase - £2,500 to £3,600 and June 2017 credit limit increase - £3,600 to £5,100

I've looked at the information that NewDay had available to them when they increased Mr W's credit limit to £3,600. They increased the credit limit by £1,100, which was the biggest increase so far. I'm also conscious that the new credit limit was four times the initial credit limit that NewDay approved for Mr W and represents a 44% increase on his previous credit limit. NewDay had gathered a lot of information of how Mr W had used his account since October 2014, when he opened the account. So, I would need to see that the data NewDay had available to them would support the increase. I'm not persuaded that it did and I'll explain why.

I've looked at NewDay's information about Mr W's account in the months leading up to the increase. In the same month that his previous credit limit was increased, NewDay's data shows Mr W incurred an overlimit charge. The month prior to the credit limit increasing to £3,600, NewDay's data shows his total credit card balances had increased to £5,971 (his total unsecured debt at the time of the application was documented as £1,300). NewDay's data shows a trend of rising balances.

Another cause for concern is the cash transaction fees that Mr W incurs straight away when his previous credit limit was increased. It appears he made eight transactions which attracted a cash transaction fee. Since the last credit increase, it also appears that Mr W is just able to pay his minimum payment, whereas before, he had occasionally made payments much higher than his minimum payment.

While I need to ensure that the credit is affordable, and Mr W hasn't been able to provide his bank statements to prove this one way or another, I also need to ensure that the credit NewDay made available to Mr W was able to be repaid in a sustainable manner within a reasonable amount of time. Once Mr W's credit was increased to £3,600, based on how he managed his account and external accounts, with the unsecured debt rising mostly month on month, I'm persuaded that NewDay should have taken this into account and not have increased his credit limit here to £3,600.

I say this as NewDay had another 18 months since his credit limit had increased to look at the trends of his rising balances and his often minimum (or close to minimum) repayments. By adding another £1,100 of credit which Mr W had available to him, his overall borrowings would require a larger amount of his income. His minimum payments would potentially quadruple from when his credit limit was £900 to £3,600. So I'm not persuaded that based on the information NewDay had available to them, that Mr W would be in a position to pay the credit back in a sustainable manner in a reasonable timeframe.

Within a short period of time from when his credit limit was increased to £3,600, Mr W made 10 transactions which incurred cash transaction fees in the following months of the limit being increased. £890 of the increase was used on transactions which incurred a cash transaction fee.

By the time Mr W's credit limit was increased to £5,100, NewDay's data shows his total credit card balances were up to £8,309 – and this had grown every month from when Mr W had his NewDay credit limit increased to £3,600. I'm satisfied that all of this shows that Mr W

should not have had his credit limit increased to £3,600 and then subsequently increased by another 42% (and over 5.5 times the original credit limit) to £5,100, as it does not appear he would be able to repay this debt in a sustainable manner in a reasonable timeframe. So it follows I intend to ask NewDay to put things right for Mr W."

I invited both parties to let me have any further submissions before I reached a final decision. NewDay said they accepted the provisional decision. Mr W did not respond to the provisional decision.

What I've decided – and why

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

As neither party have provided me with any further information to consider, then my final decision and reasoning remains the same as in my provisional decision.

Putting things right

In my provisional decision I said I intend to ask NewDay Ltd trading as Aqua to:

Rework the account for Mr W, refunding all interest, fees and charges that have been applied to any balances above £2,500;

If the rework results in a credit balance, this should be refunded to Mr W along with 8% simple interest per year calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information recorded after the January 2017 credit limit increase regarding this account from Mr W's credit file.

Or, if after the rework the outstanding balance still exceeds £2,500, NewDay should arrange an affordable repayment plan with Mr W for the remaining amount. New Day should also remove all adverse information recorded after the January 2017 credit limit increase regarding this account from Mr W's credit file.

I'm still satisfied this is a fair outcome for the reasons given previously.

My final decision

I uphold the complaint in part. NewDay Ltd trading as Aqua should settle the complaint in line with the instructions in the *"putting things right"* section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 June 2022.

Gregory Sloanes
Ombudsman