

## The complaint

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

Mr C is represented by a solicitor's firm 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 C himself.

## What happened

Mr C was approved for an Aqua credit card in March 2020 with a credit limit of £1,200. I have detailed the credit limit changes below:

August 2023	£1,200 to £2,950
December 2023	£2,950 to £3,000, then £3,000 to £4,200
November 2024	£4,200 to £6,000

Mr C says that Aqua irresponsibly lent to him. Mr C made a complaint to Aqua, who did not uphold his complaint. They said the affordability assessments were affordable and proportionate. Mr C brought his complaint to our service.

Our investigator upheld Mr C's complaint. He said Aqua's own checks showed Mr C wouldn't have enough estimated disposable income to be able to afford the repayments.

Aqua asked for an ombudsman to review the complaint. They said if the £1,200 facility was not used initially, and there were no signs of financial distress or over-indebtedness at the time of approval, it would be unreasonable to retroactively deem the lending unfair simply because Mr C later used the credit. Aqua said the disposable income was only one part of the affordability picture.

## 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 C, 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 did when initially approving Mr C's application. I'll address the other lending decisions later on. Mr C declared a gross annual income of £18,000.

The data also showed that Mr C had no County Court Judgements (CCJ's) or defaults. The checks showed that Mr C was not in arrears on any of his accounts at the time of the checks, but he had been in arrears on an account at least once in the last six months.

Aqua also completed an affordability assessment as part of this lending decision. But the affordability assessment shows that Mr C would have around £44.52 a month disposable income. While this is only one part of the affordability picture, it shows whether lending would be affordable and sustainable.

I'm not persuaded that £44.52 a month disposable income would be sufficient for Aqua to make a fair lending decision here. I say this because even a slight rise in Mr C's outgoings would result in him having a negative disposable income, not to mention him having no disposable income for emergencies. Although Aqua have said that he didn't use his account straight away, I'm not persuaded that this changes the outcome here, as Aqua wouldn't have known this at the time they approved the account.

### *Future credit limit increases*

If Mr C's application was not approved, 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 C'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 March 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 C 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.

### **Putting things right**

Our investigator has suggested that Aqua takes the actions detailed below, which I think is reasonable in the circumstances. In addition to this, if Aqua do not own the debt anymore for the account, then they should also 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.

### **My final decision**

I uphold this complaint. NewDay Ltd trading as Aqua should 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;

If the rework results in a credit balance, this should be refunded to Mr C 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 C's credit file;

Or, if after the rework there is still an outstanding balance, Aqua should arrange an affordable repayment plan with Mr C for the remaining amount. Once Mr C has cleared the balance, any adverse information in relation to the account should be removed from Mr C's credit file.

*\*If Aqua considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr C how much they've taken off. They should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 January 2026.

Gregory Sloanes  
**Ombudsman**