

Complaint

Mr D has complained about a credit card NewDay Ltd (trading as “Aqua”) provided to him.

He says the credit card as well as the limit increase should not have been provided to him as they were unaffordable.

Background

Aqua provided Mr D with a credit card with an initial limit of £450 in January 2018. The credit limit on Mr D’s account was increased to £1,350.00 in June 2018.

One of our investigators reviewed what Mr D and Aqua had told us. And she thought Aqua hadn’t done anything wrong or treated Mr D unfairly in relation to providing the credit card or the credit limit increase. So she didn’t recommend that Mr D’s complaint be upheld. Mr D disagreed and asked for an ombudsman to look at the complaint.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And I’ve used this approach to help me decide Mr D’s complaint.

Having carefully considered everything, I’ve decided not to uphold Mr D’s complaint. I’ll explain why in a little more detail.

I think that it would be helpful for me to start by setting out that we consider what a firm did to check whether repayments to credit were affordable (asking it to evidence what it did) and then determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think 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 that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower’s ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator’s rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments to credit were affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

I've kept this in mind when deciding Mr D's complaint.

Aqua says it agreed to Mr D's initial application after it cross-checked Mr D's income declaration against information it received from credit reference agencies on the amount of funds which went into Mr D's main bank account each month and also carried out a credit search. And the information obtained indicated that Mr D would be able to make the low initial monthly repayment due on this credit card.

It then decided to increase Mr D's credit limit because of the usage on his account as well as what it saw on credit searches. On the other hand, Mr D says that this card was unaffordable for him, caused him debt and that he had to rely on family help to reduce what he owed.

I've considered what the parties have said.

What's important to note is that Mr D was provided with a revolving credit facility rather than a loan. And this means that Aqua was initially required to understand whether a credit limit of £450 could be repaid within a reasonable period of time, rather than in one go. A credit limit of £450 required relatively low monthly payments in order to clear the full amount that could be owed within a reasonable period of time.

Furthermore, I've seen records of the information Aqua obtained on the credit search it carried out. This information shows that Mr D didn't have any significant adverse information such as defaulted accounts or county court judgements ("CCJ") recorded against him. He also doesn't appear to have been using payday loans either.

So the information that Aqua gathered didn't throw up anything obvious which ought reasonably to have led it to question Mr D's ability to make his payments. On the contrary, the information gathered appears to suggest that it was reasonable for Aqua to conclude that Mr D had the funds to make the low monthly payment that would be required for this credit card. In these circumstances, I'm satisfied that Aqua's decision to initially provide Mr D with his credit card was reasonable.

For the credit limit increase, it appears as though Aqua mainly relied on Mr D's account having been managed well in the five months or so since it had been opened. From what I can see Mr D used a significant proportion of the amount of credit Aqua made available to him shortly after being provided with the card.

However, I'm also mindful that Mr D did make inroads into what he owed by the time he was offered his limit increase. He owed less than £300 in the month before the limit increase was offered. I can't see that Mr D had any cash withdrawals on the card either. Furthermore, the external credit checks carried out didn't show that Mr D didn't really have much in debt with other providers and this hadn't increased since the initial decision to provide the card.

So there is a reasonable argument for saying that Mr D's account history on his Aqua card combined with his overall credit position, meant that it was reasonable for Aqua to conclude that Mr D could afford the credit limit increase and that it was fair and reasonable for Aqua to offer this.

In any event, even if I were to conclude that Aqua ought to have done more before agreeing to the limit increase, I don't think that doing more would have made a difference in this instance. I say this because at the absolute most, it could be argued that Aqua ought to have asked Mr D for information about his living expenses before increasing his credit limit. I've not seen anything in the information provided that indicates if Aqua had used information on Mr D's actual living expenses, rather than the statistical data it relied on, this would have shown it the increased monthly payments would not have been affordable to Mr D.

So overall while I can understand Mr D's sentiments and I'm sorry to hear about his situation as well as what he's said about having difficulty making his payments, I don't think that Aqua treated Mr D unfairly or unreasonably when providing him with his credit card, or increasing his credit limit. It carried out proportionate checks before initially providing the card and arguably did so before increasing his credit limit. In any event, I've not been persuaded that it doing more would have resulted in it deciding against increasing Mr D's credit limit either.

In reaching my conclusions, I've also considered whether the lending relationship between Aqua and Mr D might have been unfair to Mr D under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Aqua irresponsibly lent to Mr D or otherwise treated him unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

Consequently I'm not upholding Mr D's complaint. I appreciate this will be very disappointing for Mr D. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 4 December 2024.

Jeshen Narayanan
Ombudsman