

The complaint

Mr S complains that NewDay Ltd trading as Aqua ("Aqua") lent to him irresponsibly.

What happened

Mr S's credit card account was opened in February 2013. Between 2013 and 2016 his credit limit was increased seven times with the final limit reaching £5,650. Aqua haven't given consent for our service to look into the credit limit increases beyond the six years prior to Mr S bringing his complaint. Aqua say Mr S will have been aware of the account opening and credit limit increases at the time so he will have been aware he had cause for complaint. Mr S's credit limit was £2,250 from May 2014. The following credit limit increases were applied within the six years prior to Mr S bringing his complaint:

Date	October 2014	March 2015	August 2015	January 2016
Credit limit	£3,400	£4,150	£4,900	£5,650

Mr S wasn't able to keep up repayments so Aqua defaulted his account and sold the debt to another company. Mr S complained to Aqua as he felt they had unfairly increased his credit limits. Aqua responded and explained they regularly review how customers are using their accounts as well as how they're managing their other credit commitments to ensure they are lending appropriately. They said, prior to each of the increases (in the table above) they sent Mr S a letter allowing him 40 days to opt out of the increase but he didn't. Aqua said Mr S was managing his account well prior to each of the credit limit increases so they didn't have any cause for concern. Aqua said they consider a range of information which includes information from Credit Reference Agencies ("CRAs"), account behaviour with Aqua, if a customer already has an account with Aqua and information a customer has provided on their application.

Our investigator looked into things for Mr S. He thought the complaint relating to the account opening and the credit limit increases prior to October 2014 were out of time. And, in relation to the credit limit increases after this date, he thought Aqua hadn't carried out sufficient checks and had lent irresponsibly. He recommended Aqua refund all interest and charges from October 2014 and remove any adverse information from Mr S's credit file. Aqua disagreed so the matter has come to me for a 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.

Having done so, I've decided to uphold the complaint. And, I think the investigator's recommendation here is a fair way to resolve matters.

I can't see Mr S has challenged the investigator's view about the account opening and the pre-October 2014 credit increases being out of time. I can see Mr S accepts he could've contacted us sooner about those parts of his complaint. Aqua have also told us, given the

passage of time, they no longer hold information about the account opening. So, I've focused on the area where there is a dispute – and that's the increases from October 2014.

We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Aqua needed to take reasonable steps to ensure that they didn't lend irresponsibly. In practice this means that they should've carried out proportionate checks to make sure that Mr S could repay the credit in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure.

The first point I've addressed is whether I think Aqua carried out reasonable and proportionate checks. Section 5 of the Consumer Credit (CONC) sourcebook, in place at the time, outline that the assessment that Aqua needed to complete should've been dependent on, and proportionate to, a number of factors – including the amount and cost of the credit and the consumer's borrowing history. CONC also provides guidance on the sources of information Aqua may have wanted to consider as part of making a proportionate assessment. It then gives examples of factors a firm must consider and refers to whether the information the firm has is sufficient and whether to obtain additional information from the customer and any other sources of information to use.

Aqua is free to decide how to set their lending criteria but they should complete proportionate checks to ensure borrowing is sustainable. In this case, I can see that Aqua, when applying the credit limit increases between October 2014 to January 2016, consider information including how Mr S was managing his credit card account and information from a CRA which includes his external credit card debt. I think this information would generally help in building a financial profile of a customer but, in this particular case, I don't think these checks were sufficient. I'll explain why.

Aqua offered Mr S a credit limit increase in October 2014 to £3,400 – this being an increase of £1,150 from his previous credit limit. This represents a 51% increase in the credit limit made available to Mr S. The increases which followed, in order of sequence, brought the credit limit up by £750 (22%), £750 (18%) and £750 (15%). Looking at the first of these credit limit increases, Mr S is given an additional credit facility of £1,150 - taking the total amount of credit available to him to £3,400. In my view, this was a significant increase and Aqua needed to ensure Mr S could sustainably repay a balance of £3,400 within a reasonable period of time. Aqua's correspondence suggests that their decision to increase the credit limit on Mr S's account was based on his account conduct and management as well as information from a CRA. When I consider Mr S's credit limit increased by 51%, I don't think these checks alone provide a complete picture of Mr S's financial position and whether he can sustainably repay additional borrowing. Even if a borrower is able to successfully manage a given credit limit, I don't think this should mean they can then automatically be deemed, without further appropriate checks, to be able to successfully manage a higher limit.

In this case, I think it would've been reasonable for Aqua to ask for a copy of Mr S's bank statements to get a better and more complete picture of his incoming/outgoings and also the balance he's left with at the end of the month. This would've helped Aqua in assessing whether Mr S is left with sufficient balance to be able to sustainably repay any additional borrowing.

Given that I don't think reasonable and proportionate checks were completed in this case, the next point I've considered is, if reasonable and proportionate checks had been completed, would they more likely than not have shown that Mr S was more likely than not unable to sustainably repay what he was being lent.

To help decide this, I've looked at Mr S's bank statements for the three months leading up to each credit limit increase. Leading up to the first increase, this shows that, apart from around two days, Mr S was in overdraft throughout the entire period between July to September. And, for a number of periods this was over £1,000 but largely it was over £500. The statements also show Mr S making monthly payments to debt collection agents. In addition to this, the statements show Mr S is going further into overdraft to repay other lenders. It's therefore clear Mr S was using his overdraft to service other debts – in this case, his account with other lenders. So, I feel if Aqua had carried out reasonable and proportionate checks it would've showed Mr S being in a difficult financial position and needing his overdraft facility to either meet other repayment liabilities or to otherwise make ends meet. This would've highlighted that Mr S wouldn't be able to repay the extra credit in a sustainable manner and without any undue difficulty.

Looking at the three months leading up to the next increase, this shows that, apart from around four days, Mr S was in overdraft throughout the entire period between December 2014 to February 2015. And, for a number of periods this was over £1,000 but largely it was over £500. The statements also show Mr S making monthly payments to debt collection agents. There's a deposit of just over £1,750 in December which brings Mr S's account balance into credit, but this is only for three days after which the account is again overdrawn. The statement for January 2015 shows a similar position although, following the deposit of £1,750, Mr S's account goes from credit to overdrawn on the same day. Again, the statements show Mr S is going further into overdraft to repay other lenders which suggests Mr S was using his overdraft to service other debts. The external data obtained by Aqua from a CRA also shows, when this credit increase was applied in March 2015, Mr S's credit card balance had increased by 65% since his last credit increase. In addition to this, Aqua's own data showing how Mr S has used his card shows cash advances on his credit card in December 2014 and February 2015 – the latter being for £940. So, taking this all into account, I think this again highlights financial difficulties and that Mr S wouldn't be able to repay any further borrowing in a sustainable manner.

Five months later, in August 2015, Mr S's credit limit is increased again. Looking at the three months leading up to this increase, this shows that there's a combined period of around three weeks over the three months (between May to July 2015) where Mr S wasn't in overdraft. And, for a number of periods this was over £1,000 but largely it was over £500. The statements also show Mr S making monthly payments to debt collection agents. Again, the statements show Mr S is going further into overdraft to repay other lenders which suggests Mr S was using his overdraft to service other debts. The statements also show Mr S taking out a number of payday loans. He takes out three loans, for a combined amount of £2,000 in May. This does temporarily bring his account balance into credit, but only for three days after which his account is again overdrawn. The following month, Mr S takes out two further loans. And, on both of these occasions, when the loan arrives into Mr S's account, it still remains in overdraft. I think this shows an increasing reliance on payday loans to reduce other liabilities and make ends meet. The external data obtained by Aqua from a CRA also shows, when this credit increase was applied, Mr S's credit card balance had increased by 19% since his last credit increase. In addition to this, Aqua's own data showing how Mr S has used his card shows a cash advance on his credit card in May 2015. So, taking this all into account, I think this again highlights financial difficulties and that Mr S wouldn't be able to repay any further borrowing in a sustainable manner.

The final increase takes place in January 2016. Looking at the three months leading up to this increase, this shows that there's a combined period of around one week over the three months (between October to December 2015) where Mr S wasn't in overdraft. And, for a number of periods this was over £1,000 but largely it was over £500. The statements also show Mr S making monthly payments to debt collection agents. Again, the statements show

Mr S is going further into overdraft to repay other lenders which suggests Mr S was using his overdraft to service other debts. The statements also show Mr S taking out a payday loan of £750 in October 2015. And, he's still in overdraft even after this arrives into his account. I think this shows Mr S is still reliant on payday loans to reduce other liabilities and make ends meet. The external data obtained by Aqua from a CRA also shows, when this credit increase was applied, Mr S's credit card balance had further increased since his last credit increase. So, taking this all into account, I think this again highlights financial difficulties and that Mr S wouldn't be able to repay any further borrowing in a sustainable manner.

Looking at the few months leading up to all credit limit increases, I think there are consistent themes here which I believe would've highlighted Mr S wouldn't be able to repay the additional credit in a sustainable manner. His bank account was consistently in overdraft throughout those periods, he was using his overdraft to service other debts, taking payday loans to service his overdraft and other liabilities, he was paying debt collection agents and even when large payments deposited in his account brought his account into credit, it wasn't long before the account went back into overdraft. Given the facts in this case, I think Aqua's checks were limited. And, had they carried out reasonable and proportionate checks, I think they would've highlighted Mr S being in financial difficulty and unlikely to repay the additional borrowing without undue difficulty.

Aqua say, whenever the credit limit was increased, they sent Mr S a letter in advance letting him know about it and giving him an opportunity to opt out – but Mr S never declined the increase. Aqua have provided a copy of the letters sent to Mr S prior to the credit limit increases. This says they would like to increase Mr S's credit limit and ask Mr S to consider whether he can afford to pay back any borrowing and if his circumstances are likely to change which may impact his ability to pay back any money. They give Mr S three options, he can contact them to increase the limit immediately, make no contact in which case the limit will automatically increase in 40 days or he can contact Aqua and decline the credit limit increase and/or ask for his limit not to be increased in the future. So, I acknowledge the letters do give Mr S the option to decline the increase but I'm not persuaded this means Aqua have done enough. The evidence I have referred to above clearly shows Mr S was relying on borrowing from one lender to service other debts with other lenders. I believe Mr S's financial position meant he wouldn't have opted out of any credit increase regardless of the level of increase. And the fact that Mr S didn't opt out doesn't change the fact Aqua have a responsibility to make a fair lending decision.

I do acknowledge Aqua's point about Mr S's management of his credit card account and there being no late or over limit fees. Looking through his payment history, I agree it does generally show he makes payments above the monthly interest amount and I can't see he uses the additional credit facility immediately once it becomes available. But, as mentioned above, this only provides a limited picture of Mr S's financial circumstances. And, given the amount of the first increase in October 2014, this should've led to further checks beyond those that were carried out by Aqua. I believe had that been done, then it would've shown a more accurate picture of Mr S's financial circumstances. And, from what Aqua would've identified from those checks – in particular, the bank statements – I think it would've highlighted Mr S wouldn't be able to repay additional borrowing in a sustainable manner.

Aqua say the rules which apply to the credit limit increases in this case are the CONC rules in place between April 2014 and November 2018. Aqua say there's no reference in those rules to a lender using multiple CRAs or to obtain bank statements so they say it's unfair to apply rules retrospectively. I agree with Aqua about the CONC rules applicable at the time not having a specific requirement for those factors, but it's important to remember CONC 5.2.4 [G] in place at the time provides guidance on the sources of information a lender may

want to consider as part of making a proportionate assessment. The rules do make it clear that a firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of the credit and the potential risks to the consumer. And, the risk of credit not being sustainable directly relates to the amount of credit granted. This is what I've taken into account when looking at this complaint. I believe, given the level of credit increases, it was appropriate for Aqua to ask for Mr S's bank statements. And, I've then set out what those bank statements would've shown and how this demonstrated a risk of the credit not being sustainable.

Putting things right

I've taken the view that Aqua lent irresponsibly to Mr S when they increased his credit limit from October 2014. I therefore consider this is irresponsible lending and Aqua should put this right. So, they should refund all interest, fees and charges accrued or incurred on Mr S's account from October 2014 to the date the account was sold. This would put Mr S back in the position he would have been in were it not for the lending decisions taken by Aqua.

Any refund should be paid direct to the company which is now the owner of the account so it can be used against the balance owing.

If however, after the refund is deducted, this results in there being a credit balance in Mr S's favour, Aqua must pay this amount to Mr S together with 8% simple interest, calculated from the dates of any overpayments to the date that the payment is made to Mr S.

If the balance has already been cleared then Aqua should pay the refund to Mr S together with 8% simple interest, calculated from the dates of any overpayments to the date that the payment is made to Mr S.

If there is such a refund, then Aqua should provide Mr S with a certificate showing any taxation deducted.

Aqua must also remove all adverse reporting from Mr S's credit file for this account from October 2014 onwards.

My final decision

My final decision is that I uphold the complaint. NewDay Ltd trading as Aqua must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 December 2021.

Paviter Dhaddy
Ombudsman