

The complaint

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

What happened

Mr W applied for a credit card with Aqua in March 2018 and was accepted with a £900 credit limit. Mr W complained to Aqua and said he was in a desperate situation at the time of his application and shouldn't have been offered the card. He said the credit limit shouldn't have been increased and that the repayments were unaffordable. He wanted Aqua to write off the outstanding balance.

Aqua did not uphold his complaint. They said that they offered credit cards to people who have poor credit, which can help customers improve their credit rating. Aqua said they considered the information on his application – that he was employed earning £21,000 with £11,900 of unsecured debt and had other household income of £21,000 and used the information from credit reference agencies – such as Mr W not having any arrears, public records or defaults showing on his credit file, to accept his application.

Aqua said that they hadn't increased his credit limit from when he opened his account and that Mr W hadn't informed them of his financial circumstances (difficulty) at the time of applying for the credit card.

Mr W brought his complaint to our service. Our investigator upheld Mr W's complaint. She said she didn't think Aqua had completed reasonable or proportionate checks when agreeing to give Mr W credit. She said that Aqua's checks showed that Mr W had nine active accounts at the time of the application and given that Mr W had debt of more than half of his income she thought that it would be proportionate for Aqua to have checked Mr W's expenditure to ensure that any payments would be affordable and sustainable. Our investigator also noted that Mr W had other credit cards with higher credit limits and he was making low monthly repayments in relation to the outstanding balance. He had also occasionally exceeded his credit limit on his credit cards, so our investigator felt that Aqua wouldn't have offered him the credit card had they taken all of these factors into account.

Our investigator also looked at the activity on Mr W's Aqua account. She said that Mr W immediately took cash withdrawals which could indicate financial difficulty and he had exceeded the credit limit on his Aqua account on occasion. Mr W made low payments which could indicate he wasn't able to make payments in a sustainable way and he had incurred late payment fees at times. She felt a fair outcome of the complaint would be to refund all interest and charges applied to the account that Mr W had paid and Aqua should also pay 8% simple interest on that amount from the date the account was opened to the date of settlement. Our investigator said that if Mr W hadn't paid interest and charges, then Aqua should rework the account so no interest and charges are applied. If this results in a credit balance on the account, then Aqua should refund this amount plus 8% simple interest.

Aqua responded to the view of the investigator and queried how seven of Mr W's twelve active credit accounts appeared to be approved after the Aqua card but other lenders have approved Mr W for credit, possibly under similar risk strategies but regardless, further credit

had still been extended. Aqua asked to view Mr W's bank statements for 2018, which our investigator provided them.

Aqua reviewed Mr W's bank statements and said that they reviewed 10 months of statements, focusing on all of the regular outgoings (and using averages, where possible if some outgoings had increased/decreased). Aqua said they did not consider non essential items in the calculations. Aqua surmised that Mr W would have approximately £417 disposable income each month but noted there was £187 worth of additional unsecured debt outgoings which hadn't been regular over the 10 months and appeared to only start a few statements in, so they assumed that these were after the Aqua account was approved.

Aqua also said payments had also been made to a payday loans company, but Mr W had also received funds from the payday loan company. Aqua concluded that even if they had asked for expenditure, they couldn't have concluded with all certainty, that the outcome of Mr W's application would have been different. They said that given the fact that Mr W paid the account for a period of two years before contacting them for assistance, in itself shows that he could and did repay the borrowing. Aqua asked for an Ombudsman to review the complaint.

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.

I've decided to make a provisional decision here as I'm providing further information and this will give both parties a chance to respond to what I've provisionally decided.

Before agreeing to make credit available to Mr W, Aqua 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 the consumer's personal circumstances.

In isolation the credit limit that Aqua offered to Mr W was proportionate compared with his income. But there are other factors which persuade me that further checks should've been made to ensure the credit was affordable and sustainable for him and I'll explain these below.

I've looked at what checks Aqua said they did prior to the credit card application being accepted. They used information from credit agencies and saw that Mr W had nine active accounts/cards. They had no data of any payday loans which were reported to them. But Mr W did take out a payday loan of £600 the prior month to applying for the credit card. So the information which they used to accept his application wasn't fully up to date as this would have reflected that Mr W had an active payday loan when he applied for the Aqua card. So, as Mr W took out a payday loan shortly before applying for the Aqua credit card, this could indicate that the Aqua credit card might not be affordable or sustainable for him in the longer term as he did not have enough disposable income to meet his outgoings. Although Aqua weren't aware of this – as this didn't show up on the information they received from the credit reference agency, if they had asked Mr W for his outgoings as part of a proportionate check where he already had several unsecured borrowings, then I'm persuaded that he would have mentioned this and this would have been one reason to prompt them to do further checks based on the monthly commitment for a payday loan.

Upon closer inspection, Mr W had taken five loans of between £150 and £2,300 between March 2017 and opening his Aqua account. On one hand it may show that Mr W had existing borrowing that he was able to maintain. But on the other hand this potentially shows an overall reliance on other forms of borrowing and that Mr W may not be able to maintain his Aqua credit limit in an affordable and sustainable way. The problem is that Aqua never asked about this and I think that would've been a proportionate step here.

I've considered what Aqua have said regarding his average outgoings after he was accepted for his credit card and I'm persuaded that they wouldn't have known Mr W would keep taking further unsecured borrowing. But while Aqua has said that he had disposable income available after all of the debts were paid on a monthly basis, they didn't know what Mr W's expenditure was like in any detail.

So while these figures aren't fixed and will fluctuate on a monthly basis, I'm persuaded that it's unreasonable not to take into account these types of outgoings when Mr W's account conduct shows that he had other regular outgoings. I think it's reasonable that Aqua should've looked at his outgoings as part of their checks alongside the number of accounts opened, him exceeding his credit limits on occasion and the frequency of new unsecured borrowing in the previous twelve months. I'm persuaded that this would have been proportionate when looking at his credit habits as a whole.

Mr W hadn't had any defaults or County Court Judgments prior to the application. This would suggest that Mr W hadn't had any major issues in maintaining his payments up to the point of acceptance. But it also does not show the full picture here and I think it's that which was missing from the assessment. I'm persuaded that it would have been proportionate to investigate the unsecured debt Mr W had in more detail, along with his outgoings prior to accepting his application. I say this because if these checks had been made then it would show that Mr W had taken on three pay day loans in the previous 12 months and other borrowing which may suggest that Mr W was using unsecured borrowing to meet his outgoings. In addition, it appears from his credit file that he had missed some monthly payments on a loan prior to taking out the Aqua credit card. But from Aqua's checks they provided me it does not appear that they received information about missed payments. So as this information wasn't asked for, it would seem appropriate to consider Mr W's outgoings to clarify that he was able to manage his unsecured borrowings from his earned income.

I asked Mr W why he took out a £10,000 loan shortly after opening his Aqua account. He said this was to consolidate his payday loans and other borrowing. I don't think that would've been clear or foreseeable to Aqua from the information it gained here, but I think the circumstances leading to that loan are something that are likely to have come up if Aqua spoke to Mr W to discuss his situation in more detail – in a proportionate way. Mr W told us he had been using payday loans and credit cards to help him pay for his expenditure prior to taking out the Aqua credit card. And his activity prior to being accepted for the Aqua card does support this statement based on his bank statements prior to the Aqua card being accepted.

Mr W asked for his balance to be written off as part of resolving his complaint. It may help if I say that the general position here is that a business is entitled to ask a customer to repay money that they've borrowed. So as an impartial service, we will rarely recommend that a business writes off a debt where it's rightly owed. Here, I think it's fair that Mr W repays what he borrowed from Aqua, but only that amount. I don't think it's fair that he's disadvantaged by having to pay back any more than this. So my decision is that Aqua should remove all interest and charges applied to the account and recalculate what (if anything) Mr W owes from the initial amount he borrowed. As I'm persuaded that had Aqua completed further checks which may have changed their decision to accept Mr W for the credit card, then I think it would also be fair that Aqua put Mr W in the same position he was in prior to their

acceptance of the credit card. They should do this by removing any adverse information from Mr W's credit file relating to the Aqua credit card."

I invited both parties to let me have any further submissions before I reached a final decision. Neither party responded to my 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 responded to my provisional decision then my final decision and reasoning remain the same. It follows that I'll now be telling Aqua what they'll need to do to put things right here.

Putting things right

In my provisional decision I suggested Aqua should remove all interest and charges applied to the account and recalculate what (if anything) Mr W owes from the initial amount he borrowed. I also suggested Aqua remove any adverse information from Mr W's credit file relating to the Aqua credit card. I'm still satisfied this is a fair outcome for the reasons given previously.

My final decision

I uphold the complaint. NewDay Ltd trading as Aqua should remove all interest and charges applied to the account and recalculate what (if anything) Mr W owes from the initial amount he borrowed.

NewDay Ltd trading as Aqua should also remove any adverse information from Mr W's credit file relating to the Aqua credit card.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 August 2021.

Gregory Sloanes
Ombudsman