

## The complaint

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

Mr W is represented by a claims management company 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 W himself.

## What happened

Mr W was approved for an Aqua credit card in October 2014 with a £450 credit limit. I have detailed the credit limit changes below:

February 2015	£450 to £650
June 2015	£650 to £1,550
November 2015	£1,550 to £2,550
June 2016	£2,550 to £3,800
November 2016	£3,800 to £5,800

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

Aqua did not uphold Mr W's complaint. They said they considered the income and other information provided in Mr W's application alongside the information available from Credit Reference Agency (CRA) data. They said the limits were applied responsibly. Mr W brought his complaint to our service.

Our investigator partially upheld Mr W's complaint. He said Aqua's checks for the account opening, and the increase to £650 were proportionate, but the checks for the further credit limit increases were not proportionate. He said that Aqua should not have increased Mr W's credit limit to £2,550 as he had withdrawn cash of £750 since the last credit limit increase, which was a significant amount to withdraw considering the costs associated with withdrawing cash.

Aqua asked for an ombudsman to review the complaint. They said without bank statements, there was no evidence that Mr W was in financial difficulties at that time, and he was using a facility of the card that was available to him. Aqua said that they would be happy to review this again upon receipt of Mr W's bank statements.

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 W, 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 (£450)*

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

*The information showed that Mr W had declared a gross annual income of £17,000. But that's not all Aqua's data showed. The data showed that Mr W had previously defaulted on an agreement 31 months prior to the application, and a public record – such as a County Court Judgment (CCJ) was showing as last being registered 49 months prior to his application.*

*It may help to explain here that, while information like a CCJ or 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. So I've looked at what else Aqua's information showed them, to see if they made a fair lending decision to accept Mr W's application.*

*The information from the CRA showed that Mr W had active unsecured debt of £800. So if Mr W used the £450 credit limit he was approved for, this would mean his total active unsecured debt would be £1,250, which would be just over 7% of his declared gross annual salary. Aqua's data also shows that Mr W was not in arrears on any of his active accounts at the time his application was approved.*

*So I'm persuaded that Aqua's account opening checks were proportionate, and that they made a fair lending decision to approve his application.*

#### *February 2015 credit limit increase - £450 to £650*

*I've looked at what checks Aqua said they did when increasing the credit limit to £650. The data from a CRA shows that Mr W had active credit card balances of around £500 prior to them increasing the credit limit on the account.*

*But that's not all the data showed. The data showed that Mr W had incurred cash transaction fees from transactions totalling £230 from account opening. So this could be a sign that Mr W was financially struggling if he made transactions incurring a cash transaction fee. But the data also shows Mr W was making higher repayments to the account than what his minimum payment would be, with repayments of £200 and £205 in two of the months since his account was opened. So this would suggest Mr W wasn't struggling financially if he was able to make higher repayments to the account than what was required.*

*The data also shows that Mr W was not in arrears on his other active credit cards, and he had not opened any new accounts just prior to the credit limit increase to £650. So I'm persuaded that Aqua's checks were proportionate here, and that they made a fair lending decision to increase Mr W's credit limit to £650.*

#### *June 2015 credit limit increase - £650 to £1,550*

*I've looked at what checks Aqua said they did when increasing the credit limit to £1,550. The data from a CRA shows that Mr W had active credit card balances of around £150 prior to*

*them increasing the credit limit on the account. So Mr W had been using less credit than at the last credit limit increase.*

*But that's not all the data showed. The data showed that Mr W had incurred cash transaction fees from a number of transactions since the last credit limit increase. So this could be a sign that Mr W was financially struggling if he made transactions incurring a cash transaction fee. But the data again also showed that Mr W was making higher repayments to the account than what his minimum payment would be.*

*The data also shows that Mr W was not in arrears on his other active credit cards, and he had not opened any new accounts just prior to the credit limit increase to £1,550. So I'm persuaded that Aqua's checks were proportionate here, and that they made a fair lending decision to increase Mr W's credit limit to £1,550.*

*November 2015 credit limit increase - £1,550 to £2,550*

*I've looked at what checks Aqua said they did when increasing the credit limit to £2,550. The data from a CRA shows that Mr W had active credit card balances of around £800 prior to them increasing the credit limit on the account. So Mr W had been using more credit than at the last credit limit increase.*

*The data also showed that Mr W had incurred cash transaction fees from a number of transactions since the last credit limit increase. So this could be a sign that Mr W was financially struggling if he made transactions incurring a cash transaction fee. And Mr W had opened a new account since the last credit limit increase. But the data again also showed that Mr W was making higher repayments to the account than what his minimum payment would be at times.*

*The data also shows that Mr W was not in arrears on his other active credit cards. So I'm persuaded that Aqua's checks were proportionate here, and that they made a fair lending decision to increase Mr W's credit limit to £2,550.*

*June 2016 credit limit increase - £2,550 to £3,800*

*I've looked at what checks Aqua said they did when increasing the credit limit to £3,800. The data from a CRA shows that Mr W had active credit card balances of just under £1,200 prior to them increasing the credit limit on the account. So Mr W had been using more credit than at the last credit limit increase.*

*The data also showed that Mr W had again incurred cash transaction fees from a number of transactions since the last credit limit increase. So this could be a sign that Mr W was financially struggling if he made transactions incurring a cash transaction fee, although I note that none of these transactions were made in the three months prior to the credit limit increase. The data also shows that Mr W was not in arrears on his other active credit cards, and he had not opened any new accounts just prior to the credit limit increase.*

*The data again also showed that Mr W was making higher repayments to the account than what his minimum payment would be at times with repayments in statement periods ranging from £100-£332.94.*

*So I'm persuaded that Aqua's checks were proportionate here, and that they made a fair lending decision to increase Mr W's credit limit to £3,800.*

*November 2016 credit limit increase - £3,800 to £5,800*

*I've looked at what checks Aqua said they did when increasing the credit limit to £5,800. The data from a CRA shows that Mr W had active unsecured debt of over £8,000. And the credit limit Aqua were increasing was over a third of Mr W's declared gross annual salary when they opened his account. So with the increase to £5,800 and Mr W's existing unsecured debt, this would be over 50% of his original declared gross annual salary.*

*The data Aqua had was more detailed prior to this credit limit increase. The data showed that Mr W had combined credit limits of £7,900 amongst revolving unsecured debt, which would include agreements such as credit cards, store cards and overdrafts. And while Mr W had not utilised the full credit available to him, I still think it should have caused Aqua some concern given the debt to income ratio.*

*But that's not all the data showed. The data showed that Mr W had again incurred cash transaction fees from a number of transactions since the last credit limit increase. So this could be a sign that Mr W was financially struggling if he made transactions incurring a cash transaction fee.*

*Mr W's credit card balances had more than trebled since the last credit limit increase. Mr W had a trend of using more and more credit over the last few credit limit increases. So based on his declared income and rising exposure to debt, I'm persuaded that Aqua should have carried out further checks to ensure that he could afford a credit limit increase to £5,800, and that the repayments would be sustainable for him.*

*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 W to get an understanding of why his debt was increasing over time, and to ensure his income information was still accurate. 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 W to provide his bank statements for the three months leading up to the November 2016 credit limit increase, which Aqua could have requested as part of a proportionate check. But Mr W 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 W 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.*

*As Aqua said that they would be happy to review the lending decisions again upon receipt of Mr W's bank statements, I asked Mr W to provide these for prior to each lending decision from Aqua. But Mr W did not provide these by the deadline given, even though I extended the deadline for him.*

*I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I can't conclude that Aqua lent irresponsibly to Mr W or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here. So it follows I don't intend to ask Aqua to do anything further."*

*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.

**My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 23 December 2024.

Gregory Sloanes  
**Ombudsman**