

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 the credit limit on several occasions.

What happened

Mr B applied for a credit card with Aqua in July 2013. Aqua approved the application and sent Mr B a credit card with a limit of £250. The credit limit was increased to £400 in March 2014, £1,000 in August 2014, £1,750 in April 2015, £2,650 in October 2015, £3,450 in April 2016, £6,100 in July 2019 and £6,850 in May 2020.

Earlier this year, representatives acting on Mr B's behalf complained that Aqua lent irresponsibly and it issued a final response on 18 June 2024. Aqua didn't uphold Mr B's complaint and said it had carried out the relevant lending checks before approving his application and increasing the credit limit.

Mr B's case was referred to this service and passed to an investigator. Aqua submitted the available data but explained that due to the passage of time, it wasn't able to supply the application information Mr B provided in July 2013. Aqua also explained that it didn't have evidence to show the full lending checks carried out before increasing Mr B's credit limit in stages to £6,100 in July 2019, although it had retained some of the information found when reviewing his credit file. Aqua was able to provide the full details of the lending checks it completed prior to the May 2020 limit increase to £6,850.

Our investigator also asked Mr B's representatives to provide evidence by way of bank statements for three months before each lending decision. But, again, due to the passage of time, Mr B wasn't able to supply those bank statements.

Because of the lack of evidence from Aqua concerning the initial lending checks it completed, the investigator wasn't able to say it completed reasonable or proportionate checks before agreeing to lend. But as Mr B wasn't able to provide evidence to show his circumstances at the point of application, the investigator wasn't able to reach a decision concerning whether Aqua lent responsibly.

The investigator reached similar conclusions for the credit limit increases up to £6,100 in July 2019 and wasn't able to say that the checks Aqua completed were proportionate, although they were able to see some credit file information and account movements. But because the investigator wasn't able to look at Mr B's bank statements they weren't able to reach a conclusion concerning whether the decision to extend the credit limit was reasonable or not. As a result, the investigator didn't uphold Mr B's complaint about the original decision to lend in July 2013 or the increases to his credit limit up to £6,100 in July 2019.

Aqua was able to supply evidence of the full lending checks it completed before increasing the credit limit to £6,850 in May 2020. That information showed Aqua calculated Mr B would've had a disposable income of around £46 a month after meeting his existing credit and living costs. The investigator thought that £46 was too low for Mr B to be able to sustainably afford further borrowing with Aqua and upheld this part of his complaint. Mr B's representatives responded to confirm they accepted the investigator's recommendation on his behalf. But we didn't hear back from Aqua, so Mr B's complaint has been passed to me to make a decision.

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 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.

As noted by the investigator, because of the length of time that's now passed there is limited information available from the original application Mr B made in July 2013 or the credit limit increases up to £6,100 in July 2019. Because Aqua isn't able to show what information Mr B submitted in his application or the full detail of its initial lending checks, I'm unable to reach the conclusion they were reasonable or proportionate to the credit limit of £250. Normally, I'd look at the evidence from the consumer by way of bank statements or other supporting information. But Mr B's confirmed he doesn't have the relevant bank statements. That means I can't look at Mr B's circumstances in the months before his July 2013 application was made and am unable to say what Aqua would've found if it had looked at his bank statements or carried out better checks. I'm sorry to disappoint Mr B but that means I'm unable to fairly reach the conclusion that Aqua lent irresponsibly when it approved his application.

In much the same way, the credit limit increases that took place in stages up to £6,100 in July 2019 only have limited information available from both sides. Aqua's lending data shows more information about Mr B's credit file over time along with how his credit card was handled. But because the lending data is limited in terms of the specific lending checks Aqua carried out, I'm unable to say there were reasonable and proportionate to the new credit limits. Again, where we aren't persuaded reasonable checks were completed, we'd generally request evidence by way of bank statements to try and get a better picture of the consumer's circumstances before each credit limit increase. But as Mr B hasn't been able to provide those bank statements, I'm unable to say what Aqua would've found if it had asked to see

them before increasing his credit limit. In the circumstances, I haven't seen enough to show Aqua lent irresponsibly when it increased Mr B's credit limit in stages to £6,100 by July 2019.

Aqua's lending data shows that when it increased Mr B's credit limit to £6,850 in May 2020 it used an estimated income of £1,644 a month, rent of £350 and cost of living expenses at £549. Aqua also says Mr B was making payments of around £699 to his existing creditors, leaving him with an estimate disposable income of £46 a month. I'm not persuaded that an estimated disposable income of £46 was sufficient for Mr B to sustainably make repayments to a higher credit limit of £6,850 and afford any unexpected outgoings. In my view, the data available to Aqua ought to have shown Mr B wasn't in a position to sustainably afford further borrowing in May 2020 and that it lent irresponsibly when increasing the credit limit to £6,850. As a result, I'm upholding this part of Mr B's complaint and directing Aqua to refund all interest fees and charges applied to Mr B's credit card on balances over £6,100 from May 2020 onwards.

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.

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 above £6,100 from May 2020.

- 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 recorded after May 2020 regarding this account from Mr B's credit file.
- Or, if after the rework the outstanding balance still exceeds £6,100, Aqua should arrange an affordable repayment plan with Mr B for the remaining amount. Once Mr B has cleared the outstanding balance, any adverse information recorded after May 2020 in relation to the account should be removed from his credit file.

*HM Revenue & Customs requires Aqua to deduct tax from any award of interest. They must give Mr B a certificate showing how much tax has been taken off if he asks for one. If Aqua 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 13 January 2025.

Marco Manente

Ombudsman