

## **The complaint**

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

## **What happened**

Mr S applied for a credit card with Aqua in March 2019. Aqua approved the application and gave Mr S a credit card with an initial credit limit of £900.

Mr S says that Aqua lent to him irresponsibly.

Aqua didn't uphold Mr S's complaint. But as gesture of goodwill it offered to refund all interest and fees. The refunds were applied to reduce the balance on the account.

Mr S remained unhappy and complained to this service.

Our investigator upheld the complaint. He said that Aqua hadn't carried out reasonable and proportionate checks and that had it done so, it would've seen that Mr S was struggling financially and would've been unlikely to be able to sustainably repay the borrowing. The investigator concluded that Aqua had lent irresponsibly.

Mr S didn't agree with the investigators view. He said he thought the balance on the account should be written off.

## **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.

Before agreeing to lend, the rules say that Aqua had to complete reasonable and proportionate checks to ensure Mr S could afford to repay the debt in a sustainable way. These affordability checks need to be focussed on the borrower's circumstances. The nature of what's considered reasonable and proportionate will vary depending on various factors including the amount of credit, the total sum repayable, the amount of repayments, the cost of the credit and the customers individual circumstances.

There's no set list of checks a lender must complete. But lenders are required to consider the factors I've set out above when deciding what's reasonable and proportionate.

Our approach to complaints about irresponsible and unaffordable lending is set out on our website, I've had this approach in mind when considering Mr S's complaint.

I've thought about whether Aqua carried out reasonable and proportionate checks and whether the lending decision was fair. Aqua has said it used information provided by Mr S and verified this using external sources and credit bureau tools.

I've looked at the information gathered by Aqua. The credit checks shows that Mr S had 8 accounts in default with a total default balance of around £40,000. I think this should've alerted Aqua to the fact that Mr S was in financial difficulty and that it was unlikely that he

would be able to afford to sustainably repay further borrowing.

Looking at everything, I think Aqua lent irresponsibly to Mr S.

### **Putting things right**

Because I think Aqua lent irresponsibly to Mr S, I don't think it's fair to charge interest or charges under the agreement. However, Mr S has had the benefit of the money he's spent on the account so I think he should pay back any balance outstanding after interest and charges have been removed.

NewDay Ltd trading as Aqua should: -

Rework the account removing all interest and charges

If the rework results in a credit balance, this should be refunded to Mr S along with 8% interest per year calculated from the date of each overpayment to the date of settlement. Aqua should also remove all adverse information regarding the account from Mr S's credit file.

If, after the rework there is a balance outstanding, Aqua must agree an affordable repayment plan with Mr S. Once Mr S has cleared the balance, any adverse information in relation to the account should be removed from Mr S's credit file.

As Aqua has sold the account to a third party it should either buy back the account or liaise with the third party to ensure that the redress is carried out.

HMRC requires Aqua to deduct tax from any award of interest. Aqua must give Mr S a certificate showing how much tax has been deducted if he asks for this.

### **My final decision**

My final decision is that I uphold the complaint. NewDay Ltd trading as Aqua must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 May 2023.

Emma Davy  
**Ombudsman**