

## **The complaint**

Mr S is complaining that NewDay Limited trading as Aqua lent to him irresponsibly by providing him with, and then increasing the credit limit on, a credit card account. Mr S is represented in his complaint, but for ease I've written as if we've dealt directly with him.

## **What happened**

In June 2018, Aqua approved Mr S's application for credit, giving him a credit limit of £1,200. They increased the limit to £1,400 in October 2018, £2,150 in February 2019, £3,900 in June 2019 and £4,900 in April 2020. Mr S stopped making the payments required in September 2020 and the account was defaulted in March 2021.

Mr S complained to Aqua in May 2023. In their response, Aqua said they'd carried out a credit check with a Credit Reference Agency (CRA) before lending to Mr S and before each credit limit increase (CLI). And they said they'd looked at Mr S's account behaviour before each CLI.

Aqua noted that when he applied, Mr S had told them he was employed with an annual salary of £36,000 and had unsecured debt of £6,900. Aqua also said the credit check at this point showed Mr S had a default and three adverse public records, but all of these had been recorded more than two years before his application. They also noted he had a current payday loan with an outstanding balance of £767.

In relation to the CLIs, Aqua said they were confident each of them had been appropriate up until the last increase in April 2020. They said they were upholding Mr S's complaint about the final increase and would pass a refund of £501.45 to the debt collection business which had acquired Mr S's account.

Mr S remained unhappy and brought his complaint to our service where one of our investigators looked into it. She said she didn't think Aqua should have lent to Mr S from the start, because of the presence of adverse public information and payday loans on his credit file.

Aqua disputed our investigator's view, saying that Mr S had regularly made payments in excess of the contractual amount, there were no reports of delinquency from the CRAs for other creditors, and Mr S seemed to have been managing his credit well. They said they are second chance lenders and so consider affordability rather than adverse credit information preventing a successful application. Aqua asked for an ombudsman's decision – and the matter came to me. I issued a provisional decision on 18 March 2024 saying I was inclined to partially uphold Mr S's complaint. In that I said:

### "Initial lending decision"

*Did Aqua carry out proportionate checks before deciding to lend to Mr S?*

*Before deciding to lend to Mr S, Aqua asked him for his gross salary and household income. He said his gross annual salary was £36,000 and his partner's net monthly income was £1,300.*

*I've seen no evidence that Aqua verified Mr S's income. CONC 5.2A.16G says it is not generally sufficient for a firm to rely solely on a statement made by the customer of their current income. Instead, a firm should obtain some independent evidence. So it follows I don't think Aqua did proportionate checks.*

*Aqua also looked at Mr S's credit file. They've not shared the report they looked at but their summary says Mr S had three adverse public records, one default, and a payday loan with a balance of £787. The summary shows the adverse markers were all historic, with the most recent being 24 months before Mr S's application. So I can understand they wouldn't have caused concern to Aqua. But I think the active payday loan should have prompted Aqua to consider Mr S's financial circumstances more carefully.*

*Aqua's summary also shows Mr S had a mortgage with a balance of £148,000 and unsecured creditors totalling £6,900. I can't see that they've noted Mr S's monthly credit commitments. I'm inclined to say they also should have obtained this information to inform a proportionate affordability assessment.*

*What would Aqua have found if they had carried out proportionate checks?*

*Aqua were approving a credit limit of £1,200. As it was revolving credit, there's no set amount that needed to be repaid each month, but CONC 5.2A.27 R requires a firm to assume when carrying out its assessment that the entire credit limit is drawn down at the earliest opportunity and repaid in equal instalments over a reasonable period. I think Aqua could have reasonably assumed Mr S would need to pay them around £70 per month.*

*If Aqua had checked Mr S's income, I'm inclined to say they'd have seen it was around £1,600 per month – that's what I've seen on his bank statements for the months preceding his application.*

*And if they'd noted the amount Mr S needed to pay for his mortgage each month, I think they'd have said this was around £600 per month – again this is what I've seen on his bank statements. In relation to Mr S's unsecured credit of £6,900, it appears from his credit file that this made up of an overdraft facility and revolving credit. So I'd expect Aqua to have included around 5% of this figure to represent the amounts Mr S would need to pay to clear those debts in a reasonable timeframe. That's around £345 per month.*

*In summary, including the repayments on the Aqua credit card, Mr S would need to pay his creditors around £1,015 per month, leaving around £585 for his other living expenses. I think if Aqua had done proportionate checks, they'd have arrived at this figure and been able to fairly decide that this ought to be enough and therefore that the credit limit of £1,200 was affordable for Mr S.*

### Subsequent CLIs

*October 2018 – to £1,400*

*By October 2018, Mr S had had his account with Aqua for four months. His account history shows he was paying slightly more than he needed to each month, and was within his credit limit, with no arrears or late payments in that period.*

*Aqua checked Mr S's credit file with two different CRAs. This showed he no longer had any active payday loans, and that he had no new adverse credit markers. It showed Mr S's total credit had increased, to just over £9,000, and I can see from Mr S's credit report that this included two unsecured loans, with monthly payments totalling around £184.*

*Aqua's limit increase was only £200 at this point, so would have only required a small increase, of around £10, in his monthly payments. The combination of the additional loans and this CLI could therefore have been expected to reduce Mr S's available income to around £400 per month. I'm still inclined to say Aqua could have reasonably decided this was affordable for Mr S bearing in mind average costs of living when co-habiting.*

*February 2019 – to £2,150*

*Mr S had continued to pay slightly more than he needed to each month and I don't think his account history with Aqua should have given him any cause for concern.*

*However, the CLI Aqua offered Mr S was for £750, which would require an increase in his monthly payments to around £120. On top of that, the CRA data Aqua looked at showed his overall indebtedness had increased significantly, to around £13,000 (excluding his mortgage). I've seen nothing that might have suggested to Aqua that Mr S's salary had increased so they'd have had to assume his income remained at around £1,600 per month.*

*A rough estimate would suggest Mr S would now have to pay around £400 per month to repay his other credit cards and overdraft within a reasonable timeframe, £120 per month to Aqua, £600 per month against his mortgage, and £184 for the two loans he'd taken out in the summer of 2018. That's a total of around £1,300 per month, leaving Mr S with only around £300 per month for his living expenses. I'm inclined to say Aqua couldn't reasonably have decided this was enough for Mr S to cover utilities, council tax, food, phone bills, essential transport and other non-discretionary living costs.*

*It follows that I don't think Aqua should have increased Mr S's credit limit in and after February 2019. Instead, I'm inclined to say they should have left it at £1,400."*

Aqua accepted my provisional decision and Mr S didn't provide any comments on it.

### **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 I've received no comments on my provisional decision, my findings are unchanged from those set out above and I'm upholding Mr S's complaint.

### **Putting things right**

As I'm upholding this complaint in part, Aqua should refund all interest and charges incurred by the customer as a result of the credit limit being unfairly increased above £1,400. They should calculate this amount and use it to reduce the amount Mr S owes against the account (deducting the amount they've already paid to the debt collection business).

Once Mr S's balance has been cleared in full, Aqua should remove any adverse information relating to the account from February 2019 onwards from his credit file.

### **My final decision**

As I've explained above, I'm inclined to uphold Mr S's complaint and say NewDay Limited trading as Aqua need to take the steps I've outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 May 2024.

Clare King  
**Ombudsman**