

The complaint

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

What happened

Mr E applied online for a credit card from Aqua. This was agreed in April 2019 with a limit of £900. Aqua then increased the limit to £2,150 in July 2019:

Date	Limit
April 2019	£900
July 2019	£2,150

Mr E complained. He said he shouldn't have been given the card in the first place, or the increased limit. He was in financial difficulty at the time, and Aqua should've done more checks. He was now struggling and was in arrears on the card.

Aqua said that Mr E had passed their checks. When he applied for the card, Mr E said he earned £27,000 a year, and had unsecured debts of £2,500. He'd had two defaults – for £1,000 - but the last one was 39 months before. There were no payday loans, or accounts in arrears. There were some searches on his credit file. The card was therefore issued. When they offered the increase to £2,150 in July 2019, Aqua said they'd checked how his account had been conducted, and all was satisfactory. Mr E could've opted out of the offered increase but didn't. After that, Mr E asked for several increases in his limit, but they'd declined. The debt had been passed to a debt collection agency.

Mr E brought his complaint to us. Our investigator said the first issue of the card was OK. But the decision to increase Mr E's limit to £2,150 in July 2019 wasn't. This took place only three months after the card was issued – so Aqua couldn't have seen enough account history to form a view on Mr E's credit standing. In the short time he'd had the card, he'd used it for cash advances, and he had been over the previous limit of £900. So – to increase the limit by more than 100% after such a short time wasn't responsible. She said that Aqua should refund interest and fees on balances over £900 from the time of the increase to £2,150. And – if a credit balance results, then pay interest of 8% simple per annum on the credit balance from July 2019 to date of settlement.

Aqua disagreed. They said that a limit of £2,150 compared to Mr E's salary of £27,000 per annum was still low. While there had been some cash advances, there wasn't enough evidence to say this was a sign of financial difficulty. He'd withdrawn £500 in the three-month period, but he'd also made retail purchases of £670. In June 2019, he paid more than the monthly minimum amount needed. On that basis, they were correct in increasing Mr E's limit. They asked for an ombudsman to look at Mr E's complaint.

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.

All lenders have an obligation to lend money responsibly. We must check whether Aqua acted in line within the Financial Conduct's (FCA) rules on creditworthiness assessment as set out in its handbook, (CONC) section 5.2. These say that a firm must undertake a reasonable assessment of creditworthiness, considering both the risk to it of the customer not making the repayments, as well as the risk to the customer of not being able to make repayments. We look at:

- Whether the lender completed reasonable and proportionate checks to satisfy itself that the borrower would be able to repay any credit in a sustainable way?
- If reasonable and proportionate checks were completed, did the lender make a fair lending decision made bearing in mind the information gathered and what the lender knew about the borrower's circumstances?
- And a reasonable and proportionate check would usually need to be *more* thorough:
 - the lower a customer's income, and the higher amount to be repaid.
 - the greater the number of loans and frequency of loans.
 - the longer the term of the loans

It's important to note that the checks must be proportionate to the amount being lent – so the higher the amount, the greater the checks must be, and the lower the amount, then fewer checks can be made.

In this context, the initial limit of £900 was a modest one – and so Aqua could carry out less checks. But for the increase to £2,150 – especially after a short period of time (three months) – I think Aqua needed to carry out more substantive checks.

On the first issue of the card, I can see that Mr E declared he had annual income of £27,000 and was single. He had a mortgage of £139,000, and other debts of £2,500. There were two defaults for £1,000 – but I agree, they were 39 months before. So, on that basis, I can't disagree that Aqua were right to give Mr E a card with the limit of £900.

But looking at the increase to £2,150 – just three months later. By then, Aqua had only a very limited amount of time to see how Mr E ran his account. And there were some warning signs. He'd gone over his limit once. And he withdrew cash of £500 – this is traditionally a sign of difficulties. Equally, there weren't any significant debts showing outside of Aqua – other than Mr E's mortgage. And – I can see that Mr E had to 'opt in' to the offered increase. But – for a fairly large increase in limit – I just don't think Aqua could've been able to see enough of how Mr E used his account – and therefore how he was able to deal with the debt – in such a short period of time. And as it turned out, Mr E ran into more difficulty after that time – with more cash withdrawals, and over limit fees. He stopped making payments in January 2020, and the debt was passed to a debt collection agency.

So – I don't think Aqua could've been in a position to lend to Mr E responsibly. But equally, Mr E must bear some of the responsibility for the debt and so – he must repay it. And – if there have been entries on his credit file (as I suspect there are) – then these should remain. But I agree that Aqua should refund the interest and fees paid by Mr E on borrowing over £900 since July 2019 (the date of the last increase). This should be credited to his debt, and if a credit balance does result, then he should also receive interest on it at 8% per annum simple from the date of the limit increase to the date of settlement.

My final decision

I uphold this complaint. And NewDay Ltd trading as Aqua must:

- Refund interest and fees to Mr E's Aqua account – on borrowing over £900 with effect from July 2019.
- If a credit balance results the pay credit interest of 8% per annum simple on the credit balance from July 2019.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 23 November 2021.

Martin Lord
Ombudsman