

## The complaint

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

## What happened

Mr W was approved for an Aqua credit card in June 2022 with a £600 credit limit. I have detailed the credit limit changes below:

October 2022	£600 to £1,450
February 2023	£1,450 to £2,300
June 2024	£2,300 to £4,050
October 2024	£4,050 to £5,550

Mr W says that Aqua irresponsibly lent to him. Mr W made a complaint to Aqua who did not uphold his complaint. They said their checks were proportionate, and additional credit would be affordable for him. Mr W brought his complaint to our service.

Our investigator did not uphold Mr W's complaint. She said Aqua made fair lending decisions. Mr W asked for an ombudsman to review his complaint. He made a number of points. He said that all of his credit cards were maxed out, he complained about the impact of interest on the repayments, and he said he was only able to make repayments as he has been borrowing from family. Mr W told us about his household monthly income and rent payments, and his rent payments had increased substantially in June 2024.

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.*

*Mr W has made a number of points to this service, and I've considered and read everything he's said and sent us. But, in line with this service's role as a quick and informal body I'll be focusing on the crux of his complaint in deciding what's fair and reasonable here.*

*Before agreeing to approve or increase the credit available to Mr W, 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've looked at what checks Aqua said they completed prior to accepting Mr W's application. 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 W had provided before*

approving his application. The information shows that Mr W had declared a gross annual income of £35,000.

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

Mr W was showing as having an active debt to gross annual income ratio of 44.61% which would equate to him having around £15,614 of active unsecured debt. But the CRA also told Aqua how much Mr W was paying a month towards his active unsecured debt repayments.

The data showed an affordability assessment for Mr W. The affordability assessment showed that once Mr W's estimated expenditure had been deducted, (including what the CRA told Aqua that Mr W was paying for his monthly credit commitments), he would have enough disposable income to be able to sustainably afford repayments for a £600 credit limit.

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

October 2022 credit limit increase - £600 to £1,450

A CRA reported that Mr W's active unsecured lending was at £20,393 which was around a third higher than what it was at the account opening checks. He was showing as utilising 95% of his available revolving credit limits (such as any credit card/store card/overdraft limits).

Aqua would also have been able to see how Mr W managed his account since it had been opened. Mr W incurred no late payment or overlimit fees. And he often made repayments which were higher than the minimum requested repayment, but he often re-used this credit.

Aqua again completed an affordability exercise. While they used Current Account Turnover (CATO) to assess Mr W's income, which is a legitimate use of assessing income, the income CATO reported for Mr W was over £3,000 a month more than the net monthly figure Aqua used at the account opening stage.

While I can't rule out a new job/promotion/pay rise for Mr W, given the increase of the income, the further debt Mr W had taken on, and him utilising the majority of credit available to him, I'm persuaded that Aqua should have completed further checks to ensure that he could afford repayments sustainably for a credit limit which was more than doubling here.

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 W to ask him why his debt was increasing and to find out if his income had genuinely increased by as much as the data suggested.

I asked Mr W 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 W's credits to the account aren't the same each month for the three months I looked at. In July 2022, a state benefit of around £505 a fortnight credited his account, and another state benefit payment of £326 credited his account. Mr W received a pension payment of £1,173.56 in late July, but this was the only time the pension payment credited his account in the three month period.

In August 2022, there was just the two payments for around £505 each. In September 2022, there was just one payment of around £505 on 9 September 2022. The bank statements I

*have end on 28 September 2022. So while I can't rule out credits on 29 or 30 September 2022, the £505 state benefit payment which appeared fortnightly would have shown on the statements around 13 September 2022 if this was continued to be paid.*

*The statements show Mr W does use his overdraft at times, with him being overdrawn by nearly £1,000 at one point. There are transfers in and out of his accounts. Mr W has explained that one of these accounts was his wife's account, and one was from his son's account, who shared the same first initial as him.*

*So I am persuaded that Mr W did receive help from other family members to meet his outgoings. So I'm not persuaded that Mr W would be in a financial position to meet sustainable and affordable repayments for a higher credit limit here. So I'm not persuaded that Aqua made a fair lending decision to increase the credit limit to £1,450.*

#### *Future lending decisions*

*If Mr W's credit limit was not increased to £1,450, then it's probable that the further lending decisions wouldn't have happened after this either. So I think there is an argument for saying that Mr W's complaint about the subsequent lending decisions 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 October 2022, then 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 W 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. Mr W accepted the provisional decision. Aqua did not respond 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 £600 after 20 October 2022;

If the rework results in a credit balance, this should be refunded to Mr W 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 W's credit file recorded after 20 October 2022;

Or, if after the rework the outstanding balance still exceeds £600, Aqua should arrange an affordable repayment plan with Mr W for the remaining amount. Once Mr W has cleared the balance, any adverse information recorded after 20 October 2022 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 W how much they've taken off. They should also give Mr W 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 W to accept or reject my decision before 14 October 2025.

Gregory Sloanes  
**Ombudsman**