

Complaint

Mr H says that NewDay Ltd (trading as “Aqua”) irresponsibly lent to him. He said any affordability checks would have shown that he wasn’t fit to be lent to.

Background

Mr H was provided with an Aqua credit card with an initial credit limit of £250 in August 2017. In November 2017, the credit limit was increased to £1,150. The limit was then increased to £2,150, in March 2018, and in July 2018 the credit limit was increased to £3,900. In March 2019, Aqua decided to reduce Mr H’s credit limit back down to £2,000. And in October 2019, Aqua provided Mr H with a loan for £7,500. The loan had an APR of 29.9%, total interest of £4,653.32, and was due to be repaid in 48 monthly instalments of £253.19.

Mr H subsequently complained to Aqua about the credit card in 2019 and his loan in early 2020. Aqua didn’t uphold either of Mr H’s complaints. In its view it carried out proportionate checks before agreeing to advance the credit that it did and these checks showed Mr H could afford to repay what he was lent.

Mr H remained dissatisfied and he referred his complaint to our service. Mr H’s complaint was then considered by one of our investigators. He thought that Aqua shouldn’t have agreed any of the additional credit advanced from the first credit limit increase on the credit card, in November 2017, onwards. Aqua disagreed and asked for an ombudsman’s decision.

My findings

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 considered this while deciding Mr H’s complaint.

Having carefully considered everything provided, I think that there are three overarching questions that I need to consider in order to provisionally decide what’s fair and reasonable in all the circumstances of Mr H’s complaint. These questions are:

- Did Aqua carry out reasonable and proportionate checks to satisfy itself that Mr H would be able to repay what he borrowed in a sustainable way at the time of each lending decision (in other words - when initially providing the card, then each time it increased the credit limit and when it provided the loan)?
 - If not, what would reasonable and proportionate checks more likely than not have shown?
- Bearing in mind the circumstances, at the time of each additional advance in credit, was there a point where Aqua ought reasonably to have realised it was increasing Mr H’s indebtedness in a way that was unsustainable or otherwise harmful and so shouldn’t have provided further credit?

- Did Aqua act unfairly or unreasonably towards Mr H in some other way?

I'll consider each of these questions in turn.

Did Aqua carry out reasonable and proportionate checks to satisfy itself that Mr H would be able to repay what he borrowed in a sustainable way at the time of each lending decision?

The rules and regulations throughout Aqua's lending relationship with Mr H 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 H*. In practice this meant that Aqua had to ensure that making the payments to the credit wouldn't cause Mr H undue difficulty or adverse consequences. In other words, it wasn't enough for Aqua to simply think about the likelihood of it getting its money back, it had to consider the impact of any repayments on Mr H.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether Aqua did what it needed to before initially agreeing to Mr H's credit card and each time it increased his credit limit.

For the initial lending decision on the credit card, Aqua says that Mr H passed its affordability checks which were based on external credit bureau data and in line with Financial Conduct Authority ("FCA") guidelines. It hasn't really provided the detail in relation to what these searches showed but it says Mr H was only in arrears on one account and didn't have any defaults, which meant that he fell within its lending criteria. For the limit increases, Aqua says it reviewed how Mr H was using his card, along with how he was managing his credit commitments and made risk-based assessments to ensure it was lending appropriately. In its view, these reviews suggested Mr H could afford the additional credit offered.

For Mr H's loan, Aqua said all due diligence was taken and appropriate checks made in line with the guidelines set by the FCA. It used data, including an affordability calculator, provided by credit reference agencies and also referred to data held by the Office of National Statistics for the purposes of validating Mr H's expenditure. In the event that the data indicated Mr H had overstated his income, proof of that income would be requested. But the data it received in this case indicated that Mr H's income exceeded his monthly living expenses. And it was satisfied that the information provided met its affordability and lending policy, so Mr H's loan application was approved.

The initial decision to provide Mr H with a credit card with a limit of £250

Mr H was given a credit facility where there was an expectation that he'd repay what he borrowed plus the interest due within a reasonable period of time. The relevant rules, regulations and guidance in the period Aqua lent to Mr H don't set out what a reasonable period of time is. So I think it's important to note that a reasonable period of time will always be dependent on the circumstances of the individual case.

That said, Mr H's declared income at the time together with there not being anything too concerning on his credit file leads me to think that it was reasonable and proportionate for Aqua to conclude Mr H would be able to repay £250 within a reasonable period of time. So I don't think that Aqua did anything wrong when it decided to provide Mr H with a credit card that had an initial limit of £250.

The credit limit increases from November 2017

Aqua offered Mr H a credit limit increase of £900 (taking the total amount of credit available to him to £1,150) in November 2017. In my view, this was a significant increase and Aqua needed to ensure Mr H could sustainably repay a balance of £1,150 within a reasonable period of time. Aqua's correspondence appears to suggest that its decision to increase the credit limit on Mr H's account was based on his account conduct and management. I have significant concerns with the general principle of this approach. It is not clear to me why a borrower who is able to successfully manage a given credit limit can then automatically be deemed, without further checks, to be able to successfully manage a higher limit. It seems to me this logic would likely lead to continually increasing limits, unless or until problems arise.

In any event, even if I put my concerns about the approach in principle to one side, in this case, I've seen that after opening the account Mr H immediately made a balance transfer taking him close to his credit limit. He then only made minimum payments to the account from this point until the limit was increased. Indeed, it looks like Aqua only received a total of £15 in payments from Mr H before it decided to offer him an additional £900. I can't see how Mr H paying £15 over the course of three months was any sort of indication that he could repay a further £900 within a reasonable period of time, given this won't have been enough to have even covered the minimum payment, on the new limit, for a month.

I'm also concerned that while Aqua says it also reviewed how Mr H was managing his other credit commitments as part of its lending decisions, it doesn't appear to have taken into account that Mr H's debts elsewhere had doubled from almost £6,000 to almost £12,000. And I don't think that the position was much better at the time the second increase was offered in February/March 2018 either. By this stage Mr H had made a further two payments of £5. And his debt elsewhere had increased to £14,000.

I'm perplexed at how, in August 2017, Aqua managed to conclude that Mr H was only able to sustainably repay £250 when its checks suggested he had no external debt and yet somehow also conclude Mr H was able to sustainably repay £1,150 and £2,150 a mere

matter of months later, when he now owed approaching £12,000 and £14,000 elsewhere, simply because it had received £15 and £25 in payments.

In my view, Mr H's management of his existing credit did not in itself demonstrate his ability to sustainably repay any further credit (for reasons I'll go on to explain in the next section of this decision, I think it demonstrated the opposite was the case). And as such I'm not persuaded that the checks Aqua carried out – from the first credit limit onwards (including Mr H's loan) were reasonable and proportionate.

As I don't think that Aqua carried out proportionate checks before providing the credit it did from the first limit increase onwards, I'd usually go on to recreate what a proportionate check is more likely than not to have shown. However, for reasons I'll go on to explain in the next section of this provisional decision, I don't think that it is necessary for me to do that here.

Bearing in mind the circumstances, at the time of each lending decision, was there a point where Aqua ought reasonably to have realised it was increasing Mr H's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?

I'm mindful that the relevant rules and guidance makes it clear that a lender shouldn't continue offering credit where the borrowing is unsustainable or otherwise harmful and/or where it's apparent the borrower may be experiencing financial difficulties. So in addition to assessing the circumstances behind each *individual* lending decision, I also think it's fair and reasonable to look at what unfolded during the course of Mr H's customer relationship with Aqua.

I've already explained why, I think that reasonable and proportionate affordability checks weren't completed from the first credit limit onwards. Mr H's account conduct and external debt did not demonstrate an ability to sustainably repay additional credit. In my view, Mr H's account management and his increasing indebtedness showed that he may well have been struggling financially. Mr H didn't make a payment above the minimum payment until his seventh payment. Aqua will also be aware that it was required to monitor Mr H's repayment record and offering assistance where it appeared that he might have been experiencing financial difficulty.

I don't think that more increasing Mr H's credit limit to an amount almost 16 times the initial limit – in the less than a year period since the card was opened and therefore offering substantially more credit at an APR of 32.2% - when Mr H was already making little impact on his existing debt was offering assistance. In my view, Aqua increasing Mr H's credit limit in this way and in these circumstances was adding to any potential financial difficulty rather than offering assistance.

I'm also astounded by Aqua's decision to offer Mr H a loan for £7,500 in the circumstances that it did in October 2019. Aqua had already determined that there was a danger Mr H already had too much debt and reduced the credit limit on his credit card to £2,000, just over half the existing limit, in March 2019. Yet it somehow thought Mr H could sustainably repay almost four times the amount of the reduction a mere matter of months later. And most astonishingly of all, Aqua advanced these funds (using ONS data to assess affordability) even after having received a complaint from Mr H about irresponsible lending on his Aqua card.

In my view, Aqua increasing Mr H's credit limit and advancing further funds in this way – when the limit decrease suggested that Aqua suspected (and Mr H's account management was clearly demonstrating) an inability to manage existing debt - unfairly increased and prolonged his indebtedness. I think Aqua ought fairly and reasonably to have realised Mr H's

existing debt had already become a problem and taken steps other than continuing to provide further expensive credit. Instead, its actions meant Mr H paid Aqua high amounts of interest for the privilege of it allowing him to delay dealing with his unsustainable debt.

Given all of Aqua's obligations and what I think is fair and reasonable taking into account the circumstances and everything I've covered in this section, I find that Aqua ought fairly and reasonably to have realised it was increasing Mr H's indebtedness in a way that was unsustainable or otherwise harmful. And so it shouldn't have provided any of the credit limit increases on Mr H's credit card or the loan in October 2019.

Did Aqua act unfairly or unreasonably towards Mr H in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Aqua acted unfairly or unreasonably towards Mr H in some other way.

So I find that Aqua didn't act unfairly or unreasonably towards Mr H in some other way.

Conclusions

Overall and having carefully thought about the three overarching questions, set out on page one of this decision, I find that:

- Aqua *did* complete reasonable and proportionate checks on Mr H to satisfy itself that he was able to sustainably repay a credit card with an initial credit limit of £250 in August 2017;
- Aqua *didn't* complete reasonable and proportionate checks on Mr H to satisfy itself that he was able to sustainably repay what he owed for any of the credit limit increases offered on the credit card or the loan offered in October 2019;
- Aqua ought fairly and reasonably to have realised that the credit limit increases *and* the loan for £7,500 were unsustainable or otherwise harmful for Mr H and were unfairly and excessively increasing his overall indebtedness;
- Aqua *didn't* also act unfairly or unreasonably towards Mrs W in some other way.

The above findings leave me reaching the overall conclusion that Aqua unfairly and unreasonably provided Mr H with the credit limit increases on his credit card and a loan.

Did Mr H lose out as a result of Aqua's shortcomings in relation to his account?

As Mr H had to pay a significant amount of interest and charges as a result of his credit limit unfairly being increased and as a result of being provided with his loan, I think that he lost out because of what Aqua did wrong. So Aqua should put things right.

Fair compensation – what Aqua needs to do to put things right for Mr H

Having carefully considered everything, given the particular circumstances of Mr H's complaint, I think that Aqua needs to do the following to put things right:

Mr H's credit card

- rework Mr H's account to ensure that interest is only ever charged on the first £250 to reflect the fact that no credit limit increases should have been provided;
- if an outstanding balance remains on Mr H's account once all adjustments have been made Aqua should contact Mr H to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr H's credit file, it should backdate this to November 2017;
- if the effect of all adjustments results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr H along with 8% simple interest† on the overpayments from the date they were made until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Aqua should remove any adverse information from Mr H's credit file.

Mr H's loan

- removing all interest, fees and charges applied to Mr H's loan from the outset. The payments made should be deducted from the new starting balance – the £7,500.00 originally lent. Aqua should treat any payments made should the new starting balance be cleared as overpayments. And any overpayments should be refunded to Mr H.
- add interest at 8% per year simple on any overpayments from the date they were paid by Mr H, if they were, to the date of settlement†;
- remove any adverse information recorded on Mr H's credit file as a result of this loan should all adjustments result in there no longer being an outstanding balance.

† HM Revenue & Customs requires Aqua to take off tax from this interest. Aqua must give Mr H a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr H's complaint. NewDay Ltd should put things right for Mr H in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 August 2021.

Jeshen Narayanan
Ombudsman