

## **The complaint**

Mr A complains that New Day Limited trading as Aqua provided credit to him irresponsibly.

## **What happened**

Mr A opened a credit card account with Aqua in Sept 2017 with a credit limit of £600. His credit limit was increased to £1,150 in April 2018 and then increased again to £3,150 in 2019.

In summary, Mr A has complained that he should never have been provided with the credit card and that Aqua increased his credit limit irresponsibly. He says he was unemployed when he applied for his Aqua card and his financial position was poor. He doesn't think Aqua carried out sufficient credit checks either when he opened his account or subsequently when his credit limit was twice increased. Mr A thinks that if Aqua had carried out better checks it wouldn't have given him the card and it wouldn't have increased his credit limit. He says that as a result of being given credit by Aqua he is now in debt and has suffered poor mental health.

One of our adjudicator's looked into Mr A's complaint. She thought that it was fair and reasonable for Aqua to have provided Mr A with the card and an initial credit limit of £600. But she thought Aqua shouldn't have increased Mr A's credit limit in April 2018 and that his account should have been frozen from August 2019.

Aqua has agreed with the adjudicator's recommendation and says it has refunded all interest and charges added to Mr A's account since April 2018, plus 8% simple interest leaving an outstanding balance at the time of just over £2,445.

Mr A says he accepts he was responsible for making some payments, but he thinks the outstanding balance he is being asked to repay is too high. Mr A thinks it would be fairer if he just made payments towards his initial borrowing of £600.

As this matter hasn't been settled, it has been passed to me to make a final 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.

We've set out our approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding Mr A's complaint.

The rules and regulations throughout Aqua's lending relationship with Mr A required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he 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 Mr A. In practice this

meant that Aqua had to ensure that repaying the credit wouldn't cause Mr A undue difficulty or adverse consequences.

Aqua's checks had to be proportionate to the specific circumstances of the credit application. These checks could consider a number of different things, but there was no set list of checks Aqua had to do. With this in mind, I think less thorough checks might be reasonable and proportionate in the early stages of the lending relationship.

I've kept all of this in mind when thinking about whether Aqua did what it needed to before initially agreeing to open Mr A's credit card account.

Aqua says its decision to offer credit is based on the information supplied at the time the account was opened alongside other information it holds and its internal approach to risk. Aqua says it found some adverse information in its checks, but overall Mr A passed the 'affordability and financial difficulties' checks. Aqua says that from the checks it carried out, it had no concerns about Mr A's ability to afford the credit he was being offered.

From what I've seen, Mr A told Aqua he was employed with an annual income of £28,000 when he applied to open his account. I think it Aqua could have asked Mr A for more information about his regular expenditure before it opened his account. It is difficult to establish whether repayments are affordable without an understanding of a consumer's normal costs. But even if Aqua had asked Mr A for more information about his expenditure, I don't think it would have made a difference to Aqua's decision to open the account.

Mr A thinks Aqua's checks didn't go far enough. But I don't think there was enough recent, adverse information uncovered in Aqua's credit checks that ought it reasonably to have led Aqua to carry out more in-depth checks. I don't think it would've been proportionate for Aqua to ask Mr A for the amount of information that would be needed to show the credit was unsustainable before opening the account and agreeing the initial credit limit. Overall, I don't think Aqua was wrong to open Mr A's account or to offer him an initial credit limit of £600.

*Should Aqua have increased Mr A's credit limits?*

From what I've seen of Mr A's financial circumstances and the way he used his account, I think Aqua ought not to have increased Mr A's credit limit in April 2018 and I think it ought reasonably to have frozen the account from August 2019. However, Aqua has already agreed with this outcome. So, I don't need to consider this issue any further apart what Aqua must do to put things right, which I set out below.

*Has Aqua acted unfairly or unreasonably in some other way?*

Mr A thinks that Aqua hasn't treated him fairly and it continued to ask him for payments despite knowing he was suffering ill health and financial problems. I am sorry that Mr A has been in poor health, but it seems that Aqua did ask Mr A to contact it to discuss his concerns. Overall, I can't fairly say that Aqua has acted unreasonably or unfairly towards him.

### **Putting things right**

I've thought about what's fair and reasonable in the circumstances of this case.

Aqua should:

- Refund the additional interest and charges that it added to Mr A's account as a result of the credit limit increase it applied in April 2018. Mr A should just be charged interest on the previous limit of £600. All interest and charges should also be

refunded from August 2019 onwards.

- Payments made since the first credit limit increase in April 2018 should be deducted from the account's amended balance and any excess refunded to Mr A with 8% interest calculated from the date of overpayment to the date of settlement. HM Revenue & Customs requires Aqua to take off tax from this interest. Aqua must give Mr A a certificate showing how much tax it's taken off if he asks for one.
- Aqua remove any negative information recorded on Mr A's credit file from April 2018, once any outstanding balance has been cleared.

Aqua has now told us that it has refunded all interest and charges applied to Mr A's account since April 2018 and applied 8% interest, which left an outstanding balance of just over £2,445.

Aqua has provided a breakdown of its calculations and it has also said it will amend Mr A's credit file straight away. I think this is fair and reasonable in the circumstances of this case and goes somewhat beyond what I think Aqua has do to put things right.

Mr A thinks the amount he is still being asked to pay is too high and that he should only make repayments towards his original credit limit of £600. I've not seen anything which makes me think Aqua's calculations are incorrect or unfair. Mr A has had the benefit of the credit provided. I think it is fair and reasonable for him to repay any outstanding balance, after the account balance has been re-worked as set out above.

In the circumstances, I am not going to ask Aqua to anything more than I set out above, but I expect Aqua to treat Mr A positively and sympathetically and try to arrange a repayment plan that is affordable for him, in order that he can repay the outstanding balance on his account.

### **My final decision**

My final decision is that I uphold Mr A's complaint and direct New Day Limited trading as Aqua to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 June 2021.

Sharon Parr  
**Ombudsman**