

## **complaint**

Mr P complains that NewDay Ltd, trading as Aqua, shouldn't have given him a credit card when it did as he couldn't afford it. Mr P also complained that Aqua refused to provide proof it had carried out a credit check and said one of its staff had been rude to him.

## **background**

Mr P applied for and was granted an Aqua credit card in December 2016. The opening credit limit was £450 and Mr P reached that limit within the first couple of months of having the card. Mr P complained to Aqua when he found himself in financial difficulties. He said Aqua shouldn't have accepted his application due to his poor credit history and this was now having a negative impact on him. He also wanted proof that Aqua had carried out a credit check before approving his application. Aqua said it had considered the information Mr P had provided as well as the credit report it had obtained and Mr P had successfully met its criteria for a credit card account.

In January 2019 Mr P brought a complaint to this service saying that Aqua had been irresponsible in lending to him. He also complained that Aqua had been unhelpful and rude in the service it had provided and had refused to provide proof it carried out a credit check before lending.

Our investigator partly upheld the complaint. He was satisfied that Aqua had carried out a credit check and he explained how that process worked. He said he'd only been able to listen to one call between Aqua and Mr P but didn't think Aqua had been rude or unprofessional. However, he thought the information on the credit report should have prompted Aqua to ask more questions about his financial situation. Had it done so, he believed Aqua would have seen that Mr P couldn't afford the credit card and wouldn't have lent to him. He therefore asked Aqua to take specific action to put things right.

Mr P accepted the investigator's findings but Aqua didn't agree. It said it had considered the information Mr P had provided as well as the information in his credit report and it remained satisfied it had lent responsibly.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As Mr P has accepted the investigator's findings about the service provided by Aqua and providing proof that it had got a credit report, I see no need to look at those issues again. So I will focus my decision on Mr P's complaint that Aqua shouldn't have given him a credit card.

Before lending money, Aqua has to undertake reasonable affordability checks. These are to ensure a customer can repay the prospective borrowing in a sustainable way without it adversely impacting their financial situation. Aqua need to get sufficient information from these checks to make an informed decision about whether to lend to the customer.

Exactly what each lender should consider is up to them to decide – there's no specific list of checks a lender must carry out before deciding to provide credit. But the guidance and rules for lenders list things they may wish to consider. A key point is that the checks must be proportionate, and must take into account a number of different things – such as how much

is being lent and when it is due to be repaid. So I've looked at what has happened in the circumstances of Mr P's complaint, in light of what is expected of Aqua as outlined above.

Aqua have pointed out that its card is aimed at customers who have a poor credit history or who are new to credit - and the product is designed to help them to improve their credit rating. It says it's not unusual, therefore, to see customers with poor or absent credit history apply for its credit card and I've taken that context into account in my consideration of this complaint.

Aqua said that, when considering Mr P's application for a credit card, it took account of the information he provided as well as information held by the credit reference agencies and their own internal risk strategies. It says when Mr P applied for a credit card he stated he was employed, living at home, with an annual income of £20,000 and unsecured debts of £2,900, and said his financial situation was going to improve. Aqua said it was aware he had other borrowing, including some payday loans. But there was no history of Mr P ever being in arrears or defaulting on a pay day loan and his other accounts were all being managed within the terms and conditions of those accounts. It explained how it had calculated Mr P's disposable income and said that while it hadn't verified Mr P's income, it thought the credit limit of £450 was proportionate to his circumstances.

Our investigator thought the information Aqua obtained should have prompted it to ask more questions. And I'm inclined to agree. On the face of it, Mr P would seem to have a large disposable income. However, his credit file shows that he was overdrawn on two current accounts, just over the credit limit of £2,019 on one and just under the credit limit of £500 on the other. And he was just over the £800 credit limit on another credit card. He also had two payday loans totalling around £1,150, and his credit file showed that he had a history of taking out payday loans. In fact he took out nine in the 12 months before he applied for the Aqua card and some were taken out in the same month. I appreciate all of those payday loans were repaid on time. But I don't think Mr P's overall borrowing history at the time of his application supports Aqua's suggestion that he had sufficient disposable income to be able to maintain the repayment on the new credit card.

I recognise that Aqua says its credit card was designed to help its customers improve their credit rating and that it might not be unusual therefore for Aqua to lend to customers with poor credit histories. But, it's still required to lend responsibly and I don't think it did so in this case taking into account the information I've highlighted above about Mr P's financial situation.

The end result for Mr P has been increased debt, additional charges and negative entries on his credit file. And I think that could have been avoided had Aqua made further checks at the time of his application. Had it done so, I think it's more likely than not it would have declined Mr P's application for a credit card. I say that because the information I've seen indicates that Mr P had very little, if any, disposable income at the time he applied for the Aqua credit card. He had no regular income and a lot of the money going into his account was from payday lenders or were grants and bursaries. This money would then be used for day to day living or to pay off other lenders. Our investigator gave a good example of this when he said that a £1,000 bursary put into Mr P's current account in November 2016 was used over the next few days to pay off two payday loans, of £372.40 and £373.04 respectively.

So, in summary, I think the information Aqua obtained during the application process should have prompted it to make further enquiries. Had it done that, I don't think Aqua would have given Mr P a credit card. As Mr P has had the benefit of the spending, I don't think it's

unreasonable to expect him to repay the principle debt. But he shouldn't have to pay interest on it. So Aqua should reconstruct the account from the start to make it interest free, apply the repayments Mr P has made over the years and, if that means he would have paid off the debt at some point, it should refund any repayments made after that date, plus 8% interest. As I don't think Aqua should have given Mr P a credit card, it should also close the account and remove the card from Mr P's credit file.

### **my final decision**

For the reasons I've given, it's my final decision that the complaint is upheld and I require NewDay Ltd, trading as Aqua, to:

- reconstruct Mr P's account to remove all the interest and charges;
- apply Mr P's repayments to the account;
- if this means the debt would have been paid off at some point and/or the consumer has ended up making repayments he wouldn't otherwise have made, then Aqua should refund those payments with interest at 8% simple from the date he would have paid off the debt until he gets the refund\*;
- close the card and remove it entirely from Mr P's credit history.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 10 July 2019.

Richard Walker  
**ombudsman**

\*HM Revenue & Customs requires Aqua to take off tax from this interest. Aqua must give Mr P a certificate showing how much tax it's taken off if he asks for one.