

## The complaint

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

## What happened

Mr N was approved for an Aqua credit card in November 2013 with a £250 credit limit. I have detailed the credit limit changes below:

February 2017	£250 to £550
December 2017	£550 to £1,350
June 2018	£1,350 to £2,350
December 2018	£2,350 to £3,600
March 2019	£3,600 to £5,600
November 2019	£5,600 to £5,200
April 2020	£5,200 to £6,700
June 2021	£6,700 to £8,000

Mr N says that Aqua irresponsibly lent to him. Mr N 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 N brought his complaint to our service.

Our investigator partially upheld Mr N's complaint. She said Aqua shouldn't have increased the credit limit over £2,350, as this wouldn't be affordable for Mr N.

Aqua asked for an ombudsman to review the complaint. They said the full bank statements for Mr N should be used for transparency. They said Mr N had historically repaid more than his contractual minimum repayment, and he could afford repayments for a £3,600 credit limit.

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 N, 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 N'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 N had provided before approving his application. The information shows that Mr N had declared a gross annual income of £25,000.*

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

*Mr N was showing as having an active debt to gross annual income ratio of 32.46% which would equate to him having around £8,115 of active unsecured debt.*

*The data showed an affordability assessment for Mr N. The affordability assessment showed that once Mr N's estimated expenditure had been deducted, (including what the CRA told Aqua that Mr N was paying for his monthly credit commitments), he would have enough disposable income to be able to sustainably afford repayments for a £250 credit limit.*

*But the affordability assessment did not include how much Mr N was paying towards his credit commitments each month. And there were no housing costs showing on the expenditure despite the checks showing he had a mortgage.*

*But based on the incomplete affordability assessment, and the relatively recent arrears on an external account, I'm persuaded that Aqua should have completed further checks to ensure the lending was affordable and sustainable for Mr N.*

*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 N to ask him what his credit commitments were each month and if he had any housing costs.*

*I asked Mr N 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. 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 N for his bank statements leading up to this lending decision. But due to the time that's passed, Mr N has been unable to provide these to me. 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 N hasn't been able to provide us with his statements (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.*

*February 2017 credit limit increase - £250 to £550*

*Due to the time that's passed, information on the lending checks Aqua completed here is limited. A CRA reported that Mr N's active unsecured lending was at £6,720. A CRA reported that since Mr N's Aqua account had been opened, he had an external account which was up to six months in arrears. Aqua would also have been able to see how Mr N managed his account since it had been opened.*

*Mr N incurred several overlimit and late payment fees. So all of these things could be signs of financial difficulty. So based on how Mr N managed his Aqua account since it had been opened, and the frequent arrears on external accounts he held since the Aqua account had*

*been opened, then I'm persuaded that Aqua should have completed further checks to ensure the lending was affordable and sustainable for Mr N.*

*Mr N has been able to obtain his full bank statements for the three months leading up to this lending decision. The statements show that Mr N's account is generally well run. While he was overdrawn for a short period of time over the three month period I looked at, this was by less than £5. Mr N had no returned direct debits during the three month period.*

*Although the income he received fluctuated over these three months, it would appear that Mr N had the affordability to make sustainable repayments for a £550 credit limit. So I'm persuaded that if Aqua would have made further checks, such as requesting his bank statements, then they still would have increased the credit limit to £550, and they would have made a fair decision to do so.*

*December 2017 credit limit increase - £550 to £1,350*

*A CRA reported that Mr N's active unsecured lending was at £5,620. A CRA reported that Mr N had been in arrears on an external account since the last lending decision. This could be an oversight, but as the CRA reported arrears for two months in a row it could have been a sign of financial difficulty.*

*Aqua received information from another CRA, which is not showing for the previous lending decisions which shows that Mr N had defaulted on three accounts, with the last default being registered 30 months prior to the checks for this lending decision.*

*It may help to explain here that, while information like a default on someone's credit file may often mean they're not granted further credit – they don't automatically mean that a lender won't offer borrowing. So I've looked at what Aqua's other checks showed to see if they made a fair lending decision here.*

*Mr N had made larger repayments than his minimum required repayment, and at one point he was in credit on his account, but he also reused the majority of credit prior to the credit limit being increased. Mr N also incurred three overlimit fees since the last lending decision.*

*So based on these factors, I'm persuaded that Aqua should have completed further checks to ensure the lending was affordable and sustainable for Mr N.*

*Mr N has been able to obtain his full bank statements for the three months leading up to this lending decision. The statements show again that Mr N's account is generally well run. There was one occasion he was overdrawn by 47p, but his account was in credit the next day. Mr N had no returned direct debits during the three month period.*

*Although the income he received fluctuated again over these three months, it would appear that Mr N had the affordability to make sustainable repayments for a £1,350 credit limit. So I'm persuaded that if Aqua would have made further checks, such as requesting his bank statements, then they still would have increased the credit limit to £1,350, and they would have made a fair decision to do so.*

*June 2018 credit limit increase - £1,350 to £2,350*

*A CRA reported that Mr N's active unsecured lending was at £6,769, which was not significantly higher than at the last lending decision. The CRA's did not report any external arrears on Mr N's accounts since the last lending decision.*

*Mr N also didn't incur any late or overlimit fees on his account since the last lending*

*decision, and he often made repayments which were higher than his required minimum repayment, which I wouldn't expect him to do if he was having any financial difficulty leading up to this credit limit increase.*

*So I'm persuaded that Aqua's checks were proportionate, and they made a fair lending decision to increase the credit limit to £2,350.*

*December 2018 credit limit increase - £2,350 to £3,600*

*A CRA reported that Mr N's active unsecured lending was at £7,804 which was not significantly higher than at the last lending decision. The CRA's again didn't report any external arrears on Mr N's accounts since the last lending decision.*

*Mr N again didn't incur any late or overlimit fees on his account since the last lending decision, and he often made repayments which were higher than his required minimum repayment, which I wouldn't expect him to do if he was having any financial difficulty leading up to this credit limit increase.*

*Aqua also completed an affordability assessment, using information from the CRA about Mr N's mortgage repayment, and his other monthly credit commitments. They also used modelling to estimate Mr N's other outgoings. The affordability assessment showed that the repayments for a £3,600 credit limit should be affordable and sustainable for Mr N.*

*So I'm persuaded that Aqua's checks were proportionate, and they made a fair lending decision to increase the credit limit to £3,600.*

*March 2019 credit limit increase - £3,600 to £5,600*

*Mr N's active unsecured debt was showing as £8,037 at the time of the checks, which was similar to the active unsecured debt at the last lending decision. The CRA's did not report any arrears on his external accounts since the last lending decision.*

*Aqua would have been able to see that Mr N incurred no late or overlimit fees, and he made higher repayments than his minimum requested repayment. The affordability assessment Aqua completed showed that repayments for a £5,600 credit limit would be affordable and sustainable for Mr N. So I'm satisfied that Aqua's checks were proportionate here, and they made a fair lending decision to increase his credit limit to £5,600.*

*April 2020 credit limit increase - £5,200 to £6,700*

*Since the last credit limit increase, Aqua had reduced Mr N's credit limit to £5,200. I can see at the time of these checks for the increase to £6,700, Mr N's unsecured debt was over 50% higher than what it was when his credit limit was last increased, as a CRA reported it to be £12,499.*

*A CRA reported that Mr N had been in arrears for two months in a row since the last credit limit increase. Mr N had made many more transactions which attracted a cash advance fee than he usually made. While I acknowledge this is a legitimate use of the account, albeit potentially a more expensive way to borrow, it can also be a sign of financial difficulty. In one month alone, Mr N made 12 transactions which attracted a cash advance fee.*

*So based on all of these factors, I'm persuaded that Aqua should have completed further checks to ensure the lending would be affordable and sustainable for him. Mr N has provided his full bank statements leading up to this lending decision.*

*Mr N is often overdrawn, sometimes as much as in three figures. His outgoings exceed his regular, albeit fluctuating income. So I'm not persuaded that the credit limit increase to £6,700 would result in sustainable and affordable repayments for Mr N. So if Aqua had requested Mr N's bank statements as part of a proportionate check, based on the reasoning I gave earlier in this section, then I'm not persuaded they would have increased the credit limit to £6,700, so I can't say they made a fair lending decision here.*

#### *Future lending decision*

*If Mr N's credit limit was not increased to £6,700, 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 N'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 April 2020, 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 N 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 N 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;

Rework the account removing all interest, fees, charges, and insurances (not already refunded) that have been applied to balances above £5,200 after 7 April 2020;

If the rework results in a credit balance, this should be refunded to Mr N 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 N's credit file recorded after 7 April 2020;

Or, if after the rework the outstanding balance still exceeds £5,200, Aqua should arrange an affordable repayment plan with Mr N for the remaining amount. Once Mr N has cleared the balance, any adverse information recorded after 7 April 2020 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 N how much they've taken off. They should also give Mr N 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 N to accept or reject my decision before 17 November 2025.

Gregory Sloanes  
**Ombudsman**