

The complaint

Mr D complains NewDay Ltd trading as Aquacard irresponsibly lent to him.

Mr D 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 D himself.

What happened

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

January 2020	£1,200 to £2,800
September 2020	£2,800 to £3,400

Mr D says that Aqua irresponsibly lent to him. Mr D made a complaint to Aqua, who did not uphold his complaint. Mr D brought his complaint to our service.

Our investigator upheld Mr D's complaint. He said that Mr D had declared a gross annual income of £26,000 but he had unsecured debt of £46,400 so he was overindebted. He said Mr D also missed a mortgage payment in the six months prior to his application.

Aqua asked for an ombudsman to review the complaint. They said £44,000 of Mr D's debt was via non-revolving debt (such as personal loans), where the balance would be reducing each month. They said Mr D was paying at times more than twice his minimum payment which suggested he had the affordability to sustain repayments, and they said his overall unsecured debt kept reducing after the Aqua card was approved.

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 D, 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 D'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 D had provided before approving his application.

The information showed that Mr D had declared a gross annual income of £26,000. But that's not all Aqua's data showed. The data showed that Mr D had missed a mortgage payment within six months of him applying for the Aqua card.

The information from the CRA showed that Mr D had active unsecured debt of around £46,400 which was a lot higher than his gross income he declared to them. The CRA reported to Aqua that Mr D was paying around £1,207 a month for his credit commitments which would be the majority of his net monthly income.

So based on Mr D's indebtedness and his recent missed mortgage payment, I'm persuaded that Aqua should have made further checks to ensure repayments on a £1,200 credit limit would be affordable and 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 D to ask him why he missed his mortgage payment and to ensure he had enough disposable income to meet his Aqua repayments, given his already high credit commitments. 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 D has provided his bank statements leading up to this lending decision. Mr D's salary is showing as being less than £1,600 a month. There are occasionally other credits into his account, but these are irregular and for different amounts. I asked Mr D what these credits were for. To protect his identity I won't disclose his exact answer in this decision.

But the total of the credits from this venture crediting his bank account between 1 January 2019-26 March 2019 were for £360. Mr D was also making payments out of his bank account to sustain this venture, which Aqua would have been able to see if they requested his statements as part of a proportionate check.

Mr D's bank statements show that he transferred money from a savings account into his bank account. So I requested his savings statements to see if he could use savings to help the repayments on his Aqua card, and to see how sustainable this would be.

Mr D forwarded his savings statements from 14 December 2018 – 15 March 2019. The statements start off with a balance of £850.36, however by 8 March 2019 his savings balance was £150.36. So it appears that Mr D was having to use his savings in order to meet his regular outgoings, which wouldn't be sustainable moving forward.

I've considered what Aqua have said about the majority of Mr D's unsecured debt being non-revolving debt and the balances would decrease over time, however, this doesn't take away from the fact that he was paying the majority of his salary for these non-revolving debts. Although the debt would decrease each month on his non-revolving debt, his repayments would not decrease until an account is fully repaid.

I've also considered what Aqua has said about Mr D making higher repayments to his Aqua account. But Aqua wouldn't be aware of how he would manage his account prior to the account being opened. Mr D has told us he often re-used the credit when he made higher repayments as he was *"juggling money and living from credit if honest"*.

So if Aqua had completed further checks based on what the concerning data showed at the application stage, I'm persuaded that they wouldn't have approved Mr D's application for the account as they would have seen he was overindebted and he had a lower salary than what his gross annual income suggested he would earn. So I'm not persuaded that Aqua made a fair lending decision to approve Mr D's application.

Further credit limit increases

If Mr D's application for the Aqua account was not approved, 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 D'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 April 2019, 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 D 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 if they do not own the debt anymore, then they should also 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.

My final decision

I uphold this complaint. NewDay Ltd trading as Aquacard 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;

If the rework results in a credit balance, this should be refunded to Mr D 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 his credit file;

Or, if after the rework there is still an outstanding balance, Aqua should arrange an affordable repayment plan with Mr D for the remaining amount. Once Mr D has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

**If Aqua consider that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr D how much they've taken off. They should also give Mr D 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 D to accept or reject my decision before 3 March 2025.

Gregory Sloanes
Ombudsman