

Complaint

Mr B has complained about a credit card NewDay Ltd (trading as “Aqua”) provided to him. He says that the credit card and the subsequent limit increases were unaffordable for him and he borrowed from friends, family and other lenders to make his payments. This resulted in ongoing difficulties.

Background

Aqua provided Mr B with a credit card with an initial limit of £300 in December 2015. Mr B’s credit limit was then increased on five occasions on the following dates:

October 2016 – limit increased to £1,000.00
July 2017 – limit increased to £1,750.00
July 2018 – limit increased to £2,750.00
June 2019 – limit increased to £4,500.00
October 2019 – limit increased to £6,500.00

In September 2023, Mr B complained saying that the credit card and the limit increases Aqua provided were unaffordable for him and caused him continued financial difficulty as he had to borrow from friends, family and other lenders in order to make his payments.

Aqua did not uphold Mr B’s complaint. It was satisfied that proportionate checks had been carried out at the time of Mr B’s application as well as when he was offered the limit increases and so it was reasonable to lend. When responding to our request for its file on Mr B’s complaint, Aqua told us that it believed Mr B had complained about the initial decision to provide the card and the first two limit increases too late.

One of our investigators reviewed what Mr B and Aqua had told us. And she thought Aqua hadn’t done anything wrong or treated Mr B unfairly in relation to providing the credit card or increasing Mr B’s credit limit on the occasions that it did. So she didn’t recommend that Mr B’s complaint be upheld.

Mr B disagreed and asked for an ombudsman to look at the complaint.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Aqua has argued that Mr B’s complaint about the initial decision to provide the card and the first two credit limits was made too late because he complained more than six years after these lending decisions; as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr B's complaint as being one alleging that the relationship between him and Aqua was unfair to him as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr B's complaint. Given the reasons for this, I'm satisfied that whether Mr B's complaint about the specific lending decisions was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr B's complaint should be considered more broadly than just the lending decisions. I consider this to be the case as Mr B has not only complained not about the respective decisions to lend but has also alleged that this unfairly impacted upon his financial position moving forward.

I'm therefore satisfied that Mr B's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between him and Aqua. I acknowledge Aqua may not agree that we can look at parts of Mr B's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr B's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr B's complaint can be reasonably interpreted as being about the fairness of the lending relationship between him and Aqua, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Aqua) and the debtor (Mr B), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mr B's complaint, I therefore need to think about whether Aqua's decision to initially lend to Mr B, increase his credit limit on the occasions it did, or its later actions resulted in the lending relationship between Mr B and Aqua being unfair to Mr B, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr B's relationship with Aqua is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr B's ability to make his repayments in circumstances where doing so would have revealed the credit card or the limit increases to be unaffordable, or that it was irresponsible to lend. And if this was the case, Aqua then didn't somehow then remove the unfairness this created.

I've considered Mr B's complaint in this context.

Were the decisions to provide the credit card and subsequent credit limit increases unfair?

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr B's complaint.

Aqua needed to make sure it didn't lend irresponsibly. In practice, what this means is Aqua needed to carry out proportionate checks to be able to understand whether Mr B could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

Aqua says it initially agreed to Mr B's application after it obtained information on his income and carried out a credit search. And the information obtained indicated that Mr B would be able to make the low monthly repayment due on this credit card. It says similar checks were carried out before Mr B's credit limit was increased on the occasions that it was and these checks also showed the limit increases to be affordable.

On the other hand, Mr B says that credit card and limit increase were unaffordable and that they caused him ongoing financial difficulty as a result.

I've considered what the parties have said.

Aqua's initial decision to offer Mr B a credit card

What's important to note is that Mr B was provided with a revolving credit facility rather than a loan. And this means that to begin with Aqua was required to understand whether a credit limit of £300 could be repaid within a reasonable period of time, rather than in one go. It's fair to say that a credit limit of £300 required low monthly payments in order to clear the full amount that could be owed within a reasonable period of time.

I've seen records of the information Aqua obtained from Mr B about his income and what was on the credit search carried out. The credit search did show that Mr B had had previous difficulties with credit in the form of at least one defaulted account. However, the latest of these was from over three years prior to this application.

The credit search also showed that Mr B had some active credit at this stage. But this wasn't a high amount and the active commitments he had were also being relatively well maintained. Aqua says that Mr B declared a salary of £25,000.00 a year and this combined with the credit file information meant that it was reasonable to conclude that Mr B could afford this credit card. Having reviewed the information obtained, I'm in agreement with this conclusion.

As this is the case, I'm satisfied that it was unfair for Aqua to offer Mr B a credit card with a limit of £300 and therefore there was no unfairness created at this stage.

The lending decisions for first limit increase to £1,000.00 in October 2016 and the second limit increase to £1,750.00 in July 2017

For the first and second credit limit increases, it appears as though Aqua mainly relied on Mr B's account having been managed well in the five months or so since it had been opened. From what I can see Mr B used a significant proportion of the amount of credit Aqua made available to him shortly after being provided with the card and his balance did go slightly over his limit in April 2016. I note that Mr B also ever so slightly went over his limit in February 2017 too.

However, I'm also mindful that Mr B immediately made substantial payments afterwards and then went on to make inroads into what he owed by the time he was offered these limit increases. Furthermore, the external credit checks carried out showed that Mr B's external balances had reduced by this point too. It had dipped below £8,000.00 at the time of the first limit increase and then reduced again to around £5,000.00 at the time of the second one.

So there is a reasonable argument for saying that Mr B's account history on his Aqua card combined with his overall credit position, meant that it was reasonable for Aqua to conclude that Mr B could afford the credit limit increases and that it was fair and reasonable for Aqua to offer them. Indeed, it's also worth noting that Mr B didn't make any cash withdrawals, which he made two of after first being provided with the card, after the first limit increase was granted.

Bearing in mind all of the information Aqua had at the time, I'm satisfied that it wasn't unfair for Aqua to offer Mr B a credit limit increase to £1,000.00 in October 2016 and then £1,750.00 in July 2017. I'm also satisfied that no unfairness was created at this point of the lending relationship either.

The later credit limit increases Aqua offered to Mr B

As I've explained in the background section of this decision, Aqua increased Mr B's credit limit on three further occasions. It increased Mr B's credit limit to £2,750.00 in July 2018, £4,500.00 in June 2019 and then £6,500.00 in October 2019.

Having considered Mr B's transaction and account history, I can see that Mr B only ever went over £4,500.00 for a very brief period in September 2019. Even then Mr B immediately cleared the balance on the credit card in full. I'm therefore satisfied that Mr B is unlikely to have suffered any meaningful loss, irrespective of Aqua's actions, as a result of the final limit increase. Therefore, I'm not persuaded that Mr B lost out in relation to Aqua's actions for the fifth credit limit increase and I've focused my findings on the limit increase to £2,750.00 in July 2018 and the limit increase to £4,500.00 in June 2019.

Bearing in mind the extra being granted at the time of the third and fourth limit increases and the fact that Mr B could be left with having to repay £2,750.00 and then £4,500.00 within a reasonable period of time, I do think that it would have been reasonable and proportionate for Aqua to have found out a bit more about Mr B's regular living costs before offering these increases. As I can't see that this was something that Aqua did do, I don't think that it carried out reasonable and proportionate checks before providing the third and fourth limit increases to Mr B.

That said, having looked at copies of the current account statements Mr B has provided, I'm not persuaded that Mr B's regular non-discretionary living costs were higher than what Aqua believed at the time of his application. Indeed, Mr B's statements show that his regular living costs and non-discretionary expenditure was relatively low. And there were number of transfers to other accounts and payments to other individuals.

I accept that Mr B says that his actual circumstances at the time were worse than what this information shows. I know that he's referred to having taken out a number of payday loans. It's unclear which period Mr B is referring to. Nonetheless, I don't think that Aqua was aware of this and I can't see regular and sustained payday lending in the bank statements provided either. In any event, Mr B having previously taken payday loans isn't on its own a reason not to lend particularly given the repayments required to the limit increases appear affordable.

As I can't see that Mr B's actual living expenses and non-discretionary expenditure were much higher than what Aqua most likely assumed, I don't think that Aqua could reasonably be expected to know that Mr B's circumstances were worse than what proportionate checks are likely to have shown, or that this may have resulted in the limit increases being unaffordable.

So I can't see that requesting further information about Mr B's actual living costs, would have shown Aqua that it shouldn't have offered to increase Mr B's credit limit in July 2018 or June 2019. Consequently, I'm not persuaded that it doing more here would, in any event, have made a difference to its decisions and I don't think that it was unfair for Aqua to offer these credit limit increases, or that it doing so created unfairness either.

In reaching my conclusions, I've noted that Mr B has referred to having had a separate complaint against a different lender upheld. I can understand why Mr B might find it strange that he has a different outcome on this complaint from his other one. This is especially as he perceives the facts and circumstances to be the same.

But it's important for me to explain that we consider complaints on an individual basis and looking at the individual circumstances. As I've already explained, what will constitute a proportionate check will very much depend on the particular circumstances of the individual application. A proportionate check, even for the same customer, could look different for different applications.

Equally, what a lender would learn about a prospective borrower had proportionate checks been carried out would also be determined by what the lender can reasonably be expected to have found out about the borrower in the first place.

It may also help for me to explain that I am not bound by the outcomes reached by other case handlers on different cases. Ultimately, I'm required to consider the facts of a case and reach my own conclusion. So the outcome on Mr B's other case, cannot and does not bind me into reaching the same conclusion on this case. Furthermore, while I accept that consistency is important without knowing the particular details of Mr B's other case, it's difficult for me to comment on it.

Therefore, while I appreciate Mr B's frustration, I've not been persuaded that Mr B having had a different complaint upheld means that it follows that this complaint should also be upheld.

Overall, and based on the available evidence I don't find that Mr B's relationship with Aqua was unfair. I've not been persuaded that Aqua created unfairness in its relationship with Mr B by irresponsibly lending to him whether when initially agreeing to provide him with a credit card, or in respect of the credit limit increases. I don't find Aqua treated Mr B unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr B's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mr B. But I hope he'll understand the reasons for my

decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 February 2025.

Jeshen Narayanan
Ombudsman