

## **The complaint**

Mr C complains that NewDay Ltd trading as Aqua lent irresponsibly when it approved his credit card application and later increased the credit limit on several occasions.

## **What happened**

The background to this complaint and my initial conclusions were set out in my provisional decision. I said:

*Mr C applied for an Aqua credit card in November 2018. In the application, Mr C said he was employed with an income of £26,000. The application recorded that there was other household income of £1,171 a month. Aqua carried out a credit search and found around £2,900 of other unsecured debt in Mr C's name with no arrears. Aqua found two defaults and a county court judgement in Mr C's name. The application was approved with a credit limit of £300.*

*Mr C used the account and, within the first month, borrowed to the credit limit. In February 2020 Aqua increased the credit limit to £1,050. The credit limit increased to £2,505 in September 2020 then to £2,150 in May 2021.*

*In August 2021 Aqua approved a three month payment holiday. And in May 2022 Mr C completed an income and expenditure assessment with Aqua after asking to agree a payment arrangement. Aqua says the information available showed Mr C was able to make his contractual monthly payment, so no arrangement was agreed.*

*Mr C complained to Aqua that it had lent irresponsibly and failed to offer reasonable assistance while he was in financial difficulties. Aqua sent Mr C a final response in May 2022 but didn't agree it had lent irresponsibly or treated Mr C unfairly.*

*An investigator at this service upheld Mr C's complaint. They weren't persuaded that Aqua had completed proportionate checks before increasing Mr C's credit limit above £300. The investigator asked Aqua to refund all interest and charges applied over balances of £300 from February 2020 onwards. Aqua didn't accept and asked to appeal so Mr C's complaint has been passed to me to make a decision.*

## **What I've provisionally decided – and why**

*I've considered all the available evidence and arguments to decide what's fair and I've taken the step of issuing a provisional decision as whilst I've reached broadly the same outcome as the investigator, I've done so for different reasons. In addition, I've also used a different method to arrive at a fair settlement. As my decision has been made for different reasons to the investigator, I'm giving both parties a chance to respond before I make my final decision.*

*Our website sets out how we handle complaints relating to irresponsible lending. I've assessed Mr C's complaint in line with our approach. Having considered all the available information, I've decided to uphold Mr C's complaint. I'll explain why.*

*Aqua needed to ensure it lent responsibly. That means Aqua needed to complete proportionate checks to understand whether Mr C could afford to repay any credit it provided. Generally, our approach is that it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.*

*The longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it had continued to carry out proportionate checks to ensure it lent in a responsible manner.*

*Looking at Mr C's case, I can see Aqua took details of his income and circumstances as well as completed a credit check when the application was approved. The initial credit limit it approved was £300 which is reasonably modest. I note Aqua found around £2,900 of unsecured credit. And whilst it found some adverse credit, it wasn't recent and fell within Aqua's lending criteria. In my view, the information obtained and checks Aqua completed were reasonable and proportionate when Mr C applied. I haven't been persuaded Aqua lent irresponsibly when it approved a credit card with a £300 limit.*

*Like the investigator, I'm not persuaded that Aqua completed proportionate checks when it increased the credit limit from £300 to £1,050 in February 2020. Whilst the amount of the increase was £750, it was over three times the original credit limit Aqua approved. In addition, Mr C's unsecured borrowing figures had increased from £2,900 when he applied in 2018 to around £6,000 at the point the credit limit was increased. That's a substantial increase in Mr C's borrowing in a reasonably short period of time. I also note Mr C's balance exceeded the credit limit around three months before the increase was approved and that a payday loan had been opened around two months earlier. All these points indicate Mr C may've become reliant on credit to make ends meet and should've caused Aqua to carry out more comprehensive checks before deciding to increase the credit limit.*

*In order to get a picture of what Aqua would've seen if it had carried out better checks we asked representatives acting for Mr C to send us bank statements showing his income and regular outgoings. But Mr C's confirmed he doesn't have bank statements going back to the period before Aqua increased the credit limit in February 2020. However, we've got bank statements that start in February 2020 which is the month Aqua increased Mr C's credit limit. Whilst the bank statement doesn't cover the period immediately before the credit limit increase, it does show Mr C's income and outgoings immediately afterwards. And I'm satisfied it's likely the statements show a similar level of activity as the ones covering the period immediately before Aqua increased the credit limit in February 2020.*

*I've reviewed the bank statements and whilst they don't show a high level of outgoings for living expenses, they do show evidence of online gambling most days. In my view, the bank statements show Mr C was using his account to gamble in a way that wasn't sustainable in the long term. I think the level and frequency of the gambling transactions was such that I'm not persuaded Aqua have approved further borrowing if it had carried out better checks. I'm satisfied that Aqua lent irresponsibly when it approved the credit limit increase to £1,050 in February 2020.*

*Aqua increased the credit limit to £2,050 in September 2020. By this point, Mr C's unsecured credit had increased further to around £7,150. The credit limit was doubling from £1,050 to £2,050. And I note Mr C was charged for being over the credit limit the month before the new credit limit was put in place. Again, I think the above points should've caused Aqua to carefully consider whether further borrowing was affordable for Mr C by completing better checks.*

*I've seen bank statements for the months preceding the credit limit increase to £2,050. The bank statements continue to show daily gambling transactions. To me it appears Mr C was, at this point, using credit to sustain his outgoings – including the gambling transactions. Taken with the increase in Mr C's other unsecured credit, I think Aqua would've declined further borrowing if it had carried out more comprehensive checks like looking at his bank statements. In my view, Aqua lent irresponsibly when it approved Mr C's credit limit increase to £2,050.*

*Aqua went on to increase the credit limit to £2,150 in May 2021. Aqua's told us Mr C requested this increase. But Aqua was still obliged to ensure it lent in a responsible way. Aqua's affordability data shows after it increased the credit limit to £2,050 in September 2020 Mr C's balance was consistently over the agreed limit. Mr C incurred overlimit fees during this period. Given Mr C's balance was over the £2,050 credit limit for seven months prior to the increase to £2,150 I think Aqua should've considered whether further borrowing was sustainable. I also note that by this point Mr C's other unsecured credit had increased to around £11,300. Again, I think the increase in unsecured borrowing since Mr C opened the Aqua credit card should've caused it to carry out more comprehensive checks before offering further borrowing.*

*In line with the other bank statements I've seen for Mr C, there were daily instances of gambling showing on his bank statements. And I think this, in addition to the other points I've noted above, would've shown Aqua that Mr C was unlikely to be in a position to sustainably repay further borrowing. So whilst I accept Mr C may've requested the credit limit increase to £2,150, my view is that Aqua was still obliged to complete reasonable and proportionate checks. And I'm satisfied that, had it done so, Aqua wouldn't have approved the final credit limit increase to £2,150.*

*As I think Aqua lent irresponsibly from the point it increased Mr C's credit limit to £1,050, I intend to tell it to refund all interest, fees and charges applied on balances over £300 from February 2020 to date. Based on the information I've seen so far, I intend to uphold Mr C's complaint.*

I invited both parties to respond with any additional comments or points they wanted me to consider before I made my final decision. Mr C's representatives responded to confirm he had nothing further to add. Aqua responded to confirm the refund amount due to Mr C if he accepts.

### **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 has provided new information for me to consider, I see no reason to change the conclusions I reached in my provisional decision. I still think Mr C's complaint should be upheld, for the same reasons.

### **My final decision**

My decision is that I uphold Mr C's complaint and direct NewDay Ltd trading as Aqua to settle as follows:

- Rework the account removing all interest, fees and charges applied to balances above £300 from February 2020 to date
- If the rework results in a credit balance, this should be refunded to Mr C along with 8% simple interest per year\* calculated from the date of each overpayment to the

date of settlement. NewDay should also remove all adverse information recorded after February 2020 regarding this account from Mr C's credit file

- Or, if after the rework an outstanding balance remains, NewDay should arrange an affordable repayment plan with Mr C for the remaining amount. Once Mr C has cleared the outstanding balance, any adverse information recorded after February 2020 in relation to the account should be removed from his credit file

\*HM Revenue & Customs may require NewDay to take off tax from this interest. If it does, NewDay must give Mr C a certificate showing how much tax it's taken off if he should ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 June 2023.

Marco Manente  
**Ombudsman**