

The complaint

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

What happened

Mr B applied for a credit card with Aqua in June 2016. In his application, Mr B said he was employed with an income of £9,000 a year or £727 a month. Aqua applied cost of living and rent estimates totalling £614 a month. Aqua also carried out a credit search and found Mr B had existing debts of £2,079 with monthly repayments of £50. No adverse credit, defaults or recent missed payments were found on Mr B's credit file. Aqua deducted Mr B's outgoings from his income and found he had an estimated disposable income of £62 a month. Aqua approved the application and issued a credit card with a £900 limit.

Aqua increased the credit limit as follows:

| Event | Date | Limit |
|-------------|--------|--------|
| Application | Jun-16 | £600 |
| CLI1 | Oct-16 | £1,500 |
| CLI2 | Mar-17 | £2,700 |
| CLI3 | Jul-17 | £3,700 |
| CLI4 | Jun-18 | £4,900 |
| CLI5 | Jan-19 | £6,900 |
| CLI6 | Aug-21 | £8,000 |

Last year, representatives acting on Mr B's behalf complained that Aqua lent irresponsibly and it issued a final response. Aqua said it had carried out the relevant lending checks when approving Mr B's application and increasing the credit limit in stages to £4,900 by June 2018. Aqua upheld Mr B's complaint about the final two credit limit increases and agreed to refund interest, fees and charges applied over balances of £4,900.

An investigator at this service upheld Mr B's complaint. They highlighted that Aqua's lending checks showed Mr B only had an estimated disposable income of £62 when it approved his application. The investigator thought that was too low for Mr B to be able to make repayments to a new credit card, cover his existing outgoings and have funds available to cover unexpected or emergency expenses. The investigator asked Aqua to refund all interest, fees and charges applied to Mr B's credit card from inception. Aqua didn't agree but made a counter offer and said it was willing to refund interest, fees and charges applied to balances over £1,500, after the second credit limit increase to £2,700 in March 2017. Aqua said that whilst its affordability modelling reached the estimated disposable income figure of £62 a month, it used a higher repayment figure for Mr B's credit repayments. Aqua also said Mr B had made payments in excess of the minimum in the months before the credit limit increase to £1,500 in October 2016. As Aqua asked to appeal, Mr B's complaint has been passed to me to make a decision.

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 lend or increasing the credit limit, the rules say Aqua had to complete reasonable and proportionate checks to ensure Mr B 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.

As I've noted above, Aqua used estimates for Mr B's outgoings and carried out a credit search to get a picture of his regular outgoings. In addition to rent and general living expenses, totalling £614 a month, Aqua used a monthly repayment of £50 for Mr B's existing debts. That left Mr B with £62 a month as a disposable income. I can see that Aqua's response to the investigator says it took a conservative approach to Mr B's credit commitments, using a monthly figure of £50 against an outstanding balance of £2,079. But even if that were the case, Mr B had such a modest disposable income that he still had very limited funds available based on Aqua's calculations. As our investigator pointed out, a disposable income of £62 a month meant there would've been a lack of flexibility for Mr B in the case of unexpected or emergency costs.

In my view, the information available to Aqua should've shown Mr B wasn't in a position to sustainably afford further payments to a new credit card. I'm upholding Mr B's complaint about the decision to approve his application in June 2016.

I've thought about the credit limit increase to £1,500 in October 2016 but haven't seen anything that indicates Mr B's circumstances had changed in the four months since his original application was made or that the credit card became more affordable in that time. In my view, the decision to increase Mr B's credit limit to £1,500 was also unreasonable based on the information Aqua obtained. So I am going to tell Aqua to refund all interest, fees and charges applied to Mr B's credit card from the date of approval.

Aqua has already agreed to uphold Mr B's complaint from the second credit limit increase onwards. As Aqua has already agreed to uphold this part of Mr B's complaint, I don't need to make a finding on the credit limit increases from £2,700 in March 2017 to £8,000 in August 2021.

For the reasons I've noted above, I'm upholding Mr B's complaint and directing Aqua to refund all the interest, fees and charges applied to his credit card from inception.

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 B 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.

My final decision

My decision is that I uphold Mr B'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.
- If the rework results in a credit balance, this should be refunded to Mr B 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 regarding this account from Mr B's credit file.
- Or, if after the rework there is still an outstanding balance, Aqua should arrange an affordable repayment plan with Mr B for the remaining amount. Once Mr B has cleared the balance, any adverse information in relation to the account should be removed from his credit file.
- If Aqua has sold the debt to a third-party, they should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 May 2025.

Marco Manente
Ombudsman