

The complaint

Mr D complains that NewDay Ltd trading as Aqua have irresponsibly lent to him.

Mr D is represented by a claims management company in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Mr D himself.

What happened

Mr D was accepted for an Aqua credit card in November 2019, with an initial credit limit of £900. The credit limit was later increased to;

- £1,900 on 9 March 2020
- £2,650 on 10 August 2020

Mr D complained to Aqua that they didn't carry out necessary checks before granting him credit, in line with the Financial Conduct Authority (FCA) rules. He said the credit was not affordable. He wanted Aqua to remove the interest applied to the credit card, bringing it back to the principle amount borrowed, refund the interest on repayments made, pay 8% interest on this amount and remove any adverse credit data they had registered with credit reference agencies.

Aqua did not uphold the complaint. They said that when accepting Mr D's application, they based their decision on information from credit reference agencies and from Mr D. They said Mr D told them he was employed with an annual income of £33,000, additional household income of £3,600 and unsecured debt of £9,700.

Data also showed Aqua that Mr D had two defaults totalling £1,900 which were registered 34 months prior to the application, adverse public records which were 29 months prior to the application, no payday loans and no accounts in arrears. As Mr D had met their criteria then his application was approved with a £900 credit limit.

Aqua said that prior to increasing Mr D's credit limit, they had evaluated instances of him exceeding his credit limit, making late payments or missed payments, the payments made, the proportion of the credit he used, how he used the credit limit, internal and external payment plans, payday loan history, arrears status of external accounts and overall external credit available to Mr D and how much of this was used. Aqua said that each credit limit was provided to him correctly and adequate checks were completed to ensure these were affordable.

Mr D brought his complaint to our service. Our investigator upheld his complaint. She said greater consideration should have been given to the value of the defaults and CCJ's in Mr D's name. So she didn't think the checks Aqua completed at the time the account was opened or when the credit limit was increased were sufficient enough.

She said Aqua should refund all interest and charges which had been charged since the opening of his account. She also said that if this showed he's paid too much, Aqua should

refund him any overpayments, adding 8% simple interest. But if there was still an outstanding balance after these adjustments have been made then Mr D should still pay this back. And Aqua should work with him to maintain a suitable repayment plan for this. Our investigator also thought that Aqua should remove any adverse information that may have been recorded on Mr D's credit file.

Aqua asked for an Ombudsman to review the complaint. They said Mr D had often made more than the minimum repayment, they were aware of the adverse credit data Mr D had but this happened a long time before his application was accepted. Aqua also said that their data shows that prior to the credit limit increases, there was no evidence that Mr D was on any repayment plans, showing any arrears or showing any signs of financial difficulty or affordability problems with other lenders.

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."

Before agreeing to approve the credit limit for Mr D, 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 as the consumer's personal circumstances.

Initial credit limit

I've looked at what checks Aqua said they did prior to accepting Mr D's application. They said at the time of applying for the credit card, they considered the information that Mr D had gave them, such as being employed, earnings of £33,000 and they looked at the information on his credit file. Aqua said that Mr D's credit file showed he had external unsecured outstanding debt of £9,700.

But that's not all the credit file showed. It showed that Mr D had defaulted in the past and had a public record. The most recent default was 34 months ago and the public record was 29 months ago. So Aqua would have been aware that Mr D had previously not maintained his agreements. But the data also showed he had no accounts in arrears, no repayment plans and that the adverse credit data was at least 29 months old.

So I've considered if the checks that Aqua carried out were proportionate to the level of credit that Mr D was given. Based on the data showing that Mr D had no accounts in arrears, his last default was nearly three years ago, his last public record was over two years ago and given the low initial credit limit in relation to his earnings, I'm persuaded that the checks Aqua carried out here were proportionate.

It may help to explain here that, while information like defaults and CCJs on someone's credit file may often mean they're not granted further credit – they don't automatically mean that a lender won't offer borrowing. Here, Aqua considered the information that Mr D had on his credit history and still made a decision to lend which, in the circumstances, I think was reasonable.

Credit limit increases

I've looked at the information that Aqua had available to them when they increased Mr D's

credit limit. Firstly from £900 to £1,900 and then to £2,650. The increases happened within a short period of time, March 2020-August 2020. So Mr D's credit limit nearly trebled within a six month period.

Looking at the first credit increase, the credit limit more than doubled. Just before Mr D had his credit limit increased, he had been charged a late fee as he hadn't met his February 2020 payment on time. This may suggest that Mr D may not be able to maintain a higher commitment if he couldn't pay his normal commitment on time.

This isn't all that Aqua's information showed. Their data showed that Mr D's total credit card balances had increased to over £12,500 and he had an active payday loan. I think these factors should have prompted some further questions or checks from Aqua.

I'm persuaded that as a proportionate check, based on the issues which I've previously mentioned that this is something Aqua should have done to get a better understanding of how Mr D was managing his accounts around the time of the credit limit increases and whether the payday loan was for a one off large purchase which he didn't have the savings to make the purchase, or whether this was an indication that his income wasn't enough to meet his outgoings at the time of the credit limit increases.

So on the face of it, it does look like Aqua should've looked more closely into this. But the problem for me here is that my role is impartial. That means I have to be fair to both sides and although I'm satisfied that Aqua should've done more checks here – I can't say whether that would've revealed further information which means they wouldn't have lent. We've asked Mr D and his representative for further information here on a number of occasions, but we've never received a reply from Mr D. That means that it wouldn't be fair to me to say that Aqua shouldn't have lent here, because I don't know what further checks would reveal. So, it follows that I can't ask Aqua to do anything further here."

I invited both parties to let me have any further submissions before I reached a final decision. Aqua accepted the provisional decision. Mr D did not respond 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 have provided me with any further information to consider, then my final decision and reasoning remains the same as in my provisional decision.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 16 February 2022.

Gregory Sloanes
Ombudsman