DRN-5786173

Financial Ombudsman Service

The complaint

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

Mr M 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 M himself.

What happened

Mr M was approved for an Aqua credit card in January 2019 (which I will refer to as A in this decision) with a £900 credit limit. I have detailed the credit limit changes below for A:

June 2019	£900 to £1,650
September 2019	£1,650 to £2,400
July 2020	£2,400 to £3,900

Mr M was approved for another Aqua credit card in January 2024 (which I will refer to as B in this decision) with a £900 credit limit. Mr M says that Aqua irresponsibly lent to him. Mr M made a complaint to Aqua who did not uphold his complaint. They said their checks were proportionate. Mr M brought his complaint to our service.

Our investigator did not uphold Mr M's complaint. He said Aqua made fair lending decisions. Mr M asked for an ombudsman to review his complaint. He said his wife's wages were paid into the account also, and they shouldn't be included in any income calculations.

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 approve or increase the credit available to Mr M, 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 A

I've looked at what checks Aqua said they completed prior to accepting Mr M's application. I'll address the credit limit increases later on (including B). Aqua said they looked at information provided by Credit Reference Agencies (CRA's) and information that Mr M had provided before approving his application. The information shows that Mr M had declared a gross annual income of £40,000.

The data showed Mr M had no public records – such as a County Court Judgement (CCJ), or any defaults. Mr M was showing as having a mortgage, but he had no arrears on any of his accounts at the time of the checks, or for the six months prior to the checks.

Mr M was showing as having an active debt to gross annual income ratio of 94.62% which is relatively high. This would equate to him having around £37,848 of active unsecured debt. But the CRA also told Aqua how much Mr M was paying a month towards his active unsecured debt repayments.

The data showed an affordability assessment for Mr M. The affordability assessment showed that once Mr M's estimated expenditure had been deducted, (including what the CRA told Aqua that Mr M was paying for his monthly credit commitments), he would have enough disposable income to be able to sustainably afford repayments for a £900 credit limit.

So I'm persuaded that the checks Aqua completed prior to A being opened were proportionate, and they made a fair lending decision here.

June 2019 credit limit increase on A - £900 to £1,650

A CRA reported that Mr M's active unsecured lending was at £39,527 which was not too dissimilar to the initial lending checks. The CRA's also reported that Mr M had not been in arrears on any external accounts since A had been opened.

Aqua would also have been able to see how Mr M managed his account since A had been opened. Mr M incurred no late payment or overlimit fees. And he often made repayments which were higher than the minimum requested repayment, which could suggest he had the affordability to make higher repayments for a higher credit limit.

So I'm persuaded that Aqua's checks were proportionate here, and they made a fair lending decision to increase the credit limit to £1,650.

September 2019 credit limit increase on A - £1,650 to £2,400

A CRA reported that Mr M's active unsecured lending was at £42,477 which was an increase to his active unsecured debt since the last lending decision. Mr M incurred an overlimit fee not too long before the lending checks for this decision. And although Mr M sometimes paid more than his minimum repayment, I note he often re-used this credit (and more of the available credit) in most months he overpaid.

So I'm persuaded that based on the increase of debt, and the overlimit fee Mr M incurred, that Aqua should have completed further checks to ensure the repayments on a £2,400 credit limit would be affordable and sustainable for him.

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 M to ask him why his debt was increasing and to find out how he'd exceeded his credit limit on A not that long ago. 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 M 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 M provided a number of different account statements that he's named on.

As Mr M has joint accounts, I'm not persuaded that it would be fair to include his other joint *holders income here, as A was only in Mr M's sole name. In addition to this, I'm mindful that it also wouldn't be fair to include the outgoings his wife paid for if this was not coming from Mr M's income.*

I asked Mr M about how he and his wife split the bills. Mr M told me that he earned around three times the income that his wife did (this is evidenced on the statements he sent us), so he said the majority of the debts and outgoings were in his name.

Mr M's bank statements do show that Mr M appeared to be in financial difficulty prior to this credit limit increase. I say this because in June 2019 he had a loan crediting his account from another lender for £747.38. In July 2019, I can see a payday loan crediting his account for £834.21. There are a number of credits into the account from one of Mr M's parents. Mr M has told us that his mother had to help him out financially for various things.

Another bank account statement Mr M sent to our service shows he is constantly overdrawn. The statements don't show how much Mr M's arranged overdraft is, but it would appear that it is a £1,000 arranged overdraft as Mr M is £999.99 overdrawn on a number of occasions. His account is only in credit when his salary credits the account – but it is overdrawn again within a few days in each of the three monthly statements I viewed.

So if Aqua completed further checks based on the reasoning I gave earlier in this section, then I'm not persuaded that they would have increased Mr M's credit limit on A to £2,400 as sustainable repayments would not appear to be affordable for him. So I can't conclude that Aqua made a fair lending decision here.

July 2020 credit limit increase on A - £2,400 to £3,900

If Mr M's credit limit was not increased to £2,400, then it's probable that the further lending decision on A wouldn't have happened after this either. So I think there is an argument for saying that Mr M's complaint about the subsequent lending decision on A 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 September 2019, then I'm not persuaded that Aqua would've added to the credit.

Acceptance for B

As B was approved several years after the last credit limit increase on A, then I'm not persuaded that the lending decision for B should be automatically upheld. I say this because Mr M's financial position could have improved since the last lending decision on A.

So I've looked at what checks Aqua said they completed prior to accepting Mr M's application. Aqua again looked at information provided by CRA's and information that Mr M had provided before approving his application. The information shows that Mr M had declared a gross annual income of £58,000.

The data showed Mr M had no public records or any defaulted accounts. Mr M was showing as having a mortgage, but he had no arrears on any of his accounts at the time of the checks, or for the six months prior to the checks.

Mr M was showing as having an active debt to gross annual income ratio of 79.33% which is relatively high. This would equate to him having around £46,011.40 of active unsecured debt. But the CRA also told Aqua how much Mr M was paying a month towards his active unsecured debt repayments.

The data once again showed an affordability assessment for Mr M. The affordability *assessment showed that once Mr M's estimated expenditure had been deducted, (including what the CRA told Aqua that Mr M was paying for his monthly credit commitments), he would enough disposable income to be able to sustainably afford repayments for a £900 credit limit.*

So I'm persuaded that the checks Aqua completed prior to B being opened were proportionate, and they made a fair lending decision here.

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 M 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;

Card A only;

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 £1,650 after 27 September 2019;

If the rework results in a credit balance, this should be refunded to Mr M 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 M's credit file recorded after 27 September 2019;

Or, if after the rework the outstanding balance still exceeds £1,650, Aqua should arrange an affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the balance, any adverse information recorded after 27 September 2019 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 M how much they've taken off. They should also give Mr M 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 M to accept or reject my decision before 29 September 2025.

Gregory Sloanes
Ombudsman