

The complaint

Mr B complains that NewDay Ltd trading as Aqua lent irresponsibly when it approved his credit card application and went on to increase his credit limit.

What happened

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

Mr B applied for an Aqua credit card in December 2017. In his application, Mr B said he was employed with an income of £38,000 a year. No rent or mortgage costs were noted in the application. Aqua carried out a credit search and found Mr B had existing debts of around £44,000 with monthly repayments of around £1,049. No adverse credit or recent missed payments were found. Aqua applied estimates for housing costs of £223.05 a month and cost of living expenses of £458.04. Aqua says that left Mr B with an estimated disposable income of £455.61 each month. Aqua approved Mr B's credit card application with a limit of £450.

Mr B went on to use the credit card and in September 2018 Aqua increased the credit limit to £1,100. Aqua says its lending checks found Mr B's income had increased to £4,578 in September 2018. Aqua applied revised estimates for Mr B's outgoings and looked at his credit file. Aqua says Mr B owed £43,277 in unsecured debt and was making repayments of £383 to credit cards and £1,165 to loans in his name. Aqua says Mr B had an estimated disposable income of £2,257 so the increase in its credit limit to £1,100 was affordable.

In February 2019 Aqua increased the credit limit to £1,850. Aqua says its lending checks found Mr B's income was £5,487 a month. Aqua applied estimated living expenses and checked Mr B's credit file. Aqua found Mr B owed £44,756 in other unsecured debt with monthly credit card payments of £477 and loan payments of £1,102. Aqua calculated Mr B's estimated disposable income as £3,060 each month so the increase to £1,850 was affordable.

Mr B continued to use the credit card until August 2022 when he repaid the outstanding balance and it was closed.

Earlier this year, representatives acting on Mr B's behalf complained that Aqua lent irresponsibly. Aqua issued a final response on 24 May 2024 but didn't uphold Mr B's complaint. Aqua said it had carried out the relevant lending checks and didn't agree it lent irresponsibly to Mr B.

An investigator at this service upheld Mr B's complaint. They thought the level of Mr B's existing debt at the point of application to Aqua should've shown he wasn't in a position to afford further borrowing and caused it to decline his application. Aqua asked to appeal and said it's estimated disposable income figures had shown the borrowing was affordable for Mr B. As Aqua asked to appeal, Mr B's 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 B 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 understand that Aqua only approved a modest credit limit of £450 following Mr B's application. But I think there were signs Mr B was already over committed at that point and that further borrowing was unlikely to be affordable. When Aqua carried out a credit search it showed Mr B already owed 116% of his income to other unsecured creditors. I understand Aqua calculated a disposable income of £455.16 each month, but given how much Mr B already owed, I'd have expected the lending checks to go further than relying on the application information provided and found on his credit file. In my view, the level of outstanding debt should've caused Aqua to carry out more comprehensive checks to ensure Mr B could repay the credit card in a sustainable way. There were various options available to Aqua, one of which was to review Mr B's recent bank statements which is what I've done.

Looking at Mr B's bank statements, his income was higher than the figures Aqua used in the application with an average figure of £2,776 a month. Mr B's outgoings were also higher than Aqua calculated. In the months before Mr B's application was made, his outgoings for things like existing credit, mobile phone communications and internet were around £1,750. That figure doesn't take housing costs, food or travel into account. With that said, based on Mr B's income at the time of his application, he appeared to have around £1,000 remaining after essential commitments were met. And I'm satisfied that was sufficient to sustainably afford repayments to a new credit card with a limit of £450. I'm sorry to disappoint Mr B but I haven't been persuaded that Aqua lent irresponsibly when it approved his credit card application with a limit of £450.

With that said, I'm not persuaded Aqua used realistic figures when considering whether to increase Mr B's credit limit. I note Aqua originally calculated that Mr B had a net income of £2,185 a month in December 2017. But when Aqua increased the credit limit, it says Mr B's income had increased to £4,578 a month. That's an increase of more than double Mr B's original income in a period of nine months. I also think it's reasonable to note Mr B's debt repayments had increased from £1,049 to around £1,500 in that period which feels at odds with the increased income figure Aqua used. In my view, the level of income used wasn't realistic. I think Aqua should've taken a more comprehensive approach before more than doubling the original credit limit.

Again, I've looked at Mr B's bank statements which show a marked increase in the level of repayments he was making to other creditors. In the three months before Mr B's credit limit was increased to £1,100 his income averaged £2,824. Mr B's committed outgoings averaged £2,124. But that doesn't take into account other essential spending like housing, food, fuel or normal everyday spending. A review of Mr B's bank statements shows he was already at capacity and had little to no ability to sustainably afford an increase in the credit limit of his credit card. In my view, Aqua lent irresponsibly when it increased Mr B's credit limit to £1,100.

I haven't got a full set of bank statements for the three months before the February 2019 increase but do have November 2018's. I note Aqua used an even higher estimated income of £5,487 a month. Mr B's November 2018 bank statement shows he wasn't earning close to that figure. Mr B was paid £3,235 in November 2018 against committed outgoings of £2,789. Again, Aqua's credit file data shows Mr B's repayments for other unsecured debts had increased further with total repayments of £1,579. But Mr B's bank statements show he was paying considerably more than that. Of most significance is the fact Mr B obtained a new loan of £6,000 during this month, adding a further £142 to his already significant unsecured debt payments each month. I'm satisfied Mr B's November 2018 bank statement shows he was borrowing at an unsustainable rate and that he had little to no capacity to afford a higher credit limit on his Aqua credit card. In my view, Aqua lent irresponsibly when it increased Mr B's credit limit to £1,850.

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 B 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.

For the reasons noted above, I'm satisfied Aqua lent irresponsibly when it approved the credit limit increases to £1,100 and then £1,850. As a result, I intend to tell Aqua to refund all interest, fees and charges applied to Mr B's credit card on balances over £450 from September 2018 to the date of repayment. I also intend to tell Aqua to remove any adverse information recorded on Mr B's credit file from September 2018 until the credit card was repaid.

I invited both parties to respond with any additional information or evidence they wanted me to consider before I made my final decision. Neither party provided further comment.

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 neither party has provided new information for me to consider I see no reason to change the conclusions I reached in my provisional decision. I still think Mr B's complaint should be upheld, for the same reasons.

My final decision

My decision is that I uphold Mr B'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 over £450 from September 2018 onwards
- If the rework results in a credit balance, this should be refunded to Mr B 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 B's credit file from September 2018 onwards
- Or, if after the rework there is still an outstanding balance, Aqua should arrange an affordable repayment plan with Mr B for the remaining amount. Once Mr B has cleared the balance, any adverse information in relation to the account should be removed from their credit file from September 2018 onwards

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 B 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 B to accept or reject my decision before 12 December 2024.

Marco Manente
Ombudsman