

## **The complaint**

Mr P 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 P applied for an Aqua credit card in August 2019. In his application, Mr P said he was earning £39,000 that Aqua calculated left him with £2,235 a month after deductions. Aqua applied estimates for Mr P's housing cost and general living expenses totalling £709 a month. A credit search was completed that showed Mr P owed around £30,200 in other unsecured debts and was making monthly payments of £460. Aqua applied its lending criteria and says Mr P had an estimated disposable income of £500 a month after meeting his existing outgoings. Aqua approved Mr P's application and issued a credit card with a £900 limit.

Aqua increased Mr P's credit limit to £1,650 in March 2020. Aqua says it looked at Mr P's account history, credit file and completed a new affordability assessment before approving the credit limit increase.

Last year, representatives acting on Mr P's behalf complained that Aqua lent irresponsibly and it issued a final response. Aqua said it had carried out the relevant lending checks before approving Mr P's application and increasing the credit limit and didn't agree it lent irresponsibly.

An investigator at this service thought the original decision to approve Mr P's application was reasonable based on the information Aqua obtained about him. But the investigator wasn't persuaded the level or nature of checks completed before the credit limit increase were reasonable so looked at Mr P's bank statements for the preceding months. The investigator found Mr P's outgoings exceeded his income in the three months before the credit limit increase was approved and said he wasn't in a position to afford further credit. The investigator asked Aqua to refund all interest, fees and charges applied to balances over £900 from March 2020 to resolve Mr P's complaint.

Despite being chased and notified Mr P's case would be referred for an ombudsman's decision, no response was received from Aqua. As a result, Mr P'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 P 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 set out the information Aqua used when assessing Mr P's application above. I note Mr P's credit file was free from any adverse information, defaults, recent missed payments or payday loans when Aqua checked it. Whilst I can see Mr P owed around £30,200 at the point of his application (which is reasonably high when compared against his income) I note his payments were up to date and all the accounts appear to have been well handled. Aqua used reasonable estimates obtained from nationally recognised statistics when considering Mr P's outgoings – an approach it's allowed to take. And Aqua found Mr P had an estimated disposable income of £500 a month after meeting his existing commitments.

In my view, the level and nature of checks completed by Aqua were reasonable and proportionate to the application Mr P made and credit limit of £900 it went on to approve. And I'm satisfied the decision to approve Mr P's application on the basis of the information Aqua obtained was also reasonable. I'm sorry to disappoint Mr P but I haven't been persuaded Aqua lent irresponsibly when it approved his credit card application.

By the time Mr P's credit limit was increased in March 2020 his unsecured debts had increase to around £39,000. That was a reasonably steep increase in a short period of time. I note a late payment fee was applied to Mr P's account just two months before the credit limit was approved as well. In my view, Aqua's lending checks should've gone further to ensure Mr P was able to sustainably afford an increase in the credit limit. One option Aqua had was to look at Mr P's bank statements for the preceding months to get a clearer picture of his circumstances which is what I've done.

Mr P's bank statements show that in the three months before the credit limit increase his average income was £2,765 against average outgoings of £2,889. That doesn't include any spending on items like food, fuel or other general living expenses. I also note Mr P was clearly taking new credit out with other lenders during this time. I saw new borrowing totalling over £3,600 in the three months of bank statements I reviewed.

In my view, Mr P's bank statements show he was already over committed and borrowing at an unsustainable rate in March 2020 when Aqua increased his credit limit to £1,650. I think it's more likely than not that if Aqua had carried out a more comprehensive set of checks, like reviewing Mr P's bank statements, before increasing the credit limit it would've declined to proceed. I haven't been persuaded Aqua lent responsibly when it approved the credit limit increase to £1,650 in March 2020. As a result, I'm going to tell Aqua to refund all interest, fees and charges applied to balances over £900 from March 2020 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 below results in fair compensation for Mr P 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 P'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 £900 after 12 March 2020.
- If the rework results in a credit balance, this should be refunded 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 recorded after 12 March 2020 regarding this account from Mr P's credit file.
- Or, if after the rework the outstanding balance still exceeds £900, NewDay should arrange an affordable repayment plan with Mr P for the remaining amount. Once Mr P has cleared the outstanding balance, any adverse information recorded after 12 March 2020 in relation to the account should be removed from their credit file.

If NewDay has sold Mr P's account to another business it should work with the new owner or consider buying the debt back to ensure the above settlement can be put in place.

\*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mr P a certificate showing how much tax has been taken off if they ask 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 P to accept or reject my decision before 30 May 2025.

Marco Manente  
**Ombudsman**