

The complaint

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

Mr P 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 P himself.

What happened

Mr P was approved for an Aqua credit card, in January 2018 with a £250 credit limit. I have detailed the credit limit changes below:

May 2018	£250 to £800
November 2018	£800 to £1,550
July 2019	£1,550 to £750
June 2020	£750 to £1,250
July 2021	£1,250 to £3,000
March 2022	£3,000 to £4,500

Mr P says that Aqua irresponsibly lent to him. Mr P made a complaint to Aqua, who partially upheld his complaint from the July 2019 credit limit change. Mr P brought his complaint to our service.

Our investigator partially upheld Mr P's complaint. She said that Aqua made fair lending decisions to approve the account, but after the account was opened, Mr P incurred cash advance fees, overlimit fees and late payment fees, so she said Aqua did not make a fair lending decision to increase the credit limit to £800, or the subsequent increases.

Aqua asked for an ombudsman to review the complaint. They said Mr P paid more than the minimum payment which also indicated the fees were as a result of poor account management as opposed to financial difficulty. They said the cash withdrawal facility is one of many services available on their products.

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 P, 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 card - initial credit limit (£250)

I've looked at what checks Aqua said they did when initially approving Mr P'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 P had provided before approving his application. The information shows that Mr P had declared a gross annual income of £17,000. But the data also showed that Mr P had defaulted on a credit agreement previously – with the last default being registered 25 months prior to his application.

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 – it doesn't automatically mean that a lender won't offer borrowing. So I've looked at what else Aqua's information showed them, to see if they made a fair lending decision to accept Mr P's application.

The data from a CRA showed Mr P's credit commitments were £84.08 a month. And the information from the CRA showed Mr P was not currently in arrears on any active accounts, and he hadn't been in the previous six months. The £250 credit limit was less than 1.5% of his declared gross annual income.

So I'm satisfied that the checks Aqua carried out here, prior to approving the initial £250 credit limit were proportionate and that Aqua made a fair lending decision to approve Mr P's application for the Aqua account.

May 2018 credit limit increase - £250 to £800

I've looked at the information available to Aqua when they increased Mr P's credit limit to £800. The information that Aqua had available to them does show that Mr P could be financially struggling prior to this point. I say this because in the four months Mr P's credit card had been opened, he had made a late payment in two of these months. He also exceeded his credit limit, and he made transactions which incurred cash advance fees.

I agree with Aqua that this is one of the facilities a customer can use. And this in itself would not demonstrate that Mr P could not afford a credit limit increase, especially when Mr P had been making repayments a lot higher than his minimum payment.

But it also could be a sign of financial difficulty. One of these transactions was for £5, and a cash advance fee of £3 was incurred by Mr P here. So if he had funds available elsewhere then it would be unusual he would choose to pay 60% of the transaction in fees. The other transactions which attracted a cash advance fee were for £20 in total. But this wasn't one transaction, it was two.

Although Aqua have said that it appears that Mr P had poor account management, and the repayments were affordable for him, I need to be mindful that payments need to be affordable and sustainable for him. While Aqua have highlighted that Mr P had made repayments higher than his minimum payment, if Mr P was making higher repayments and then re-using this credit the following month – and more credit, then this might not be sustainable, especially if he was late with his payments and exceeded his credit limit. NewDay's data showed the statement balance rising month by month.

So based on the late fees, the overlimit fee, and the cash advance fees, and Mr P using more credit month by month, these could all be signs that Mr P was financially struggling.

So based on these reasons, I'm persuaded that Aqua should have completed further checks to ensure the credit limit increase would be affordable and sustainable for Mr P, especially as the credit limit was more than trebled.

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 P to get an understanding of why he needed to make low value transactions incurring a cash withdrawal fee, and why he was late with his repayments 50% of the months since his account had been open, and why he exceeded his credit limit by more than 10%, especially as the overlimit fee, a late payment fee and the two cash advance fees were in the month prior to the credit limit increase. 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 P has provided his bank statements for January-April 2018, leading up to the £800 credit limit increase, which NewDay could have requested as part of a proportionate check. Mr P's bank statements do show that he was struggling financially. There is an £8 unpaid transaction fee charged to his account on 18 January 2018. His salary crediting his account was no higher than £1,075.52 between January-March 2018, and I note that no salary credited his account in April 2018, which could help explain why Mr P was late with his repayment and exceeded his credit limit on his Aqua account.

So although Mr P had said his income was £17,000 originally, prior to the credit limit increase, it would appear, based on Mr P's bank statements, that he was earning less than this. Mr P has also told us that he tried to repay more than his minimum payment to try and get out of debt, but his debts kept piling up. Mr P's bank statements also show further unpaid transaction fees for both March and April 2018.

So I'm persuaded that if Aqua would have made further checks, based on the concerning data they held since Mr P opened his account, that it would have come to light that Mr P was financially struggling after further proportionate checks were completed, and that a credit limit increase to £800 would not be affordable and sustainable for him. So I can't say that Aqua made a fair lending decision here.

Further credit limit increases:

If Mr P's credit limit increase to £800 did not happen, then it's probable that none of the further lending decisions would have happened after this either. So I think there is an argument for saying that Mr P'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 May 2018, I'm not persuaded that Aqua would've added 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 P 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 £250 after 14 May 2018;

If the rework results in a credit balance, this should be refunded to Mr P along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding this account from Mr P's credit file recorded after 14 May 2018;

Or, if after the rework the outstanding balance still exceeds £250, Aqua should arrange an affordable repayment plan with Mr P for the remaining amount. Once Mr P has cleared the balance, any adverse information recorded after 14 May 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 P how much they've taken off. They should also give Mr P 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 P to accept or reject my decision before 27 December 2024.

Gregory Sloanes
Ombudsman