

The complaint

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

What happened

Mr J was approved for an Aqua credit card in August 2020, with a £300 credit limit. The credit limit was increased a further five times; in December 2020 (to £1,300), April 2021 (to £2,300), August 2021 (to £3,300), January 2022 (to £4,300), and in June 2022 (to £5,800). Mr J says that Aqua irresponsibly lent to him. Mr J made a complaint to Aqua, who did not uphold his complaint. Aqua said that their affordability assessments were proportionate and appropriate. Mr J brought his complaint to our service.

Our investigator did not uphold Mr J's complaint. She said that Aqua had used Current Account Turnover (CATO), to assess his income, but sometimes they needed to complete further checks. She said further checks would have shown all of the lending was affordable and sustainable for Mr J.

Mr J asked for an ombudsman to review his complaint. He made a number of points. He said that Aqua overstated his income using CATO, therefore verification of his income should have been verified, other similar decisions our service has published have upheld complaints like his, he said there was a loan showing on his credit file (in December 2020), which Aqua didn't consider. Mr J said he was in persistent debt, and he ended up having to sell his car to repay the Aqua outstanding balance.

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.

Firstly, I'm aware that I've only summarised Mr J's complaint points. And I'm not going to respond to every single point made by him. No discourtesy is intended by this. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair outcome.

I've considered what Mr J has said about other complaints our service has upheld. But our service judges each individual complaint on its own merits. While a situation can look similar between two lending decisions, or they could have been made around the same time, even with the same company, the checks and the results of the checks, could have been different between different products, different amounts being lent, and with different companies. So I'll be focusing here on whether Aqua made fair lending decisions.

Before agreeing to approve or increase the credit available to Mr J, 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 credit card

I've looked at what checks Aqua said they completed prior to accepting Mr J'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 J had provided before approving his application. The information shows that Mr J had declared a gross annual income of £25,000.

The data showed Mr J had no public records – such as a County Court Judgement (CCJ), or any defaults. Mr J 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. But despite this, the data showed he had been bankrupt in the past three years, with an Individual Voluntary Arrangement (IVA) in the three years prior to the checks. But the data showed Mr J was not currently bankrupt.

Mr J was showing as having an active debt to gross annual income ratio of 2.84%. This would equate to him having around £368.46 of active unsecured debt. But the CRA also told Aqua how much Mr J was paying a month towards his active unsecured debt repayments.

The data showed an affordability assessment for Mr J. The affordability assessment showed that once Mr J's estimated expenditure had been deducted, (including what the CRA told Aqua that Mr J was paying for his monthly credit commitments), he would have enough disposable income to be able to sustainably afford repayments for a £300 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.

December 2020 credit limit increase - £300 to £1,300

A CRA reported that Mr J's active unsecured lending was at £184 which was lower than the initial lending checks. The CRA's also reported that Mr J had not been in arrears on any external accounts since the account had been opened.

Aqua would also have been able to see how Mr J managed his account since it had been opened. Mr J incurred no late payment or overlimit fees. And he made three figure repayments each month leading up to the credit limit increase, which were a lot higher than the minimum requested repayment, which could suggest he had the affordability to make higher repayments for a higher credit limit.

Although I've noted Mr J's comments about Aqua using CATO for an affordability assessment and they used higher figures than his actual income, Aqua are not required to complete an in depth affordability assessment at each lending decision. This would not be proportionate.

There can be other indicator that a borrower has enough disposable income to be able to afford repayments for a higher credit limit. Here, Mr J had enough disposable income to reduce his overall active unsecured debt since his Aqua account had been opened, and still pay at least a minimum of £141.50 each month since his account had been opened and these lending decision checks, which would be considered a sustainable repayment for a £1,300 credit limit. His minimum repayment that he paid would be over 10% of his new credit limit.

Mr J has said that Aqua didn't pick up a loan he opened in December 2020. But I can't hold

Aqua responsible for information a CRA tells them. And as a credit file typically takes 4-6 weeks to update, I wouldn't expect this to be showing at the time Aqua completed the checks for this lending decision.

It would not be proportionate for Aqua to have requested Mr J's full credit file, when they received information from two different CRA's, and they were both reporting that Mr J had £184 of active unsecured debt.

But while I don't think it was proportionate for Aqua to view this, as a courtesy to Mr J, I have viewed the credit file he sent us. While the credit union loan in question states payment terms of £250 x 60 months, the reality is that the section underneath shows no balance for the last 12 months, so it's questionable whether Mr J was loaned anything here, as the credit union entry above this entry shows payment history for up to 44 months. So even this CRA was reporting a £0 balance, and no outstanding balance at any point, and it wasn't open for 60 months, and there was no settlement payment showing as being made.

So I'm persuaded that Aqua's checks were proportionate here, and they made a fair lending decision to increase the credit limit to £1,300.

April 2021 credit limit increase - £1,300 to £2,300

A CRA reported that Mr J's active unsecured lending was at £0 at the time of the checks. The CRA's also reported that Mr J had not been in arrears on any external accounts since the last lending decision.

Aqua would also have been able to see how Mr J managed his account since the last lending decision. Mr J incurred no late payment or overlimit fees. And he made repayments each month leading up to the credit limit increase, which either repaid the outstanding balance on his previous statement, or he paid at least £150.56 a month between the last lending decision and this lending decision, which could suggest he had the affordability to make higher repayments for a higher credit limit. One of these repayments was for £376.86.

So despite what the CATO showed, I'm not persuaded that it would have been proportionate for Aqua to have requested copies of Mr J's payslips or bank statements when he was making repayments consistently which would be considered sustainable for a £2,300 credit limit.

So I'm persuaded that Aqua's checks were proportionate here, and they made a fair lending decision.

August 2021 credit limit increase - £2,300 to £3,300

A CRA reported that Mr J's active unsecured lending was at £105 which was slightly higher than the last lending decision. But this would still equate to 0.42% of his originally declared gross annual income. The CRA's again reported that Mr J had not been in arrears on any external accounts since the last lending decision.

Mr J incurred no late payment or overlimit fees on his Aqua account. And he made repayments each month leading up to the credit limit increase, which were at least £305.52 a month between the last lending decision and this lending decision, which could suggest he had the affordability to make higher repayments for a higher credit limit. One of these repayments was for £470.97.

Mr J was on average, using less than 10% of his credit limit with Aqua between the last lending decision and this lending decision. So despite what the CATO showed, I'm not

persuaded that it would have been proportionate for Aqua to have requested copies of Mr J's payslips or bank statements when he was making repayments consistently which would be considered sustainable for a £3,300 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 £3,300.

January 2022 credit limit increase - £3,300 to £4,300

A CRA reported that Mr J's active unsecured debt was at £41 which was slightly lower than at the last lending checks. The CRA's also reported that Mr J had not been in arrears on any external accounts since the last lending decision.

Mr J again incurred no late payment or overlimit fees on his Aqua account. And he made repayments each month leading up to the credit limit increase, which were at least £578.13 a month between the last lending decision and this lending decision, which could suggest he had the affordability to make higher repayments for a higher credit limit. One of these repayments was for £682.54.

Mr J was on average, using less than 10% of his credit limit with Aqua between the last lending decision and this lending decision. So despite what the CATO showed, I'm not persuaded that it would have been proportionate for Aqua to have requested copies of Mr J's payslips or bank statements when he was making repayments consistently which would be considered sustainable for a £4,300 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 £4,300.

June 2022 credit limit increase - £4,300 to £5,800

A CRA reported that Mr J's active unsecured debt was £15,291, which was significantly higher than what it was only five months earlier, at the last lending decision checks. Whereas previously Mr J was typically using less than 10% of his credit limit at previous lending checks, he did have a statement balance of £3,273.73 at one point.

Shortly after Mr J's credit limit increase to £4,300 he made two transactions which incurred cash advance fees. Mr J had previously never made transactions on this account which attracted cash advance fees.

While I'm mindful that this is a legitimate feature of the account, it is usually a more expensive way to borrow, and it could indicate financial difficulty. Based on the increase of Mr J's active unsecured debt, and the increased credit limit usage, I'm persuaded that Aqua should have completed further checks to ensure the repayments for the credit limit increase were affordable and sustainable, especially as the affordability assessment they completed didn't include a loan repayment despite Mr J appearing to take out a loan.

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 J to ask him why his unsecured debt had increased substantially recently, and what his income and outgoings were. 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 must be clear to Mr J that while I'm persuaded that Aqua should have made further checks here, it doesn't automatically follow that any lending decision should be upheld. This is because I need to see what further checks would have shown to see if sustainable

repayments would be affordable for Mr J.

Mr J has provided his bank statements leading up to this lending decision. The statements show several transfers to and from what I believe to be a savings account. I can also see payments to and from a credit union. A credit union can offer both savings and loans. The credit file Mr J sent our service shows that the loan which was opened in March 2022, with the credit union, was the only loan open with the credit union in June 2022, at the time of these checks, but his credit file shows repayments of £275 a month, as opposed to £500 a month that he pays to the credit union each month.

When Mr J sent us his bank statements, he said that during this period, his earned income alone was not sufficient to comfortably meet his normal living costs and his committed credit repayments, so as a result, he relied on withdrawals from his savings account to bridge the gap between his income and outgoings. He said without access to savings, he would not have been able to have met his obligations during this period.

But I'm not persuaded that if Aqua saw Mr J's statements as part of a proportionate check they would have agreed with this. I say this as while Mr J's statements do show transfers from another account(s) into his main bank account, he often makes transfers to that account.

Mr J has a lot of non-priority spending on his account. And I have to take into consideration that Mr J wasn't required to pay as much towards his Aqua account as what he was paying. So just because Mr J was making much higher repayments to his Aqua account, it wouldn't be proportionate to expect him to continue to make such high repayments. The test here is could Mr J make affordable and sustainable repayments for a £5,800 credit limit.

While I agree he didn't have the disposable income to keep making repayments such as £1,000 and £2,032.74, which he did during the statement period I looked at, the statements showed that he did appear to have enough disposable income from his earned income (and without using further borrowing or savings), in order to make sustainable and affordable repayments for a £5,800 credit limit. So I can't fairly conclude that Aqua made an unfair lending decision here.

I'm sorry to hear that Mr J says he needed to sell his car to repay the outstanding balance. Mr J has provided a page of his bank statement to show this happened in August 2023, but as this was over a year after the last lending decision, I can't fairly say this would have been foreseeable to Aqua at the time of the last lending decision.

I've considered what Mr J has said about being in persistent debt. But Mr J did not fall into the regulator's definition of persistent debt – *“that the amount the customer has paid to the firm towards the credit card balance...over the immediately preceding 18 month period comprises a lower amount in principle than in interest, fees and charges”*. So I can't fairly say that Aqua should have stepped in and took any action prior to Mr J repaying the outstanding balance, as even after the last lending decision, and prior to him making his large repayment in August 2023, he did not incur any late/overlimit fees, and he was not in any arrears on any external accounts.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I can't conclude that Aqua lent irresponsibly to Mr J or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 March 2026.

Gregory Sloanes
Ombudsman