

The complaint

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

What happened

Mr G was approved for an Aqua credit card in August 2017 with a credit limit of £900. I have detailed the credit limit changes below:

July 2018	£900 to £2,100
October 2018	£2,100 to £3,600
April 2019	£3,600 to £5,350

Mr G says Aqua irresponsibly lent to him. Mr G made a complaint to Aqua, who did not uphold Mr G's complaint. Aqua said Mr G told them he was employed earning £17,000 per annum, and he had unsecured debt of £5,400. They said their checks showed Mr G had four defaults registered, but the last one occurred 46 months prior to his application. They said their checks for the application and credit limit increases were proportionate and fair. Mr G brought his complaint to our service.

Our investigator partially upheld Mr G's complaint. She said Aqua's account opening checks were proportionate, and they made a fair lending decision. She said there were signs Mr G was experiencing financial difficulties prior to the first credit limit increase as he had been incurring cash withdrawal fees, an overlimit fee, and a late payment fee on his account, so Aqua shouldn't have increased the credit limit.

Aqua asked for an ombudsman to review the complaint. In summary, they said the cash withdrawals occurred six months prior to the first credit limit increase, and they were not a repeated pattern. Aqua said the late and overlimit fees were incurred five months prior to the credit limit increase.

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 approve or increase the credit available to Mr G, 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. I've listed below what checks Aqua have done and whether I'm persuaded these checks were proportionate.

Acceptance for the Aqua credit card - initial credit limit (£900)

I've looked at what checks Aqua said they did when initially approving Mr G's application. I'll address the credit limit increases later on. Aqua said they looked at information provided by

Credit Reference Agencies (CRA's) and information that Mr G had provided before approving his application.

The information showed that Mr G had declared a gross annual salary of £17,000 and he was employed. But that's not all Aqua's data showed. The data showed that Mr G had active outstanding unsecured balances of £5,400. And he also had four defaults totalling £12,000.

It may help to explain here that, while information like a default 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 G had on his credit history and still made a decision to lend which, in the circumstances, I think was reasonable.

I say this because the last default was registered 46 months prior to Mr G's application. So some time had passed since this was registered. The credit checks showed that Mr G had no County Court Judgements (CCJ's) being reported by the CRA, no payday loans and he had no arrears on any active accounts he held that the CRA they used reported to Aqua.

So I'm satisfied that the checks Aqua carried out here, prior to approving the initial £900 credit limit were proportionate and that Aqua made a fair lending decision to approve Mr G's application.

July 2018 credit limit increase - £900 to £2,100

I've looked at the information available to Aqua prior to them increasing the credit limit on Mr G's credit card to £2,100. The information that Aqua had available to them from the CRA shows that one of the CRA's was reporting his unsecured debt to be £12,136 prior to the credit limit increase. So his unsecured debt was more than double of what was showing by another CRA at the account opening stage. And his unsecured debt was over 70% of his declared gross annual salary.

Aqua would have seen that Mr G had incurred cash advance fees since his Aqua account had been open, which could be a sign of financial difficulty. While Aqua have said that Mr G made these cash withdrawals several months prior to the credit limit increase, and these weren't repeated patterns, I do note that Mr G didn't have a lot of his credit limit remaining in order to make further cash withdrawals even if he wanted to.

In addition to this, Mr G had been late with a payment, and he had been over his credit limit. When the initial application checks were completed Mr G had seven active accounts, and prior to the credit limit increase he had nine active accounts, so there were signs that Mr G could be experiencing financial difficulties, by taking on more credit and opening more accounts, even if the late payment/overlimit fees were incurred months prior to the credit limit increase.

So I'm not persuaded that Aqua's checks prior to increasing the credit limit to £2,100 were proportionate, given the increase in the unsecured debt one of the CRA's was showing. So with all of the factors listed above, I'm persuaded that Aqua should have made further checks to ensure the increased lending was affordable and sustainable for Mr G.

There's no set way of how Aqua should have made further proportionate checks. One of the things they could have done was to contact Mr G to get an understanding of why he had substantially increased his unsecured borrowings in such a short period of time, and why he missed/was late on a repayment. Or they could have asked for his bank statements as part of a proportionate check to ensure the lending was sustainable and affordable for him.

Mr G has provided his bank statements leading up to the July 2018 credit limit increase,

which Aqua could have requested as part of a proportionate check. Mr G's bank statements shows that he is nearly always utilising a significant proportion of his £1,000 arranged overdraft.

The bank statements show that on occasion Mr G exceeds his arranged overdraft, such as on 2 May 2018 and 13 June 2018. There was a returned direct debit on 25 April 2018 as Mr G didn't have the £21.78 in his account in order to pay this. On 13 June 2018 there was a returned cheque as Mr G didn't have the £30 in his account in order for the cheque to be paid. The bank statements also show that Mr G was paying a standing order to a company who arranges debt management plans.

In effect, Mr G was using debt (his overdraft) to pay debt such as his Aqua credit card. It would not be sustainable for him to continue doing this as he was unable to stay in a credit balance on his bank account for days, let alone weeks.

So I'm persuaded that if Aqua would have carried out proportionate checks and they would have communicated with Mr G based on the increased unsecured borrowings that a CRA reported to them, which were almost the same as his net annual salary, that they would have seen that Mr G was experiencing financial difficulties around the time they more than doubled the credit limit from £900 to £2,100. So I'm not persuaded that any increase to the lending would have been affordable and sustainable for Mr G. So I'm not persuaded that Aqua made a fair lending decision here.

Further credit limit increases

If Mr G's credit limit was not increased to £2,100, I think there is an argument for saying that Mr G's complaint about the subsequent lending decisions should be upheld without making a finding on reasonable and proportionate checks. After all, if matters had played out as the evidence suggests they should have done in July 2018, I'm not persuaded Mr G would've been able to add to the credit.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed at the end of this decision results in fair compensation for Mr G in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

Our investigator has suggested that Aqua takes the actions detailed below, which I think is reasonable in the circumstances.

My final decision

I uphold this complaint in part. NewDay Ltd trading as Aqua should take the following actions:

Aqua should arrange to transfer any debt back to themselves if it has been passed to a debt recovery agent or liaise with them to ensure the redress set out below is carried out promptly.

End the agreement and rework the account removing all interest, fees, charges, and insurances (not already refunded) that have been applied to balances above £900 after 6 July 2018;

If the rework results in a credit balance, this should be refunded to Mr G along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. Aqua should also remove all adverse information regarding this account from Mr G's credit file recorded after 6 July 2018;

Or, if after the rework the outstanding balance still exceeds £900, Aqua should arrange an affordable repayment plan with Mr G for the remaining amount. Once Mr G has cleared the balance, any adverse information recorded after 6 July 2018 in relation to the account should be removed from his credit file

**If Aqua considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr G how much they've taken off. They should also give Mr G a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 8 October 2024.

Gregory Sloanes
Ombudsman