

## The complaint

Mr C complains that NewDay Ltd trading as Aqua lent irresponsibly when it approved his credit card application and went on to increase the credit limit.

## What happened

The background to this complaint and my initial conclusions were set out in a provisional decision. I said:

*Mr C applied for an Aqua credit card in October 2015. In his application, Mr C said he was employed with an income of £16,000 that Aqua calculated left him with £1,157 a month after deductions. Aqua applied a housing figure (rent) of £438 and estimated living expenses of £415 a month. Aqua carried out a credit search and no evidence of any defaults or other adverse credit were found. Aqua also found Mr C owed around £300 to other lenders. No County Court Judgements or other adverse information was found on Mr C's credit file. Aqua says that after Mr C covered his existing commitments he had an estimated disposable income of £274 a month. Aqua approved a credit card with a limit of £300.*

*Aqua went on to approve the following credit limit increases:*

<b>Date</b>	<b>Event</b>	<b>Amount</b>
October 2015	Acc opening	£300
January 2016	Credit Limit Increase 1	£500
June 2016	Credit Limit Increase 2	£600
August 2018	Credit Limit Increase 3	£1,100
March 2020	Credit Limit Increase 4	£2,100
August 2020	Credit Limit Increase 5	£3,600
December 2020	Credit Limit Increase 6	£4,600
June 2023	Credit Limit Increase 7	£6,600
October 2023	Credit Limit Increase 8	£6,700

*Aqua says that before each credit limit increase it reviewed Mr C's account history and credit file.*

*Last year, Mr C complained that Aqua lent irresponsibly and it issued a final response. Aqua said that before approving Mr C's application and later increasing the credit limit in stages to £6,700 it had carried out the relevant lending checks. Aqua didn't agree it lent irresponsibly to Mr C and didn't uphold his complaint.*

*An investigator at this service looked at Mr C's case. They thought Aqua had completed reasonable and proportionate lending checks before approving Mr C's application and increasing his credit limit to £500 in January 2016 and £600 in May 2016. The investigator thought that Aqua should've carried out a more thorough set of checks before increasing the credit limit to £1,100 in August 2018. The investigator didn't think additional checks from Aqua would've led to it declining to increase Mr C's credit limit to £1,100.*

*The investigator said they thought a more comprehensive set of checks should've been completed before for credit limit increases four to six, taking it to £4,600. But when the investigator looked at Mr C's bank statements they found he had a reasonable disposable income after his commitments were met during this period. The investigator thought that if Aqua had carried out better checks it would've still approved the credit limit increases up to £4,600 in August 2020.*

*The investigator looked at Mr C's bank statements for the months leading up to credit limit increase 7 in June 2023, when it was set at £6,600. They found evidence that Mr C was gambling heavily during this time. The investigator thought that if Aqua had checked Mr C's bank statements before increasing the credit limit to £6,600 in June 2023 it would've most likely declined to proceed and upheld his complaint. The investigator asked Aqua to refund all interest, fees and charges applied to Mr C's credit card on balances over £6,600 from June 2023. Aqua didn't respond to the investigator's recommendation so Mr C's case has been passed to me to make a decision.*

### **What I've provisionally 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 lend or increasing the credit limit, the rules say Aqua had to complete reasonable and proportionate checks to ensure Mr C could afford to repay the debt in a sustainable way. These affordability checks needed to be focused on the borrower's circumstances. The nature of what's considered reasonable and proportionate will vary depending on various factors like:*

- The amount of credit;*
- The total sum repayable and the size of regular repayments;*
- The duration of the agreement;*
- The costs of the credit; and*
- The consumer's individual circumstances.*

*That means there's no set list of checks a lender must complete. But lenders are required to consider the above points when deciding what's reasonable and proportionate. Lenders may choose to verify a borrower's income or obtain a more detailed picture of their circumstances by reviewing bank statements for example. More information about how we consider irresponsible lending complaints can be found on our website.*

*When Mr C applied for the credit card in October 2015 he provided information about his circumstances to Aqua. Mr C said he was earning £16,000 a year and Aqua says that left him with a monthly net income of £1,157. I can see that Aqua applied a rent figure of £438 along with an estimate of Mr C's living expenses of £415 a month. I'm satisfied both figures were reasonable at the time of Mr C's application. Aqua also carried out a credit search and found Mr C owed around £300 to other lenders. When Aqua applied its lending criteria it says Mr C had an estimated disposable income of £274 a month. In my view that figure was sufficient*

for Mr C to be able to sustainably make repayments to a credit card with a limit of £300. Overall, I'm satisfied Aqua lent responsibly based on the information it found.

I've considered the information Aqua had available before credit limit increases one and two, taking it to £600. The application data Aqua obtained was still reasonably current and there's nothing in the credit file data that indicated his circumstances had changed. I also think it's reasonable to say that the increases were reasonably modest in nature. In my view, the level and nature of the checks Aqua completed were reasonable and proportionate to the new credit limits of £500 in January 2016 and £600 in May 2016. I haven't been persuaded that Aqua lent irresponsibly.

I've reached a different conclusion to the investigator concerning the decision to increase Mr C's credit limit to £1,100 in August 2018. Looking at the lending data available to Aqua, I can see Mr C's unsecured debts had increased from around £300 when he originally applied to around £11,700 by August 2018. The credit file information also shows Mr C had recently been using payday loans. As a result, Mr C's repayments had increased substantially from when he first applied and I've seen no evidence Aqua sought to revisit his income or confirm whether his circumstances had changed. In my view, it would've been reasonable for Aqua to consider completing more in depth checks before increasing the credit limit. One option Aqua had would've been to look at Mr C's bank statements to get a clearer picture of his circumstances which is what I've done.

Mr C's bank statements for the months prior to August 2018 show he was making substantial repayments to payday lenders. In addition, the bank statements show Mr C was still actively taking out new payday loans. In total, I found Mr C borrowed £1,850 from payday lenders in the months before his credit limit was increased. In my view, that indicates Mr C was reliant on credit to make ends meet and already borrowing at an unsustainable rate. I think it's more likely than not that if Aqua had carried out better checks, like looking at Mr C's bank statements, it would've most likely declined to increase his credit limit to £1,100 in August 2018.

It follows that if I think Aqua lent irresponsibly when it increased the credit limit to £1,100 in August 2018 I think the same about its later decisions to increase the credit limit further. I've not seen anything in the data Aqua had available that shows the credit card became more affordable over time. I note that in the months before the March 2020 increase to £2,100 Mr C had missed payments recorded on his credit file and that he'd used his credit card for cash advances. I also note a recent repayment plan that concluded a few months earlier. By August 2020, when Aqua increased the credit limit to £3,600, Mr C's other unsecured debt had increased to nearly £13,000. That in itself ought to have been a sign to Aqua that Mr C was borrowing at an increased rate and caused it to consider whether to offer more credit.

The lending data Aqua has provided shows that in the six months before it increased the credit limit to £4,600 in December 2020 Mr C had opened new credit totalling £2,465 which again shows an increase in the overall level of borrowing activity. In the three months before the credit limit increase to £6,600 in June 2023 Mr C took money transfers totalling £3,995 from his Aqua credit card. And in the three months before Mr C's credit limit was increased to £6,700 in October 2023 Mr C used his Aqua card for money transfers totalling £4,835. Mr C's told us he had a gambling problem around this time.

As noted above, I think that a better level of checks would most likely have led Aqua to have declined to lend further in August 2018 when it increased the credit limit to £1,100. And I haven't been persuaded that the other information provided demonstrates the subsequent credit limit increases were reasonably approved based on the lending data Aqua has supplied. In my view, Aqua lent irresponsibly from August 2018 onwards when it increased the credit limit from £600 to £1,100 and all subsequent increases. As a result, I intend to

*uphold Mr C's complaint and direct Aqua to refund all interest, fees and charges applied to balances over £600 from August 2018 onwards.*

*I've considered whether the business acted unfairly or unreasonably in any other way including whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mr C 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.*

I invited both parties to respond with any additional comments or information they wanted me to consider before I made my final decision. Mr C confirmed he is willing to accept. We didn't hear back from Aqua.

### **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 no new information has been received and Mr C has confirmed he's willing to accept, I see no reason to change the conclusions I reached in my provisional decision. I still think Mr C's complaint should be upheld, for the same reasons.

### **My final decision**

My decision is that I uphold Mr C's complaint and direct NewDay Ltd trading as Aqua to settle as follows:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £600 after August 2018.
- If the rework results in a credit balance, this should be refunded to Mr C 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 recorded after August 2018 regarding this account from Mr C's credit file.
- Or, if after the rework the outstanding balance still exceeds £600, Aqua should arrange an affordable repayment plan with Mr C for the remaining amount. Once Mr C has cleared the outstanding balance, any adverse information recorded after August 2018 in relation to the account should be removed from their credit file.

\*HM Revenue & Customs requires Aqua to deduct tax from any award of interest. It must give Mr C a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 27 March 2025.

Marco Manente  
**Ombudsman**