DRN-6215715

The complaint

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

What happened

Mr M was approved for an Aqua credit card in March 2020, with a £450 credit limit. I have set out the credit limit increases below:

September 2020	£450 to £1,200
January 2021	£1,200 to £2,200
May 2021	£2,200 to £4,700
March 2023	£4,700 to £6,050
May 2024	£6,050 to £7,050

Mr M complains that Aqua irresponsibly lent to him. Mr M made a complaint to Aqua, who did not uphold Mr M's complaint. Aqua said that they completed credit worthiness assessments, which highlighted that Mr M had sufficient disposable income in order to afford the repayments without causing adverse financial difficulties. Mr M brought his complaint to our service.

Our investigator partially upheld Mr M's complaint. She said that Aqua shouldn't have increased his credit limit above £1,200 in January 2021, as this was not affordable for him. Aqua requested an ombudsman to review the complaint. They said that Mr M's student loan should be used in affordability assessments, as it wasn't a loan for tuition fees, which is usually paid to the University in question.

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 M, 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 M's application. I'll address the other lending decisions later on. Mr M declared a gross annual income of £9,300.

The data also showed that Mr M had no County Court Judgements (CCJ's) or defaults. The checks showed that Mr M was not in arrears on any of his accounts at the time of the checks, and he had not been in arrears on any account the six months leading up to the checks.

Aqua also completed an affordability assessment as part of this lending decision. But while Mr M was showing as having a debt to income ratio of 12.4%, (which would equate to him having unsecured debt of around £1,153.20), there were no monthly credit commitments showing in the affordability assessment being reported by a Credit Reference Agency (CRA).

So this could seem contradictory if Mr M had debt, but he wasn't paying towards it on a monthly basis. So I'm persuaded that Aqua should have completed further checks here, especially as the estimated disposable income showing on the affordability assessment wasn't high.

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 M to ensure he had enough disposable income to meet repayments for a £450 credit limit once any monthly credit commitments have been paid. 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.

Mr M has provided his bank statements leading up to this lending decision. The statements do show on two occasions that he has entered an unarranged overdraft. So this could be a sign of financial difficulty. But here it appears to be poor account management. And I'm not persuaded that the level of the poor account management was such that it automatically meant Mr M wouldn't be able to make sustainable and affordable repayments for a £450 credit limit.

Mr M's statements did show a student loan payment of around £3,100 crediting his account. So if this was paid into his account three times a year at the same amount, then this would equate to around £9,300 – the same amount Mr M declared as his gross annual income. His bank statements don't show any other income, so it appears that Mr M also believes his student loan is part of his regular income to meet his normal outgoings. And since his statements show he received this before the Aqua account was opened, then I can't fairly say he's took out a loan for the express purpose of making repayments on a credit card.

While Mr M's statements do show him being close to his overdraft and sometimes exceeding it, overall Mr M has a lot of non-priority spending. So I'm persuaded that Mr M would be able to make sustainable and affordable repayments for a £450 credit limit. So I'm persuaded that Aqua made a fair lending decision here.

September 2020 credit limit increase - £450 to £1,200

A CRA reported that Mr M's active unsecure debt had grown to £2,110 at the time of these lending checks, but I'm not persuaded that this was substantially higher than what it was at the account opening stage.

The CRA reported that Mr M had not been in arrears on any accounts at the time of the checks. And he hadn't been in arrears on any of his accounts since his Aqua account had been opened either.

Aqua would have also been able to see how Mr M used his account since it had been opened. Mr M incurred no late or overlimit fees. Aqua completed an affordability assessment. I noticed that they again didn't include monthly credit commitments in the affordability assessment, but based on the amount he owed, he was showing a healthy disposable income of £429 a month, so I'm not persuaded that further checks were needed here.

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

January 2021 credit limit increase - £1,200 to £2,200

Aqua also completed an affordability assessment as part of this lending decision. But the affordability assessment showed that Mr M would have around £149 a month disposable income.

I'm not persuaded that £149 a month disposable income would be sufficient for Aqua to make a fair lending decision here. I say this because Mr M's debt had risen to £3,123, and the affordability assessment did not take into account any repayments to repay his debt, not to mention if Mr M used the full new £2,200 credit limit when it was approved.

So because Aqua would need to ensure the lending was affordable and sustainable instantly from when it had been approved, I'm not persuaded that they needed to complete any further checks here, because if a sustainable repayment was deducted from the estimated disposable income, then even a slight rise in Mr M's outgoings could result in him having a negative monthly disposable income (if his other credit commitments also had a monthly payment).

But even if his external existing debt did not have a monthly credit commitment requirement (such as an overdraft), then after Mr M made a sustainable and affordable repayment for a £2,220 credit limit, then Mr M would have little to no disposable income for emergencies. So I'm not persuaded that Aqua made a fair lending decision here.

Future credit limit increases

If Mr M's credit limit was not increased to £2,200, 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 M'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 January 2021, 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 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.

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 in part. 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;

End the agreement and rework the account removing all interest, fees, charges, and insurances (not already refunded) that have been applied to balances above £1,200 after 22 January 2021;

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 regarding this account from Mr M's credit file recorded after 22 January 2021;

Or, if after the rework the outstanding balance still exceeds £1,200, Aqua should arrange an affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the balance, any adverse information recorded after 22 January 2021 in relation to the account should be removed from Mr M'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 M how much they've taken off. They should also give Mr M 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 M to accept or reject my decision before 21 April 2026.

Gregory Sloanes
Ombudsman