

The complaint

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

Mr F 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 F himself.

What happened

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

August 2021	£1,200 to £2,700
January 2022	£2,700 to £3,700
August 2022	£3,700 to £4,950
December 2022	£4,950 to £6,300

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

Our investigator did not uphold Mr F's complaint. He said that Aqua should have made further checks based on the increasing credit limits, however, Mr F was unable to provide his bank statements for the lending decisions, so he couldn't say what proportionate checks would have shown.

Mr F asked for an ombudsman to review his complaint. He said he would forward his bank statements for consideration.

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 F, 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

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

The information showed that Mr F had declared a gross annual income of £23,500. The data showed that Mr F had not defaulted on a credit agreement in the last six years and he had no County Court Judgements (CCJ's).

But the data showed that Mr F had been in arrears on one of his accounts in the last six months. So this could be a sign of financial difficulty. But it also could have been an oversight from Mr F.

On this occasion, it does appear to be an oversight. I say this because at the point Aqua's checks were made, the checks showed that Mr F had no accounts in arrears, which means that Mr F was able to clear his arrears and be up to date on all of his credit agreements at the time the checks were made.

The information from the CRA showed that Mr F had active unsecured debt of around £4,604 as he's shown as having a debt to annual income ratio of 19.59%. But the CRA reported to Aqua that Mr F was paying £108 a month for his credit commitments.

Aqua also used modelling, which is industry standard to estimate Mr F's expenditure, including things like his living and housing costs. And the calculations would suggest that Mr F would have enough disposable income to be able to afford repayments for a £1,200 credit limit.

So I'm persuaded that Aqua's checks were proportionate, and they made a fair lending decision in accepting Mr F's application for the account.

August 2021 credit limit increase - £1,200 to £2,700

I've looked at what checks Aqua said they did when increasing the credit limit. It would appear that Mr F's unsecured debt had slightly decreased (by over £300) since the account opening checks. Mr F also had no accounts in arrears at the time of the checks.

Aqua would have also been able to see how Mr F used his account since it had been opened, and they would have seen that Mr F incurred no late or overlimit fees, and no cash advance fees. Mr F paid more than his minimum repayment each statement period he was required to pay, but then he often utilised more of the credit than he was repaying.

Any credit limit increase should have been affordable and sustainable for Mr F. Aqua were more than doubling his credit limit here and the majority of months since his account was open Mr F was repaying only £30 a month, therefore it would take some time to repay an increased balance at this monthly payment (although I acknowledge in one month he repaid £100).

And while Aqua estimated Mr F's expenditure again, it is not clear why they calculated Mr F's cost of living to be lower at this point than when the checks were originally completed. There were also no housing costs on this calculation for the credit limit, unlike the original checks.

So based on the missing housing costs, and the more than doubling of the credit limit, I'm persuaded that it would have been proportionate for Aqua to carry out further checks here, to ensure Mr F could sustainably afford repayments for a higher credit limit.

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 F to ask him his housing costs and to see if his living costs had decreased since his application for the account. 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.

Our investigator asked Mr F to provide his bank statements, and Mr F himself indicated he would forward these to our service. But over four months after these were requested, these still have not been provided to our service, despite our investigator agreeing extensions for Mr F to provide these. So I'm unable to say what further checks would have shown here.

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 F hasn't provided our service with the information our investigator asked him, 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.

January 2022 credit limit increase - £2,700 to £3,700

The data showed that Mr F had incurred no late payment fees, no overlimit fees since his credit limit had been last increased. There were also no cash advance fees charged to his account.

But Mr F often paid only his minimum repayment which wouldn't result in his outstanding balance being repaid in a timely manner. Mr F's unsecured debt had almost doubled prior to the credit limit increase, as it was now over £8,000 since the last credit increase only five months earlier. And on Aqua's affordability calculations there were no housing costs showing again.

So based on the missing housing costs, the four figure increase to the credit limit, the almost doubling of his unsecured debts since the last credit limit increase, and mostly the minimum payments Mr F made to his account, I'm persuaded that it would have been proportionate for Aqua to carry out further checks here, to ensure Mr F could sustainably afford repayments for a higher credit limit.

Again, 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 F to ask him his housing costs, why he's taken out a lot of unsecured debt since the last credit limit increase, and to ensure he could afford to sustainably make higher repayments to a higher credit limit. 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. But again, as Mr F has not provided his bank statements then I'm unable to say what further checks would have shown here.

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 F hasn't provided our service with the information our investigator asked him, 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.

August 2022 credit limit increase - £3,700 to £4,950

I've looked at what checks Aqua said they did when increasing the credit limit here. The data from a CRA shows that Mr F's active unsecured debt had fallen since the last lending decision. Mr F again had no late, overlimit or cash advance fees charged to his account, and he wasn't in arrears on any of his other accounts.

The data shows that Mr F had mostly cleared his outstanding balance since the last credit limit increase, albeit he had started to use over £1,000 of available credit just prior to this lending decision. Based on Aqua's assessed income for Mr F it's unlikely he could repay the majority of his balance without completing a balance transfer to another lender unless he received a bonus from his occupation or he received money from a third party.

The data from the CRA showed Mr F had access to limits of over £10,000 at this point. So although he wasn't utilising these credit limits in full, I would still expect Aqua to take into account the level of credit he had access to prior to approving any further credit limit increase for him.

With this credit being available to him, and his existing loan balances, this would equate to around half of Aqua's assessed annual income for Mr F. And the calculation again didn't include any housing costs despite this being accounted for in their opening checks for the account. The proposed increase to his Aqua credit limit was over 25% higher than what it was prior to the increase.

So again I'm persuaded that it would have been proportionate for Aqua to carry out further checks here, to ensure Mr F could sustainably afford repayments for a higher credit limit. But as Mr F has not provided his bank statements then I'm unable to say what further checks would have shown here.

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 F hasn't provided our service with the information our investigator asked him, 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.

December 2022 credit limit increase - £4,950 to £6,300

I've looked at what checks Aqua said they did when increasing the credit limit here. Mr F again had no late, overlimit or cash advance fees charged to his account, and he wasn't in arrears on any of his other accounts.

Although Mr F paid more than his required minimum repayments, he was utilising more credit on his Aqua account than he was repaying. And the data from a CRA shows that Mr F's active unsecured debt was around 50% higher than it was at the last lending decision.

The data from the CRA showed Mr F had access to limits of over £13,900 at this point. So although he wasn't utilising these credit limits in full, I would still expect Aqua to take into account the level of credit he had access to prior to approving any further credit limit increase for him.

With this credit being available to him, and his existing loan balances, this would equate to more than half of Aqua's assessed income for Mr F. And the calculation again didn't include any housing costs despite this being accounted for in their opening checks for the account. The assessed income for Mr F had fallen since the last calculation they completed at the last credit limit increase. The proposed increase to his Aqua credit limit was nearly 25% higher than what it was.

So again I'm persuaded that it would have been proportionate for Aqua to carry out further checks here, to ensure Mr F could sustainably afford repayments for a higher credit limit. But

as Mr F has not provided his bank statements then I'm unable to say what further checks would have shown here.

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 F hasn't provided our service with the information our investigator asked him, 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.

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 F 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.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 5 March 2025.

Gregory Sloanes
Ombudsman