

The complaint

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

Mr Z 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 Z himself.

What happened

Mr Z was approved for an Aqua credit card in May 2018 with a £600 credit limit. I have detailed the credit limit changes below:

October 2018	£600 to £1,500
March 2019	£1,500 to £2,250

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

Our investigator partially upheld Mr Z's complaint. He said Aqua's checks for the account opening were proportionate, but Aqua should not have increased Mr Z's credit limit above £600 due to the management of his account as he had incurred overlimit fees in consecutive months prior to the credit limit increase.

Aqua asked for an ombudsman to review the complaint. They said Mr Z made larger repayments to his account, so they believed the lending was responsible. But they did offer to uphold Mr Z's complaint from the March 2019 lending decision. Mr Z said that between January 2022 and the present month he paid £761.99 to them through his Debt Management Plan (DMP) so it isn't that he had any benefit from this money, as when they increased the amount of credit for the second time, he had already almost paid it back.

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.

I've considered what Mr Z has said about what he's paid as part of his DMP. But as this has not been addressed by Aqua as part of the original complaint then I'm unable to look into this point for him. I also must make it clear I can only look into whether Aqua has irresponsibly lent to him, and I can't consider the actions of any other party (such as a debt collection agency) as part of this complaint.

Before agreeing to approve or increase the credit available to Mr Z, 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 Z'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 Z had provided before approving his application.

The information showed that Mr Z had declared a gross annual income of £24,000. The CRA did not report any defaults or County Court Judgements being registered in Mr Z's name. There were no arrears showing on his accounts at the time of the checks, and there weren't any arrears showing on his accounts for the six months prior to the lending checks.

The information from the CRA showed that Mr Z had a debt to annual gross income ratio of 37.97% which would have equated to around £9,113. Aqua completed an affordability assessment using information from Mr Z, the CRA and modelling to estimate his net monthly disposable income, and the assessment showed that Mr Z should be able to sustainably afford repayments for a £600 credit limit.

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

October 2018 credit limit increase - £600 to £1,500

I've looked at what checks Aqua said they did when increasing the credit limit as part of this lending decision. The data from a CRA shows that Mr Z had active unsecured debt of £9,601.

Aqua would also have been able to see how Mr Z managed his account since it had been opened. Mr Z incurred two overlimit fees in consecutive months which could be a sign of financial difficulty, but again, they could have been oversights from Mr Z.

I've considered what Aqua have said about Mr Z's overpayments. Mr Z's £324.30 repayment was made after his credit limit was increased as I can see in the same month he spent £1,082.07 on his Aqua card. He did make a repayment of £100 the month prior to this, but he mainly paid close to his minimum repayment (apart from one month when he repaid £99.35, but in the same month he also spent £173.54).

Data from one of the CRA's showed Mr Z had six accounts, but in the month Aqua completed their checks for this lending decision, Mr Z opened three new accounts as the data showed he had nine accounts opened, with three new accounts being opened in a month. So this could be a sign that Mr Z was hungry for credit. So based on these factors I'm persuaded that Aqua should have completed further checks to ensure the increased lending was 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 Z to get an understanding of why he had exceeded his credit limit two months in a row, and to find out why he'd recently opened three new accounts. 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 Z to provide his bank statements for the three months leading up to this

lending decision, which Aqua could have requested as part of a proportionate check. Mr Z's bank statements show he is overdrawn for the entire three month period I reviewed leading up to this lending decision, often by four figures.

Mr Z's bank statements show financial difficulty as there were 22 direct debits returned unpaid, with at least four direct debits being returned unpaid in each of the three months I reviewed, so the financial difficulty was over a prolonged period of time. Even when £1,000 credited his account from a third party lender, Mr Z had returned direct debits unpaid later that month.

So if Aqua would have requested Mr Z's bank statements as part of a proportionate check then I'm persuaded that they wouldn't have increased the credit limit here. So I'm persuaded that Aqua made an unfair lending decision here.

March 2019 lending decision

As Aqua have agreed to uphold Mr Z's complaint about this lending decision, I have not looked to see what their checks showed here. But based on the previous section of this decision, I'm persuaded that Aqua should have upheld Mr Z's complaint from the lending decision prior to the March 2019 lending decision.

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 Z 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. I have also made a slight amendment to the date from where Aqua should take action from to reflect the actual date that the credit limit was increased for the first time.

My final decision

I uphold this complaint in part. NewDay Ltd trading as Aqua 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 to balances above £600 after 29 October 2018;

If the rework results in a credit balance, this should be refunded to Mr Z along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding this account from Mr Z's credit file recorded after 29 October 2018;

Or, if after the rework the outstanding balance still exceeds £600, Aqua should arrange an affordable repayment plan with Mr Z for the remaining amount. Once Mr Z has cleared the balance, any adverse information recorded after 29 October 2018 in relation to the account should be removed from his credit file.

**If Aqua considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr Z how much they've taken off. They should also give Mr Z 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 Z to accept or reject my decision before 26 May 2025.

Gregory Sloanes
Ombudsman