

The complaint

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

Mr B is represented by a solicitors firm in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Mr B himself.

What happened

Mr B was approved for an Aqua credit card in January 2019 with a £1,200 credit limit. I have detailed the credit limit changes below:

May 2019	£1,200 to £2,950
October 2019	£2,950 to £4,150
February 2020	£4,150 to £2,200
November 2021	£2,200 to £3,950
March 2022	£3,950 to £4,950
August 2022	£4,950 to £3,950

Mr B says that Aqua irresponsibly lent to him. Mr B made a complaint to Aqua.

Aqua said that based on the information Mr B provided them, they decided to uphold Mr B's complaint from the credit limit increase they gave in October 2019. They said they had refunded £96 in late payment fees, £12 in overlimit fees, and proportionate interest of £901.57. They said once the outstanding balance had been repaid in full, Mr B can contact them to remove adverse information from his credit file from when they increased his credit limit to £4,150 in October 2019. Mr B brought his complaint to our service.

Our investigator partially upheld Mr B's complaint. He said he would have expected Aqua to have carried out further checks at the point of the credit limit increases to ensure that they were affordable, and to evidence that a reasonable creditworthiness assessment had been undertaken prior to applying the increases in credit limits. He said Aqua were solely reliant on effective disposable income figures (EDI), so he thought that while the initial lending decision was fair, all of the further lending decisions were unfair.

Aqua asked for an ombudsman to review the complaint. They said they considered the EDI for the account opening and credit limit increases.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

"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 B, 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 (£1,200)

I've looked at what checks Aqua said they did when initially approving Mr B'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 B had provided before approving his application.

The information showed that Mr B had declared a gross annual salary of £23,577 and he was employed. But that's not all Aqua's data showed. The data showed that Mr B had active outstanding unsecured balances of £11,200. And he also had County Court Judgements (CCJ's) totalling £1,200.

It may help to explain here that, while information like a CCJ 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 B 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 CCJ was registered 22 months ago. So some time had passed since this was registered. The credit checks showed that Mr B had no defaults being reported by the CRA and he had no arrears on any active accounts.

Aqua also used EDI by looking at Mr B's current account turnover data, credit report data from CRA's, customer declared costs and affordability models, including a buffer to respond to cost of living and housing costs. Based on this, Aqua deemed that Mr B had an EDI of £368.46 a month.

So I'm satisfied that the checks Aqua carried out here, prior to approving the initial £1,200 credit limit were proportionate and that Aqua made a fair lending decision to approve Mr B's application.

May 2019 credit limit increase - £1,200 to £2,950

I've looked at the information available to Aqua when they increased Mr B's credit limit to £2,950. The information that Aqua had available to them from the CRA and how he managed his Aqua account do show that Mr B may have been experiencing financial difficulties, and he may not be able to afford and sustain an increased credit limit.

I say this as Mr B had not always paid his Aqua repayment on time as he had incurred late fees. The data from the CRA shows that Mr B's unsecured debt had increased since the Aqua account was first opened. The data also shows that Mr B had been in arrears by two months within the previous six months. So if Mr B had not been able to keep up to date with his existing financial commitments, then he may not have been able to sustain and be able to afford an increase to his credit limit here.

So I think this should have prompted Aqua to complete further proportionate checks as although the EDI they calculated for Mr B at this credit limit increase was £635.62 a month, it would not seem accurate for him to have as much disposable income yet be unable to keep up to date with an agreement for two months running within the last six months.

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 B to get an understanding of why he wasn't

able to keep up to date with his financial commitments, and why he had fallen two payments behind on an agreement. 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.

So I asked Mr B to provide his bank statements for the three months leading up to the May 2019 credit limit increase, which Aqua could have requested as part of a proportionate check. But Mr B did not provide these by the deadline given, even though I extended the deadline for him.

So on the face of it, it does look like Aqua should've looked more closely into this. But as my role is impartial, that means I have to be fair to both sides and although I'm satisfied that Aqua should've done more checks here – I can't say whether further checks would've revealed further information which means they wouldn't have lent. So as Mr B hasn't provided me with his bank statements, that means that it wouldn't be fair for me to say that Aqua shouldn't have lent here, because I don't know what further checks would reveal.

Future credit limit increases

As Aqua have said that they shouldn't have increased the credit limit to £4,150 in October 2019, then it would not be proportionate for me to look into this lending decision or any future lending decisions when Aqua have accepted they shouldn't have increased the limit (and future credit limit increases).

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 Aqua have calculated is in line with what I would ask them to do if I made the same finding as them, and it results in fair compensation for Mr B 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."

I invited both parties to let me have any further submissions before I reached a final decision. Aqua did not respond to the provisional decision. Mr B provided his bank statements for the months leading up to the May 2019 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.

In the provisional decision I said "*I asked Mr B to provide his bank statements for the three months leading up to the May 2019 credit limit increase, which Aqua could have requested as part of a proportionate check*". As Mr B has now provided his bank statements, I've reviewed these to see if Aqua made a fair lending decision to increase Mr B's credit limit to £2,950.

Mr B's bank statements show that he generally ran his account well. There were occasions where Mr B have become overdrawn, but I note that his February-April 2019 statements tend to show that Mr B was back in credit either the same day or the following day.

There was one occasion in April 2019 where Mr B had a returned direct debit for £64.90, but I can see later that day Mr B credited £140 to his account which brought his account into credit.

Mr B's balance was often at three figures in credit over the three month period I've looked at, which does suggest that Mr B could afford and sustain a higher credit limit. His balance was sometimes four figures, as his wages did fluctuate. So if Aqua had asked for his bank

statements leading up to the May 2019 credit limit increase as part of a proportionate check based on the reasons I gave in the provisional decision, then I'm persuaded they would have still increased the credit limit to £2,950. And I'm satisfied they made a fair lending decision in doing so.

I have reviewed Mr B's May 2019 statement, but as Mr B's credit limit was increased on 8 May 2019, his May statement would not have been produced in time for Aqua to consider the information on the statement. So the four returned direct debits from 15-31 May 2019 were after the credit limit increase, so Aqua would not have been aware of this even if they requested bank statements from Mr B as part of a proportionate check. So as I'm persuaded that Aqua made a fair lending decision to increase the credit limit in May 2019, it follows I don't require Aqua to do anything further.

My final decision

I do not uphold this complaint.

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

Gregory Sloanes
Ombudsman