

The complaint

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

What happened

Mr J applied for an Aqua credit card in March 2014 and it was agreed with a limit of £250. Limit increases were offered by Aqua and put in place as follows:

Date	Limit
March 2014 – new card	£250
July 2014	£400
January 2015	£500
October 2015	£1,000
April 2016	£1,750
August 2016	£2,500
February 2017	£3,250
August 2020 (Mr J's request)	£3,450

Mr J complained. He said Aqua didn't complete sufficient checks when offering the increased limits. He had a lot of other debts, including payday loans. He was now in a spiral of debt and had taken other loans to try to make the payments. His credit file had been badly affected. He was suffering a lot of stress.

Aqua said that Mr J had passed their credit checks at each stage. When he applied for the card, he said he was earning £15,000 a year and had other debts of only £400. Aqua couldn't see any signs of problems – there weren't any defaults, payday loans or arrears. When they assessed the increases, they'd looked at how Mr J had used the card and were satisfied the increases were justified. Mr J could've opted out of the increases that they offered but didn't.

Mr J brought his complaint to us. We saw that the limit increases up to and including January 2015 were more than six years before Mr J complained to Aqua – so under our rules, we couldn't look at those. Our investigator advised Mr J of this. He went on to uphold Mr J's

complaint in respect of the limit increases from October 2015 onwards. This was because he could see that Mr J was borrowing up to his limit and making only minimum payments each month. There was also a pattern of missed payments. He didn't believe that the other debts of £64 in October 2015 - which Aqua could see in their searches - could be accurate. He said that Aqua should refund interest and fees charged as a result of the increases since October 2015 - and add 8% simple interest to this. Mr J's credit file should be amended to remove any adverse data for the same period. If the debt had been sold to a debt collection agency, Aqua should take it back onto their books and agree a repayment schedule with Mr J.

Aqua didn't agree and asked that an ombudsman look at Mr J's complaint.

I reached a provisional decision where I said:

I take a different view to our investigator. I think the increases up to and including April 2016 (to £1,750) were OK, but those after that were not. I will explain.

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.

So, I have looked at the increases in the light of this guidance.

When Mr J applied for the card, he told Aqua he was earning £15,000 a year, and was a tenant. He had other debts of £400. Aqua still had that information when they looked at the increases later. We can only look at the increases from October 2015 – because we can only look at events which took place within six years of Mr J's complaint - in April 2021. So – we can't look at what happened before April 2015.

Looking at the first increase from £500 to £1,000 in October 2015. Mr J was borrowing up to the previous limit. And had gone over his limit three times in the last year. He'd also missed two payments. But other than that, things were OK – and Aqua could see that he only had £64 of other debts, with no payday loans. I consider the limit of £1,000 to be modest, and therefore I think Aqua were OK to offer Mr J a new limit of that amount.

Looking at the next increase to £1,750 in April 2016. Again, things looked OK – on balance. Mr J's borrowing had been well within his old limit. No payments had been

missed. Aqua could now see that Mr J had other debts of £1,324 – this had increased but was still OK. There were four payday loans showing – but again, on balance, I think Aqua were OK to offer the increase to Mr J.

But by the next increase, in August 2016 – to £2,500 – there is evidence to say that Aqua should've made more inquiries into Mr J's circumstances. By then, they could see Mr J had used the card for cash withdrawal six times – a sign of problems. The borrowing was continually up to the limit. There were three payday loans showing – and Mr J had other debts which had increased to £2,662. One payment has been missed. And – the increase was only four months since the last one.

These trends continued when the increase to £3,250 was offered in February 2017. There had been three cash withdrawals. Borrowing was up to the limit continually. A payment had been missed. There were three payday loans. And - Mr J's other debts had gone up to £4,385 from £2,662. And – the limit increase was only six months after the last one.

Looking at the last increase in August 2020 – to £3,450. Mr J asked for this one. His borrowing had been up to the limit a lot - and over the limit on three occasions. There had been 12 missed payments. It's not clear what Mr J's other debts were at the time of this increase – as Aqua's data doesn't show it. But I can see that in July 2018 – Mr J's debts were £10,772, with 15 payday loans in operation. This was a big change from the previous figures they saw. By the month after the increase – in September 2020 – Mr J's debts had gone up to £44,380 – so by then, he was in significant debt. I think it's safe to assume that when Aqua looked at the increase in August 2020, Mr J's debts would've been of a similar figure.

And so – I think that up to and including the increase to £1,750 in April 2016, Aqua did complete enough, proportionate checks. But for the subsequent increases from August 2016, I think there's evidence to say that Aqua should've made more inquiries into Mr J's circumstances before offering or agreeing to the increases.

Turning to the remedies. I could see that for all the increases up to February 2017 – Mr J could've opted out of Aqua's offers but didn't. So, he must take some responsibility for what happened. Mr J has had the use of the money, so it's not fair to ask Aqua to write off the debt. But I do think it's fair that they refund all interest and fees charged from August 2016 for borrowing over £1,750. If this clears the outstanding balance, then the resulting credit balance should attract interest at 8% simple from the date of overpayment to the date of settlement. Aqua should also remove any adverse information advised to credit reference agencies for the period from August 2016. It's not clear if Mr J's debt has been passed to a debt collection agency. But – if there is an outstanding debt, Aqua should agree a mutually agreeable payment schedule for it to be repaid – whether the debt is with a debt collection agency or on Aqua's books.]

Responses to the provisional decision:

Mr J didn't have any comments, but Aqua did. They said, in summary:

- The incidence of missed payments and cash withdrawals in the lead up to the limit increases in August 2016, February 2017 and August 2020 were less than I had quoted, and they didn't charge for the 12 missed payments between February 2017 and August 2020.
- They questioned the date and amount of interest to be refunded in the remedy I proposed.

So – I now need 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.

I accept that I overstated the number of times that payments were missed, and cash withdrawals made in the periods up to August 2016 and February 2017– as Aqua have said. But, taken in the round, I still think that Aqua should've done more checks for the increases agreed in August 2016 and thereafter, particularly when seen in the light of Mr J's rising debts shown in Aqua's searches. And, even though Aqua said they didn't charge for the 12 missed payments up August 2020, there were still that number of missed payments - which is the important thing.

Looking at the proposed interest refund – I said that I thought the increase to £1,750 in April 2016 was reasonable, but the increase to £2,500 in August 2016 wasn't. So – it seems fair to ask Aqua to refund the interest for any borrowing over £1,750 with effect from August 2016 – this date being the time when I considered that Aqua should've looked into Mr J's circumstances more closely.

And so – having considered Aqua's comments, my final decision remains the same as I set out in the provisional decision.

My final decision

My final decision is to uphold this complaint. And NewDay Ltd trading as Aqua must:

- Refund interest and fees on borrowing over £1,750 from August 2016 to the date of final decision.
- If the balance is repaid by the refunds, pay 8% per annum simple on the amount overpaid from the date of overpayment to the date of settlement.
- Remove any adverse information reported to credit reference agencies since August 2016.
- Agree a mutually agreeable repayment schedule with Mr J for any remaining borrowing.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 29 December 2021.

Martin Lord
Ombudsman