

## The complaint

Mr J complains that NewDay Ltd trading as Aqua lent irresponsibly when it approved his credit card application and later increased the credit limit.

## What happened

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

*Mr J applied for a credit card with Aqua in June 2016. In his application, Mr J said he was employed with an income of £24,000 that Aqua calculated left him with £1,517 a month after deductions. Aqua carried out a credit search and found Mr J had a default recorded around 11 months earlier. The lending data Aqua has supplied gives a "1" for missed mortgage payments in the previous six months. Aqua also found Mr J owed around £2,750 to other lenders with monthly repayments of around £150. No other adverse information or recent missed payments were found on Mr J's credit file. Aqua applied estimates of Mr J's rent of £175 and general living expenses of £430 a month, in addition to his credit commitments of £150 to his income of £1,517. Aqua says Mr J had an estimated disposable income of £761 after meeting his existing commitments and approved a credit card with a limit of £1,200.*

*Aqua went on to increase the credit limit in stages as follows:*

	<b>Date</b>	<b>Limit</b>
<b>Account opening</b>	June 2016	£1,200
<b>CLI 1</b>	November 2016	£2,300
<b>CLI 2</b>	April 2017	£3,300
<b>CLI 3</b>	August 2017	£4,000
<b>CLI 4</b>	January 2018	£5,000
<b>CLI 5</b>	December 2018	£7,000
<b>CLI 6</b>	October 2019	£8,000

*Last year, Mr J complained that Aqua lent irresponsibly and it sent him a final response. Aqua said it had carried out the relevant lending checks before approving Mr J's application and increasing the credit limit and didn't agree it lent irresponsibly.*

*An investigator at this service looked at Mr J's complaint and upheld it. They noted that Mr J had a default 11 months before his application and Aqua had found a missed mortgage payment within the preceding six months. Given the missed mortgage payment and default, the investigator thought Mr J showed clear signs he was struggling and that Aqua should've taken a more detailed look at Mr J's circumstances before approving the application.*

*To get a clearer picture of Mr J's circumstances, the investigator looked at his bank statements for the three months before his application was made. They noted Mr J had gone over his agreed overdraft limit in the preceding months and was incurring daily overdraft fees. The investigator also noted a number of unpaid direct debits and associated fees. The investigator thought that because Mr J was already reliant on his overdraft and credit for his day to day spending, more thorough checks would've shown Aqua he was unlikely to be in a*

position to sustainably afford a new credit card and felt it lent irresponsibly. The investigator also thought Aqua lent irresponsibly when it approved the credit limit increases, taking it to £8,000 in October 2019. The investigator recommended that Aqua refund all interest, fees and charges applied to Mr J's credit card from the date of approval.

Aqua asked to appeal and said the "1" recorded against the missed mortgage payment in the six months before his application approved didn't reflect a missed mortgage payment. Aqua also said the default recorded eleven months earlier wasn't a barrier to lending and that it didn't have data to reflect Mr J's overdraft use in the months before his application was made. As Aqua asked to appeal, Mr J's complaint 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 J 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.*

*I've looked at the application data Aqua has sent us setting out the checks it completed when considering Mr J's application in June 2016. I can see Mr J provided details of his income and that Aqua applied what appear to be reasonable estimates for his general outgoings. I can also see Aqua carried out a credit check and found a default from the previous year. Aqua's lending data also returned a "1" for the "worst mortgage status in the last six months". In response to the investigator, Aqua's case handler claimed the "1" didn't actually indicate Mr J had missed a mortgage payment in the previous six months. But the affordability glossary Aqua's provided gives the explanation that the number recorded in that field indicates the worst mortgage status in the last six months. Based on the glossary and result Aqua obtained, to me, the information showed Mr J had a missed mortgage payment in the previous six months before his application was made.*

*In my view, the information available to Aqua when Mr J applied indicated he may have been struggling. In the circumstances, I think it would've been reasonable for Aqua to have taken a more detailed approach to Mr J's application. One option Aqua had was to review Mr J's bank statements for the preceding months to get a clearer picture of his circumstances, which is what I've done.*

*Mr J's bank statements show he had a variable income from various sources. On average, Mr J earned around £2,250 a month in the three months before his application was made*

which is somewhat higher than the figure Aqua used in the application. On average, Mr J's bills for items like his mortgage, credit commitments, utilities and insurance came to around £790. I can see Mr J was often overdrawn and sometimes at his limit. But overall, the account is well administered. I note that during this period, in addition to his normal spending, Mr J made payments towards a caravan totalling around £2,300. In my view, Mr J's bank statements showed he had an average disposable income of around £790 after meeting his existing commitments and I'm satisfied that was sufficient to be able to sustainably afford repayments to a credit card with a limit of £1,200. I'm sorry to disappoint Mr J as whilst I agree with the investigator's view Aqua should've carried out a more thorough approach to his application, I think it's more likely than not that it would've still approved his application if it had done so. I haven't been persuaded Aqua lent irresponsibly when it approved Mr J's credit card application in June 2016.

Aqua increased the credit limit to £2,300 in November 2016, only five months after Mr J opened the account. Given Aqua only had a short track record with Mr J and the fact it was almost doubling the credit limit, I again think there were grounds for a more detailed approach to Mr J's application. Again, I've looked at Mr J's bank statements to get a picture of his circumstances at the time. Mr J's bank statements show his account was well maintained, albeit overdrawn for much of the time. All Mr J's payments were made. Mr J's income averaged around £2,660 and his regular payments for items like his mortgage, credit commitments, utilities and insurances came to an average of £972 a month. From what I can see, after Mr J's committed outgoings were met he had around £1,688 available to cover his general living expenses. In my view, Mr J's bank statements show he had capacity to sustainably afford repayments to an increased credit limit of £2,300. I'm sorry to disappoint Mr J but I haven't been persuaded Aqua lent irresponsibly when it increased his credit limit to £2,300 in November 2016.

I've gone on to look at the credit limit increase to £3,300 in April 2017. Given it was only four months since the previous credit limit increase and Mr J had shown previous signs he may've been struggling, I think Aqua ought to have gone further in its lending checks before deciding to proceed. I've looked at Mr J's bank statements to get a clearer picture of his circumstances in the months before. Mr J's circumstances appear to have changed somewhat and his earnings reduced. On average, Mr J earned around £1,140 and his outgoings for regular payments for items like his mortgage, credit commitments, utilities and insurances came to £872. That left Mr J with around £268 as a disposable income after his key commitments were met. But from that sum, Mr J needed to cover all his food, fuel, everyday spending and ensure he had enough to afford any emergency expenses that may have arisen, in addition to the increased Aqua payment caused by the higher credit limit.

I'm not persuaded that Mr J's disposable income was sufficient to sustainably afford increased repayments to Aqua for a new credit limit of £3,300 in April 2017. In my view, if Aqua had carried out a more detailed approach to the credit limit increase it would've most likely declined to proceed. Based on the available evidence, I think Aqua lent irresponsibly when it increased Mr J's credit limit to £3,300 in April 2017.

I've thought about the later credit limit increases that took it to £8,000 in October 2019. It follows that if I think Aqua lent irresponsibly when it increased Mr J's credit limit to £3,300 in April 2017 I think the same about the following decisions it made. I've looked at the remaining data provided by Aqua and note that from June 2017 onwards Mr J started to use his credit card to take cash advances. Mr J's other unsecured debts also continued to increase over time. I haven't seen anything in the data provided that persuades me Aqua lent responsibly when it increased the credit limit in stages until it reached £8,000 in October 2019.

*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 below results in fair compensation for Mr J 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.*

*For the reasons I've noted above, I intend to uphold Mr J's complaint and direct Aqua to refund all interest, fees and charges applied to balances over £3,300 from April 2017 onwards.*

I invited both parties to respond with any additional comments or information they wanted me to consider before I made my final decision. Mr J responded to confirm he accepts the settlement set out in the provisional decision. 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 provided I see no reason to change the conclusions I reached in my provisional decision. I still think Mr J's complaint should be upheld, for the same reasons.

### **My final decision**

My decision is that I uphold Mr J'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 £3,300 after April 2017.
- If the rework results in a credit balance, this should be refunded to Mr J 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 April 2017 regarding this account from Mr J's credit file.
- Or, if after the rework the outstanding balance still exceeds £3,300, Aqua should arrange an affordable repayment plan with Mr J for the remaining amount. Once Mr J has cleared the outstanding balance, any adverse information recorded after April 2017 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 J 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 J to accept or reject my decision before 10 April 2025.

Marco Manente  
**Ombudsman**