

## The complaint

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

Mr H 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 H himself.

## What happened

Mr H was approved for an Aqua credit card in March 2015 with a £900 credit limit. I have detailed the credit limit changes below:

July 2015	£900 to £1,800
November 2015	£1,800 to £3,000
April 2016	£3,000 to £4,450
November 2016	£4,450 to £5,950
July 2017	£5,950 to £7,450
September 2021	£7,450 to £6,600

Mr H says that Aqua irresponsibly lent to him. Mr H made a complaint to Aqua. As Aqua did not uphold Mr H's complaint, he brought his complaint to our service.

Our investigator partially upheld Mr H's complaint. She said the checks Aqua completed prior to the first credit limit increase were not proportionate, so she reviewed three months of bank statements prior to the first credit limit increase. She said that while the bank statements that were provided were joint, she'd considered the income received, and the essential living costs that can be evidenced.

Our investigator said that the statements show that the committed expenditure was around £1,700 a month, not including any food, childcare or unexpected costs or other unsecured debt repayments, but the combined income into the account was on average £1,900, which demonstrated that Mr H appeared not to have had enough disposable income each month to make regular, sustainable repayments towards the increased credit limit.

Aqua asked for an ombudsman to review the complaint. They said they found it difficult to be able to decipher an average expenditure of £1,700 for committed expenditure as most of the outgoings don't stipulate which party they belong to. They calculated £1,011 a month for committed household expenditure, so they said Mr H would have £889 a month available income for credit commitments. Aqua said Mr H had made repayments over £90 a month prior to the credit limit increase, so if he didn't have enough disposable income to make the increased payments, it wouldn't make sense for him to make overpayments.

## 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 H, 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 H'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 H had provided before approving his application.

The information showed that Mr H had declared a gross annual income of £33,000. But that's not all Aqua's data showed. The data showed that Mr H had active outstanding unsecured balances of £26,900 across nine accounts. So this was fairly high compared to Mr H's gross income.

But the data from the CRA also shows that there were no defaults or County Court Judgments registered on Mr H's credit file, and he had no accounts in arrears. The credit limit of £900 was just under 3% of Mr H's declared gross income. So based on how well it would appear that he managed his credit, with no adverse information showing on his credit file, I'm not persuaded that Aqua were unreasonable in approving Mr H's application.

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 H's application.

#### *July 2015 credit limit increase - £900 to £1,800*

I've looked at the information Aqua would have had available to them prior to them increasing the credit limit to £1,800 to see if they made a fair lending decision here.

Aqua's data suggests that for one month, he paid more than £90 which Aqua say would be approximately the monthly repayment needed to sustainably afford a 5% monthly repayment if he used the available increased credit limit straight away. The data also shows Mr H didn't incur any late fees, or overlimit fees.

But the data also shows that Mr H had 12 active accounts prior to the credit limit increase. As Mr H had only been approved for the account only four months earlier, where he had nine active accounts showing, this data could suggest that Mr H is hungry for credit having apparently opened three new accounts in the last four months.

So given that the data four months earlier showed a high debt to income ratio and given that it would appear from Aqua's data from the CRA's that Mr H had opened multiple accounts in just four months, then I would expect Aqua to make further checks to ensure the increased credit limit would be affordable and sustainable for Mr H. Especially as they were doubling his credit limit after only four 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 H to get an understanding of why it appeared he opened several new accounts since his Aqua account had been opened. 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.

I've reviewed the bank statements Mr H has provided our service. I've also considered what Aqua have said about the account being joint so it's difficult to decipher who the outgoings belong to, and they calculated £1,011 a month for committed household expenditure, so it would appear Mr H had £889 available for credit commitments.

While I accept Aqua's point that it would be difficult to decipher who some of the outgoings would be for, I've noted that the £1,011 a month that Aqua calculated doesn't appear to include items such as council tax, food, clothing, childcare costs (which the statements show child benefit crediting the account), and what appears to be a secured loan of £227.52 debiting the account each month.

So although Aqua have calculated that Mr H would have £889 available for credit commitments a month. The reality is that this figure would be significantly lower if the expenditure in the previous paragraph was deducted from this figure. And as Mr H has a high debt to income ratio, there would also be his existing unsecured debt which would need to be deducted from this figure to ascertain what Mr H's true disposable income would be.

But the bank statements show that prior to the increased credit limit, that Mr H spent the entire three months overdrawn, apart from one day where it appears a loan was paid into the account. I can see that the following day this appears to have been transferred into Mr H's wife's sole account and has a reference of loan. I've also noted repayments to the individual who provided the loan are showing on the bank statements as an outgoing, but as it appears the loan may have been to Mr H's wife as opposed to him, I've discounted these repayments as being made by Mr H.

So as the bank statements show that Mr H's salary, his wife's income and the child benefit weren't sufficient to bring the account into credit at any point of the three month period (as it was the loan for the one day in the account which was the only time the account was in credit), then I do think this was an indication that Mr H was needing to use credit to pay credit.

So although it may not make financial sense for Mr H to pay more than his minimum payment when it appears it wouldn't be affordable for him, I think it's clear from his bank statements that he was using debt (namely in the form of his overdraft) to pay debt, which wouldn't be sustainable for him. So with the recent increase in accounts, this could be a reason why Mr H's credit file showed no adverse information as he was in effect using borrowings to help meet his outgoings, which wouldn't be sustainable.

So if Aqua had carried out further checks based on the reasons I've given here, I'm persuaded that they would have realised the credit limit increase was not affordable and sustainable for Mr H for the reasons given above, so I can't conclude Aqua made a fair lending decision to increase Mr H's credit limit to £1,800.

#### *Further credit limit increases*

If Mr H's credit limit was not increased to £1,800, I think there is an argument for saying that Mr H'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 2015, I'm not persuaded Mr H 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 H 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, but I also think they should end the agreement and 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. I also note our investigator's view mentions a date of 31 July 2015, however, this should have read 21 July 2015, based on when Aqua told us they increased Mr H's credit limit to £1,800.

### **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 21 July 2015;

If the rework results in a credit balance, this should be refunded to Mr H 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 H's credit file recorded after 21 July 2015;

Or, if after the rework the outstanding balance still exceeds £900, Aqua should arrange an affordable repayment plan with Mr H for the remaining amount. Once Mr H has cleared the balance, any adverse information recorded after 21 July 2015 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 H how much they've taken off. They should also give Mr H 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 H to accept or reject my decision before 18 November 2024.

Gregory Sloanes  
**Ombudsman**