

The complaint

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

What happened

On 4 June 2014, Mr A applied for and received a credit card with Aqua. He was given a credit limit of £250 which changed over time as follows:

Date	Limit increase / decrease	New limit
7 October 2014	Increase	£750
27 January 2015	Decrease	£400
24 August 2016	Increase	£1,110
5 May 2017	Increase	£2,100
28 September 2018	Increase	£3,200
28 September 2018	Decrease	£2,400
4 March 2020	Increase	£3,900

Mr A repaid the balance of the account in full on 14 March 2020 and the account was closed.

On 25 July 2023, Mr A complained to Aqua saying it had lent to him irresponsibly. He says he has experienced financial difficulties, but the bank didn't help him. He ended up taking a loan elsewhere to repay Aqua because the interest was very high. He said he had no job and Aqua kept increasing his limit without any proper checks. To resolve his complaint, Mr A asked the bank to refund his charges and interest he'd paid on the account.

Aqua looked into Mr A's complaint and issued a final response letter. It said that when he'd applied for the card, he had declared he was employed and had an annual income of £15,000. It carried out a credit check and found he had £1,500 of unsecured debt, so it was happy to agree a card with a £250 limit. Aqua explained it regularly reviewed how Mr A was using his account and his external debt. It made offers of increases in his limit, or decreased his limit, as and when it felt appropriate to do so. Mr A could opt-out of any increases.

Aqua felt it had reached fair decisions to lend to Mr A, but in view of his circumstances, it upheld his complaint and offered a refund of charges and interest he'd paid as a result of the increase given on 28 September 2018. It refunded a total of £460.13.

Mr A was unhappy with Aqua's response, so he referred his complaint to our service. When he did so, Aqua told us it didn't consent to us looking into events prior to July 2017 as he'd brought the complaint too late. It said most of the increases had taken place more than six years ago, so he was out of time under the rules for the early part of this complaint. It acknowledged however that it ought to have added interest to Mr A's refund at a rate of 8% per annum in line with our usual approach, so it offered to do so now.

One of our investigators looked into the complaint. She didn't agree with Aqua that the complaint had been brought too late. She felt Mr A's complaint could reasonably be considered as being about his credit relationship with Aqua being unfair as described in

Section 140 of the Consumer Credit Act 1974 (s.140). Our investigator went on to look into the whole of Mr A's complaint and agreed with the outcome Aqua had reached. She explained this to Mr A and let him know that Aqua would now add interest to that sum.

Mr A didn't accept what our investigator said. As there was no agreement, the complaint has been passed to me for 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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Aqua thinks this complaint was referred to us too late. Our investigator explained why she didn't, as a starting point, think we could look at a complaint about the lending decisions that happened more than six years before the complaint was made. But she also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in s.140, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. I think this complaint can reasonably be considered as being about an unfair relationship as Mr A says the increases simply made his situation worse. These may have made the relationship unfair as he had to pay more in interest than he could afford and was unable to reduce the debt. I acknowledge Aqua still doesn't agree we can look at this complaint, but as I don't think it needs to do any more than it has already offered to do, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr A's complaint can be reasonably interpreted as being about the fairness of his relationship with Aqua, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Aqua) and the debtor (Mr A), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship.

S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given what Mr A has complained about, I need to consider whether Aqua's decision to lend to him and increase his credit limits, or its later actions, created unfairness in the relationship between him and Aqua such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr A's relationship with Aqua is therefore likely to be unfair if it didn't carry out proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Aqua carry out reasonable and proportionate checks to satisfy itself that Mr A was in a position to sustainably repay the credit?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did Aqua make a fair lending decision?
- Did Aqua act unfairly or unreasonably towards Mr A in some other way?

Aqua had to carry out reasonable and proportionate checks to satisfy itself that Mr A would be able to repay the credit sustainably. It's not about Aqua assessing the likelihood of it being repaid, but it had to consider the impact of the repayments on him.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the monthly repayments and the overall circumstances of the borrower.

When Mr A applied for the Aqua card, he declared he was employed, earning £15,000 a year - £1,150 per month. Aqua checked his credit file and found he had credit commitments of around £15 per month. It used a widely used statistical tool to estimate his living expenditure and calculated he had a disposable income of approximately £675 a month. I think it carried out reasonable and proportionate checks for the opening limit of £250 and I think it reached a fair decision to open the account.

Aqua carried out a review each month to see how Mr A was using the account and had a look at his credit file to keep an eye on his external credit. Due to the time that's passed, Aqua has been unable to supply the credit file information it saw. This isn't unusual as businesses are not required to retain records indefinitely, but I can see that it checked. For the first few months, Mr A repaid his card in full. Aqua offered to increase Mr A's limit to £750. Again, I think reasonable checks were carried out and I can't say that the offer to lend was unfair.

Aqua carried out similar checks and adjusted Mr A's credit limit on a fairly regular basis – and not only upwards. For example, it saw that Mr A hadn't used his account following the increase to £750, so it reduced the limit to £400. During the time Mr A's limit was £400, he ran the account well, often clearing the balance in full.

In August 2016, Aqua offered an increase to £1,100. It had reviewed Mr A's account performance and his credit file. I do have the credit file information for this review. He had around £2,400 of external debt and I can see that there had been a default registered against Mr A around 11 months earlier. But I don't think one default from almost a year ago would have unduly concerned Aqua given the way Mr A had run his account with it. There was no sign of pressure on his account such as missed or late payments, and he'd stayed within his limit. So overall, I think it did enough to check Mr A's circumstances before offering a credit limit increase to £1,100 and I think it did so fairly.

Increase to £2,100

Aqua kept Mr A's account under review and continued to check his credit file. And as we

know, it offered to increase his limit to £2,100 in May 2017. This was about 2½ years from when the account was opened, and a significant increase on his opening and existing limits. While his account with Aqua was well run and there was no new adverse information on his credit file, I can see that Mr A had begun to increase his credit elsewhere which can be a sign of difficulty.

I haven't seen anything to show that Aqua had checked the income and expenditure details it held for Mr A since his account was opened. Given the time since the account was opened, the apparent increase in his debt elsewhere and the size of the increase it was proposing, I think it would have been reasonable for Aqua to have at least asked Mr A for some details of his income to ensure the new limit would be sustainable.

I don't think it carried out reasonable and proportionate checks before offering this limit increase, so I've gone on to consider what it would have found had it done so. While there is no set way of checking such information, Mr A has provided copies of his bank statement covering April and May 2017. I think these are likely to provide a reasonable indication of what Aqua would have found had it done more.

While there is no evidence of a regular income paid directly into the account, Mr A had a significant amount of money transferred into his account from others in his name – in April, a total of over £7,100, and in May a total of over £3,800. Mr A did use his overdraft from time to time, but he was in credit for the majority of each month. So I've not seen anything which I think would have made Aqua reach a different lending decision – I think if it had asked for more information, it would have been likely to continue to offer the increase to £2,100.

Increase to £3,200 immediately reduced to £2,400 – 28 September 2018

Mr A continued to use his Aqua account well within the £2,100 limit. But in the last few months before Aqua offered the increase to £3,200, Mr A had a balance close to his limit. His credit file showed he had taken out a number of new accounts elsewhere – in May 2018, he had one active account elsewhere, but by August, that had increased to 10. So it seems Mr A was taking on credit regularly during this period and I would have expected Aqua to take this into account.

On the day that Aqua implemented the increase to £3,200, it reversed that decision and instead increased the limit to £2,400 – an increase of £300 – as he'd missed a payment to it. So there was still an increase in his limit, albeit smaller than had been anticipated initially.

Aqua has agreed already that it shouldn't have offered this increase, or the one that followed in March 2020 to £3,900. It has refunded charges and interest on balances over £2,100 (a limit I think was fairly lent) directly to Mr A's bank account as his card with Aqua had closed.

I think that was fair as far as it goes but this service would normally expect a lender to add interest at 8% to that sum too. Aqua has offered to do that. Overall, I think Aqua has made a fair offer to Mr A and it is for him to decide if he wishes to accept it or not. To be clear, if he accepts my decision, I expect Aqua to contact him to check his bank details and make a payment of the interest to him.

My final decision

My final decision is that I don't uphold this complaint. NewDay Ltd trading as Aqua has made a reasonable offer to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 23 July 2025.

Richard Hale
Ombudsman