

## The complaint

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

Mr S 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 S himself.

## What happened

Mr S was approved for an Aqua credit card in May 2021 with a £1,200 credit limit. I have detailed the credit limit changes below:

November 2021	£1,200 to £2,450
March 2022	£2,450 to £3,950
June 2022	£3,950 to £4,950
November 2022	£4,950 to £6,300
March 2023	£6,300 to £6,800

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

Our investigator upheld Mr S's complaint. He said the checks Aqua completed prior to the initial lending decision were not proportionate, and proportionate checks would have shown Mr S received no salary into his bank account, and his bank statements showed a negative disposable income leading up to the initial lending decision.

Aqua asked for an ombudsman to review the complaint. They said they verified Mr S' income using different Credit Reference Agency (CRA) variables which showed that the current account turnover in the three months prior to the application was enough to verify the income. Aqua said that their affordability figures did appear to show a negative disposable income for Mr S of £191 a month when they increased the credit limit from November 2021, so they would be looking to uphold Mr S' complaint from that point.

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 S, 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 S' application. I'll address the credit limit increases later on. Aqua said they looked at information provided by CRA's and information that Mr S had provided before approving his application.*

*The information showed that Mr S had declared a gross annual income of £21,000. But that's not all Aqua's data showed. The data showed that Mr S had active outstanding unsecured balances of £700. And he also had a default registered on his credit file for £500.*

*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 S 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 default was registered 54 months prior to his application. So some time had passed since this was registered. The credit checks showed that Mr S had no County Court Judgements (CCJ's) being reported by the CRA and he had no arrears on any active accounts.*

*Aqua also used Estimated Disposable Income (EDI) by looking at Mr S'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 S had an EDI of £299.68 a month.*

*Once the application was approved, if Mr S used all of the available balance and still had an outstanding balance of £700 on his active debts, the total of £1,900 (his existing £700 and his new Aqua £1,200 limit) would equate to around 9% of his declared gross annual income.*

*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 S's application.*

*November 2021 credit limit increase - £1,200 to £2,450 and future credit limit increases*

*As Aqua have said they will uphold Mr S' complaint from the November 2021 lending decision as the EDI was showing a negative figure of £191 a month, then I have not investigated these lending decisions.*

*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 S 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. Neither party responded to the provisional decision.*

### **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 neither party have provided me with any further information to consider, then my decision and reasoning remains the same as in my provisional decision.*

## **Putting things right**

In the provisional decision I said I intend to uphold this complaint in part. I said I intend to ask NewDay Ltd trading as Aqua to 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 £1,200 after 22 November 2021;

If the rework results in a credit balance, this should be refunded to Mr S 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 S's credit file recorded after 22 November 2021;

Or, if after the rework the outstanding balance still exceeds £1,200, Aqua should arrange an affordable repayment plan with Mr S for the remaining amount. Once Mr S has cleared the balance, any adverse information recorded after 22 November 2021 in relation to the account should be removed from his credit file.

I'm still satisfied this is a fair outcome for the reasons given previously.

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

## **My final decision**

I uphold this complaint in part. NewDay Ltd trading as Aqua should settle the complaint in line with the instructions in the *"Putting things right"* section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 November 2024.

Gregory Sloanes  
**Ombudsman**