

The complaint

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

Mr C is represented by a solicitors firm 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 C himself.

What happened

Mr C was approved for an Aqua credit card in January 2014 with a £250 credit limit. I have detailed the credit limit changes below:

May 2014	£250 to £400
February 2015	£400 to £1,000
July 2015	£1,000 to £1,750
January 2017	£1,750 to £2,650
August 2018	£2,650 to £3,900
December 2023	£3,900 to £5,650

Mr C made a complaint to Aqua, who did not uphold Mr C's complaint. They said they made fair lending decisions. Mr C brought his complaint to our service. Our investigator partially upheld Mr C's complaint. She said Aqua should have made further checks from February 2015 when they increased his credit limit to £1,000 and further checks would have showed the lending wasn't fair. As Aqua did not confirm whether they accepted or rejected our investigator's view of Mr C's complaint then the complaint was passed to me to make a decision on it.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

"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 increase the credit available to Mr C, 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 of the Aqua account

I've looked at what checks Aqua said they did when they approved Mr C's application. Aqua said they looked at information provided by Credit Reference Agencies (CRA's) and they considered information Mr C told them.

Mr C told Aqua he was earning a £13,000 gross annual income, which Aqua calculated to be around £975 a month. Aqua used information from the CRA and modelling to estimate Mr C's expenditure. This is an industry standard way of assessing a borrower's expenditure. The assessment showed that the repayments for a credit limit of £250 would be able to be affordable and sustainable for Mr C.

I've looked at what other data Aqua had available to them as part of this lending decision. Mr C was showing as having no unsecured debt. And there were no defaults or County Court Judgements (CCJ's) being reported by the CRA Aqua used. Based on his declared gross annual income, the credit limit would equate to less than 2% of his declared gross annual income.

So I'm persuaded that the checks Aqua completed were proportionate, and it would not have been proportionate for them to make further checks here. I'm persuaded that Aqua made a fair lending decision to approve Mr C's application and give him a £250 credit limit.

May 2014 credit limit increase - £250 to £400

I've looked at what checks Aqua said they did when they increased Mr C's credit limit as part of this lending decision. Aqua have said that due to the time that's passed, they have limited information regarding this. So I can't see what the checks from the CRA would have shown. Therefore I'm not able to say that the checks that were performed prior to the £400 credit limit being approved were proportionate or not, or whether a fair lending decision was made here.

There is data with how Mr C used his Aqua account from account opening though. Mr C incurred no late or overlimit fees on the account since it was opened. And while Mr C had cash advances on one occasion which could be a sign of financial difficulty, but I'm also mindful that it is a legitimate use of the account.

Ultimately, I simply do not have sufficient evidence to conclude that an unfair lending decision was made to increase the credit limit to £400.

February 2015 credit limit increase - £400 to £1,000

I've looked at what checks Aqua said they did when they increased Mr C's credit limit as part of this lending decision. Again, due to the time that's passed, Aqua have limited information regarding this.

But this time there is limited information from one of the CRA's. The CRA reported that Mr C had credit card balances of £3,032, The CRA showed that Mr C didn't have any arrears on his active accounts since the last lending decision.

Mr C incurred a late fee since the last lending decision. Mr C had more frequent cash advances since the last lending decision. So based on the increase of Mr C's unsecured debt (as none was showing at the account opening checks), the late payment and the frequent cash advances, I'm persuaded that Aqua should have completed further checks to ensure the lending was affordable and sustainable for Mr C.

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 C to ask him why he had missed a payment, made several cash advances, and enquired why his debt had significantly increased since the account was opened. 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.

Mr C has provided bank statements prior to this lending decision. But it appears he has another account also. The statements Mr C sent us only shows he received around £148 a month crediting his account. But he makes faster payments into the account which appear to come from another of his accounts. Our investigator asked Mr C for his other account statements and Mr C told us that he couldn't get them as he didn't think they went back that far.

So on the face of it, it does look like Aqua should've looked more closely into this. But as my role is impartial, that means I have to be fair to both sides and although I'm satisfied that Aqua should've done more checks here – I can't say whether further checks would've revealed further information which means they wouldn't have lent. So as Mr C hasn't been able to provide our service with all of the information he was asked for (albeit through no fault of his own), that means that it wouldn't be fair for me to say that Aqua shouldn't have lent here, because I don't know what further checks would reveal.

July 2015 credit limit increase - £1,000 to £1,750

I've looked at what checks Aqua said they did when they increased Mr C's credit limit as part of this lending decision. Again, due to the time that's passed, Aqua have limited information regarding this.

The CRA reported that Mr C had credit card balances of £3,381, which was not significantly higher than the last lending decision. The CRA showed that Mr C didn't have any arrears on his active accounts since the last lending decision.

Mr C incurred three late fees on his Aqua account since the last lending decision. And he again made several cash advances since the last lending decision. So again, I'm persuaded that Aqua should have made further checks based on the frequent late fees incurred and the cash advances.

But similarly to the bank statements Mr C sent us with the last lending decision, these statements show only limited regular income crediting the account, and he makes faster payments to the account again. As Mr C has been unable to provide his statements for his other account, I'm unable to see what these would have shown.

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January 2017 credit limit increase - £1,750 to £2,650

I've looked at what checks Aqua said they did when they increased Mr C's credit limit as part of this lending decision. There is slightly more information from the CRA's regarding this lending decision.

The CRA reported that Mr C had revolving balances (such as credit/store card/overdraft) of £4,388 which was not significantly higher than the last lending decision considering his credit limit had been increased by £750. The CRA again showed that Mr C didn't have any arrears on his active accounts since the last lending decision.

But Mr C incurred seven overlimit fees on his Aqua account since the last lending decision, and Mr C frequently made cash advances since the last lending decision. Mr C did not withdraw any cash since the last lending decision. So again, I'm persuaded that Aqua should have made further checks based on the frequent overlimit fees incurred and the cash advances.

But similarly to the bank statements Mr C sent us with the last lending decision, these statements show only limited regular income crediting the account, and he makes faster payments to the account again. As Mr C has been unable to provide his statements for his other account, I'm unable to see what these would have shown.

So on the face of it, it does look like Aqua should've looked more closely into this. But as my role is impartial, that means I have to be fair to both sides and although I'm satisfied that Aqua should've done more checks here – I can't say whether further checks would've revealed further information which means they wouldn't have lent. So as Mr C hasn't been able to provide our service with all of the information he was asked for (albeit through no fault of his own), that means that it wouldn't be fair for me to say that Aqua shouldn't have lent here, because I don't know what further checks would reveal.

August 2018 credit limit increase - £2,650 to £3,900

I've looked at what checks Aqua said they did when they increased Mr C's credit limit as part of this lending decision. Aqua completed an affordability assessment which assessed the likelihood of Mr C being able to afford the credit limit increase. However, based on the results of Mr C likely being able to afford the credit limit increase (a 38% likelihood), then Aqua should have not increased the credit limit to £3,900 based on their own internal criteria, therefore I'm not persuaded a fair lending decision was made here.

December 2023 credit limit increase - £3,900 to £5,650

If Mr C's credit limit increase to £3,900 did not happen, then it's probable that the further lending decision wouldn't have happened after this either. So I think there is an argument for saying that Mr C's complaint about the subsequent lending decision should be upheld without making a finding on reasonable and proportionate checks. After all, if matters had played out as the evidence suggests they should have done in August 2018, I'm not persuaded that Aqua would've added to the credit.

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 C 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."

I invited both parties to let me have any further submissions before I reached a final decision. Neither party responded to the provisional 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.

As neither party have provided me with any further information to consider, then my decision and reasoning remains the same as in my provisional decision.

Putting things right

In the provisional decision I said I intend to uphold this complaint in part. I said I intend to ask NewDay Ltd trading as Aqua to 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 £2,650 after 17 August 2018;

If the rework results in a credit balance, this should be refunded to Mr C 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 C's credit file recorded after 17 August 2018;

Or, if after the rework the outstanding balance still exceeds £2,650, Aqua should arrange an affordable repayment plan with Mr C for the remaining amount. Once Mr C has cleared the balance, any adverse information recorded after 17 August 2018 in relation to the account should be removed from his credit file.

I'm still satisfied this is a fair outcome for the reasons given previously.

**If Aqua considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr C how much they've taken off. They should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

My final decision

I uphold this complaint in part. NewDay Ltd trading as Aqua should settle the complaint in line with the instructions in the "*Putting things right*" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 May 2025.

Gregory Sloanes
Ombudsman