

## **The complaint**

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

Mr R is represented by a claims management company 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 R himself.

## **What happened**

Mr R was approved for an Aqua credit card in May 2019 with a £900 credit limit. The credit limit was increased to £1,400 in July 2020. The credit limit was increased for a final time in September 2020 to £1,900. Mr R says that Aqua irresponsibly lent to him. Mr R made a complaint to Aqua who did not uphold his complaint. They said the account was provided responsibly, and the affordability assessments were appropriate and proportionate. Mr R brought his complaint to our service.

Our investigator did not uphold Mr R's complaint. She said Aqua's lending checks were proportionate, and they made fair lending decisions. Mr R asked for an ombudsman to review his complaint. He said he had debt of £43,000, he had exceeded his credit card limits 15 times, and he took out three loans in a six month period.

## **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 approve or increase the credit available to Mr R, 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 for the Aqua account*

I'll address the credit limit increases later on. Aqua said they looked at information provided by Credit Reference Agencies (CRA's) and information that Mr R had provided before approving his application. The information shows that Mr R had declared a gross annual income of £67,000.

The data showed Mr R had no public records – such as a County Court Judgement (CCJ), and no defaults on his credit file. There were no current arrears, or any arrears on his accounts in the six months prior to the checks. Mr R was showing as having an active debt to gross annual income ratio of 64.27% which would equate to him having around £43,060.90 of active unsecured debt. So Aqua were aware of Mr R's unsecured debt level.

Although Mr R's debt may seem high, the data showed Aqua completed an affordability assessment for Mr R. Aqua used information from a CRA (so they were aware of Mr R's monthly credit commitments) and modelling to estimate Mr R's outgoings. The affordability assessment showed that Mr R should be able to sustainably afford repayments for a £900 credit limit.

The checks don't show any data regarding credit limits being exceeded, or any recent accounts opened by Mr R, so I can't fairly say that Aqua should have been aware of this if Mr R had recently exceeded his credit limits or opened any new accounts just prior to the checks.

So I'm persuaded that the checks Aqua completed for this lending decision were proportionate, and they made a fair lending decision to approve Mr R's application with a £900 credit limit.

#### *July 2020 credit limit increase - £900 to £1,400*

A CRA reported to Aqua that Mr R's total unsecured debt was £40,866. There were two months where Mr R had exceeded his revolving credit limits (such as credit card limits/store cards/overdraft limits), but Mr R brought his accounts within their credit limits overall in the following month, and he wasn't showing as being over his credit limit at the time of the checks for this lending decision.

Mr R had no accounts in arrears at the time of the checks, and the CRA reported no accounts in arrears since his Aqua account had been opened. Aqua would have also been able to see how Mr R managed his account since it had been opened.

Mr R incurred six overlimit fees on his Aqua account and three late fees on his account since it had been opened. So these could be signs of financial difficulty, or it could be poor account mismanagement from Mr R.

But based on how Mr R used his account, and him exceeding his overall credit limits at times, I'm persuaded that this should have prompted Aqua to have completed further checks to ensure that Mr R could afford a credit limit increase which was more than 50% of his original credit limit.

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 R to ask him why he had exceeded his credit limit on multiple occasions and been late with repayments. 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.

I asked Mr R if he could provide me with his bank statements leading up to this lending decision to see if the lending would be affordable and sustainable for him. Mr R provided me with some bank statements. But the statements did not display the name(s) of the account holders. While it's likely Mr R was an account holder, it could appear that it could be a joint account statement he sent me.

I say this because there are dividend payments crediting the account regularly, and an income from a different company. While I can't definitively rule out all of the income is Mr R's, if it was all of his income, then it would seem to be a lot higher than the gross annual income he declared at the account opening stage the year earlier.

So I asked Mr R further questions about the account, to try and get a fuller understanding of his financial circumstances leading up to this lending decision. But Mr R didn't respond to the

questions I asked him, despite extending the deadline for his responses.

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 R hasn't provided me with the information he was asked for, 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.

*September 2020 credit limit increase - £1,400 to £1,900*

A CRA reported to Aqua that Mr R's total unsecured debt was £41,082 which was not dissimilar to his unsecured debt at the last lending decision. Mr R did exceed his Aqua credit limit since the last credit limit increase, but I note in the same month he incurred an overlimit fee, he made repayments totalling £1,410.

Mr R's Aqua account was actually in credit at the time of the checks for this lending decision. He had no arrears on any external active accounts at the time of the checks, and he hadn't any arrears on his active accounts since the last lending decision. In the month that Mr R repaid his Aqua outstanding balance – the same month as the checks for this lending decision – he repaid £280.01. So it would appear that Mr R would be able to meet repayments sustainably for a £1,900 credit limit.

So I'm persuaded that Aqua's checks were proportionate, and that they made a fair lending decision to increase the credit limit on the account to £1,900.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I can't conclude that Aqua lent irresponsibly to Mr R or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

### **My final decision**

I do not uphold this complaint.

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

Gregory Sloanes  
**Ombudsman**