

The complaint

Mr M complains that NewDay Ltd trading as Aqua lent irresponsibly when it approved his credit card application and later increased the limit.

What happened

The background to this complaint and my initial conclusions were set out in a provisional decision. I said:

Mr M applied for an Aqua credit card in May 2021. In his application Mr M said he was working with an annual income of £15,000 that Aqua calculated left him with £1,193 a month net. A credit search found no evidence of adverse credit, defaults or current arrears. The credit file showed Mr M had missed two payments in the preceding six months. In addition, the credit file results indicated Mr M had unsecured debts totalling around £750.

Aqua used a rent figure of £231 and general living expenses of £475 a month when completing its affordability assessment. Aqua says that after covering Mr M's existing outgoings he had an estimated disposable income of around £470 a month. Aqua approved Mr M's application and issued a credit card with a limit of £450.

Mr M used the credit card and Aqua went on to approve the following credit limit increases over time:

Event	Date	Limit
<i>App</i>	<i>May-21</i>	<i>£450</i>
<i>CLI1</i>	<i>Nov-21</i>	<i>£1,200</i>
<i>CLI2</i>	<i>Mar-22</i>	<i>£2,700</i>
<i>CLI3</i>	<i>Jul-22</i>	<i>£3,950</i>
<i>CLI4</i>	<i>Aug-23</i>	<i>£5,450</i>

Before approving each credit limit increase Aqua checked Mr M's account history, credit file and completed new affordability assessments.

More recently, Mr M complained that Aqua lent irresponsibly and it issued a final response. Aqua said it had completed the relevant lending checks before approving Mr M's application and increasing the limit and didn't agree it lent irresponsibly.

An investigator at this service looked at Mr M's complaint. They thought Aqua had completed reasonable and proportionate checks each time it extended borrowing to Mr M and weren't persuaded it lent irresponsibly. Mr M asked to appeal, so his complaint has been passed to me to make a decision.

What I've provisionally 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 lend or increasing the credit limit, the rules say Aqua had to complete reasonable and proportionate checks to ensure Mr M could afford to repay the debt in a sustainable way. These affordability checks needed to be focused on the borrower's circumstances. The nature of what's considered reasonable and proportionate will vary depending on various factors like:

- The amount of credit;*
- The total sum repayable and the size of regular repayments;*
- The duration of the agreement;*
- The costs of the credit; and*
- The consumer's individual circumstances.*

That means there's no set list of checks a lender must complete. But lenders are required to consider the above points when deciding what's reasonable and proportionate. Lenders may choose to verify a borrower's income or obtain a more detailed picture of their circumstances by reviewing bank statements for example. More information about how we consider irresponsible lending complaints can be found on our website.

I've set out the information that Aqua used when considering Mr M's application above. I can see Mr M gave details of his income that were verified by Aqua which used a net monthly figure of £1,193. Aqua completed a credit search and results found Mr M had outstanding debts of around £750. No adverse credit was noted and whilst I can see there were two missed payments in the preceding six months, all Mr M's accounts were up to date at the point of application and his outstanding debts were modest.

The affordability assessment used estimates for Mr M's outgoings obtained from statistical data – an approach Aqua is allowed to take under the relevant lending rules. Overall, I'm satisfied the figures used were reasonable. And I can see that after making deductions from Mr M's income for his regular outgoings Aqua reached the position he had a disposable income of around £470 a month. In my view, that was a reasonable conclusion to reach following proportionate checks by Aqua. Overall, I'm satisfied the information Aqua obtained indicated Mr M was able to sustainably afford repayments to a credit card with a limit of £450 and haven't been persuaded it lent irresponsibly.

I have some concerns in relation to the credit limit increases Aqua went on to approve. Looking at CLI1, I note it was approved around six months after Mr M's application was made. In the application, Aqua found Mr M had existing debts of £750 but that figure grew to around £7,750 in the following six months. In addition, Mr M's credit file shows a missed payment with another lender in October 2021. The account history shows cash withdrawals from Mr M's Aqua credit card in two out of the previous three months. In my view, there was information available to Aqua that indicated Mr M was borrowing at an increasing rate.

I understand Aqua used a service provided by the credit reference agencies known as CATO to check Mr M's current account turnover to help verify his income. But I'm not satisfied it was reasonable to rely on the £4,189 figure it obtained. Aqua knew Mr M was earning £1,193 a month six months earlier. Since that time, Mr M's other debts had increased from £750 to £7,750 and he missed a payment to one of his creditors. I also note Mr M used his Aqua credit card for cash advances in two of the preceding three months. Taking all this information together, I haven't been persuaded the checks completed by Aqua were reasonable. I think it ought to have considered more detailed lending checks before approving CLI1. One option would've been to review Mr M's bank statements for the months before his application to get a clearer picture of his circumstances. I recently asked our investigator to request the relevant statements from Mr M.

I've looked at Mr M's bank statements for August, September and October 2021. When Mr M sent us his bank statements he said it was a sole trader account reflecting his self employed income and working in the trades. Mr M explained that part of the money he received from clients related to purchasing materials for jobs which is reflected in the payments made from the account. I'd like to thank Mr M for explaining. But I think it's fair to note that his isn't a sole named account and doesn't appear to specifically be a business account. The account statements show Mr M was using a joint account he shared with his partner. Both Mr M's income and what appear to be benefit payments for his partner are included in the statements.

I've taken the approach of using all the income and household outgoings shown in the account statements into consideration when reaching my decision about whether Aqua lent responsibly. I have taken Mr M's comments on board in terms of the expenses for jobs he was doing being taken from the account. I can see varying amounts for merchants who specialise in building materials on Mr M's bank statements. The amounts and pattern of the spending reflects what Mr M has told us about the nature of his work and I'm satisfied it's reasonable to deduct the payments as a regular outgoing in this case.

I found the bank statements had an average monthly income of around £3,162 in the three months before CLI1 was approved. That includes Mr M's pay from various sources and benefit income that appears to relate to his partner along with child benefit. I took outgoings for items like rent, utilities, debt repayments, communications, insurances, fuel and supermarket shopping into account. As noted above, I also took spending in hardware shops into account. I found average outgoings of around £2,051. That left around £1,111 remaining after covering the regular outgoings. As I've said, this was a joint account so I've reduced that figure by half, leaving Mr M with around £550 a month after his outgoings were covered.

In my view, Mr M's bank statements show he was in a position to sustainably afford repayments to a new credit limit of £1,200 in November 2021. I think it's more likely than not that better checks from Aqua would've still led to it approving CLI1.

I've taken the same approach when looking at the following credit limits for largely the same reasons. In the three months before CLI2 in March 2022 I found income that averaged around £4,425 and outgoings coming to £2,803. That left around £1,600 on a joint basis so around £800 for Mr M. In my view, Mr M's disposable income was sufficient to cover repayments to an increased credit limit of £2,700. I think it's most likely that Aqua would've approved CLI2 if it had completed more detailed checks first.

In July 2022 the credit limit was set at £3,950 by Aqua (CLI3). I've taken the same approach and reviewed Mr M's bank statements for the preceding months. I found the average income being received into the account was £4,715 and outgoings averaged at £3,390. That left around £1,325 remaining, half of which meant Mr M had a disposable income of around £660. In my view, that was sufficient to sustainably afford repayments to the increased credit limit. Again, I think better checks by Aqua would've still most likely led to it approving CLI3.

For CLI4 in August 2023 I've reviewed three months bank statements going back to May 2023. It appears something had changed in the way the bank account was being used and the spending habits. The income level had increased, averaging at around £6,600 a month. But the outgoings also increased to around £4,425. That appears to have left a higher disposable income. With that being said, I can see Mr M obtained a new loan of £3,000 in June 2023. In addition, Mr M's bank statements show a sharp increase in gambling transactions around this time. In July 2023 the bank statements show payments to online gambling websites of £3,220. I think any reasonable person would conclude that borrowing £3,000 then using a larger sum to gamble within the same month isn't sustainable.

In my view, Mr M's bank statements from the months before CLI4 show he was borrowing money and using it to gamble. I think, in those circumstances, Aqua would've most likely declined to approve CLI4 if it has completed more detailed lending checks like reviewing Mr M's bank statements first. As a result, I haven't been persuaded Aqua lent responsibly when it approved CLI4 so intend to uphold this part of Mr M's complaint and direct a refund of all interest, fees and charges applied to balances over £3,950 from August 2023.

I've considered whether the business acted unfairly or unreasonably in any other way including whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below 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 respond with any additional comments or information they wanted me to consider before I made my final decision. Mr M responded to confirm he's willing to accept. We didn't hear back from Aqua.

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 no new information has been provided and Mr M has confirmed he's willing to accept I see no reason to change the conclusions reached in my provisional decision. I still think Mr M's complaint should be upheld, for the same reasons.

My final decision

My decision is that I uphold Mr M's complaint and direct NewDay Ltd trading as Aqua to settle as follows:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £3,950 from August 2023
- 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 recorded from August 2023 regarding this account from Mr M's credit file.
- Or, if after the rework the outstanding balance still exceeds £3,950, Aqua should arrange an affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the outstanding balance, any adverse information recorded from August 2023 in relation to the account should be removed from their credit file.

If Aqua has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

*HM Revenue & Customs requires Aqua to deduct tax from any award of interest. It must give Mr M a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 March 2026.

Marco Manente
Ombudsman