

The complaint

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

What happened

The late Mr H applied for an Aqua credit card in November 2012 and said he had an income of £38,000 a year. No other details from the late Mr H's application remain available due to the passage of time. Aqua approved the late Mr H's application and issued a credit card with a limit of £500.

Aqua went on to increase the credit limit as follows:

| Event | Date | Limit |
|-------|--------|--------|
| App | Nov-12 | £500 |
| CLI1 | Apr-13 | £750 |
| CLI2 | Aug-13 | £1,750 |
| CLI3 | Dec-13 | £2,000 |
| CLI4 | Mar-14 | £3,000 |
| CLI5 | Sep-14 | £3,900 |
| CLI6 | Apr-15 | £5,100 |
| CLI7 | Oct-15 | £6,650 |
| CLI8 | Aug-17 | £7,750 |

From around June 2020 the late Mr H's balance exceeded the agreed credit limit and he started to incur fees from Aqua. Aqua stopped applying interest from November 2020.

Sadly, the late Mr H passed away in April 2023. The late Mr H's wife was later confirmed as executor of his estate via letters of administration and went on to raise a complaint that Aqua lent irresponsibly. A final response was issued in December 2023 and covered three separate accounts the late Mr H held with NewDay, including the Aqua credit card. Aqua didn't agree it lent irresponsibly and didn't uphold the estate of Mr H's complaint.

The estate of Mr H's complaint was referred to this service and passed to an investigator. The estate of Mr H's executor confirmed they wanted us to focus on the Aqua credit card when dealing with the complaint. Business bank statements were provided showing regular income and outgoings but no personal bank statements or credit reports were available. The investigator said they were unable to reach a conclusion about the initial decision to approve the late Mr H's application and credit limit increases up to CLI4 when it was set at £3,000 in March 2014 as no evidence of lending checks remained. And the business bank statements provided didn't allow the investigator to reach a conclusion about the late Mr H's circumstances at the time.

The investigator noted that Aqua started to obtain details of the late Mr H's unsecured debts before CLI 5 and that he owed around £8,900 to other lenders at the time. The investigator thought that the late Mr H's existing debts and his declared income of £38,000 showed he was likely able to sustainably afford repayments to a credit limit of £3,900 and wasn't persuaded Aqua lent irresponsibly.

The investigator looked at CLI6 and found the late Mr H's debts had increased to £18,568 in the months since CLI5. The investigator thought that should've led Aqua to consider more detailed lending checks, like reviewing the late Mr H's bank statements. The investigator reviewed the late Mr H's business bank statements and felt they showed he had capacity to afford a credit limit increase to £5,100 in April 2015 so didn't agree Aqua lent irresponsibly. The investigator noted that before CLI7 the late Mr H's debts had reduced and felt that the lending checks completed by Aqua were reasonable so didn't uphold this part of his complaint.

The lending data showed that before CLI8 the late Mr H's other unsecured debts had increased to around £70,000. The investigator thought that should've shown Aqua he was already overcommitted and unlikely to be able to afford a further credit limit increase and upheld this part of the estate of Mr H's complaint. The estate of Mr H's executor confirmed receipt of the investigator's view and didn't raise any concerns with the approach taken. Aqua didn't respond so the estate of Mr H'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 the late Mr H 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.

Unfortunately, due to the passage of time the original application data Aqua used is no longer available to review. Businesses aren't obliged to retain information indefinitely and I'm satisfied Aqua no longer has the lending data available. With that said, I can see the estate of Mr H's executor has provided a copy of part of his original application that gave an income of £38,000 in November 2012. I've taken this into account when looking at this case.

I'm going to cover the original application and credit limit increases up to CLI4 together. As no lending data from Aqua remains from this time, our investigator requested bank statements for the months before each lending decision. The estate of Mr H's executor

provided business bank statements covering the relevant periods. But, as the investigator said, it's not possible to get a clear picture of the late Mr H's personal income and circumstances by reviewing the business bank statements on their own. Ultimately, without further supporting evidence, I haven't been able to reach the conclusion Aqua lent irresponsibly when it approved the late Mr H's application or credit limit increases up to £3,000 in March 2014.

Aqua has been able to provide some additional information from before CLI5 that shows it was monitoring the late Mr H's other debts. At the time, Mr H owed around £8,900 to other lenders with no active arrears recorded on his credit file. In addition, the late Mr H's payments to his Aqua credit card were all made on time without any late or overlimit fees applied since the previous credit limit increase. In my view, the information available indicates the late Mr H was in a stable financial position and able to sustainably manage an increased credit limit of £3,900 in September 2014. So, on balance, I think Aqua's decision to approve CLI5 was reasonable.

The late Mr H's other debts increased to £18,568 before CLI6 was approved in October 2015. Given the increase, I think Aqua should've sought to get a clearer picture of the late Mr H's circumstances before approving CLI6. One option would've been to ask the late Mr H about his regular income and outgoings or looked at his bank statements. The available business bank statements show the late Mr H received an average income of around £4,700 a month which gives a good indication of his net income. And whilst the business bank statements don't appear to show all the late Mr H's personal outgoings, they did show other regular payments he was making at the time. I've used half of the late Mr H's mortgage payment and the regular payments collected from his business account and reach an average of around £2,260 a month. I also note that while the late Mr H's other debts had increased, they were being well maintained overall. Taking all the available information together, I think the decision to approve the credit limit increase to £5,100 in April 2015 was reasonable.

Before approving CLI7 the late Mr H's other debts had reduced substantially to around £9,570 with no recent arrears. I've looked at the late Mr H's account management up to that point and found no evidence of late or overlimit fees being applied since the previous credit limit increase. Given the reduction in the late Mr H's other debts and account management, overall, I think the lending checks Aqua completed were likely reasonable and proportionate and haven't been persuaded it lent irresponsibly when increasing the credit limit to £6,650 in October 2015.

By CLI8 in August 2017 the late Mr H's other unsecured debts had increased to around £70,000. In the circumstances, I think it ought to have been clear to Aqua that the late Mr H was already overcommitted and unlikely to be able to sustainably afford further credit. As a result, I'm satisfied the decision to increase the late Mr H's credit limit to £7,750 in August 2017 wasn't reasonable. So I'm upholding this part of the estate of Mr H's complaint and directing Aqua to refund all interest, fees and charges applied to balances over £6,650 from August 2017 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 the estate of Mr H in the circumstances of this 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 the estate of Mr H'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 £6,650 after August 2017.
- If the rework results in a credit balance, this should be refunded to the estate of Mr H along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement.
- Or, if after the rework the outstanding balance still exceeds £6,650, NewDay should contact the executor of the estate of Mr H to confirm whether there's any funds remaining to repay it.

If NewDay has sold the debt to a third party, it 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 NewDay to deduct tax from any award of interest. It must give the estate of Mr H a certificate showing how much tax has been taken off it asks 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 the estate of Mr H to accept or reject my decision before 31 July 2025.

Marco Manente
Ombudsman