

## **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**

Mr B applied for a credit card with Aqua in February 2018. In his application Mr B said he was employed with an income of £12,500 a year that Aqua says left him with around £937.50 a month after deductions. Aqua applied an estimated cost of living figure of £406 and housing cost of £192 a month. Aqua also carried out a credit search and found Mr B had a credit card with around £382 outstanding that he was making monthly repayments of £23 towards. No adverse information, defaults or recent missed payments were found on Mr B's credit file. Aqua says that after deducting Mr B's outgoings from his income he had a disposable income of £315 a month. Aqua approved Mr B's credit card with a limit of £250.

Aqua increased the credit limit to £1,000 in August 2021, £2,500 in November 2021, £3,000 in October 2022, £3,850 in March 2023 and £4,000 in July 2023.

Last year, representatives acting on Mr B's behalf complained that Aqua had lent irresponsibly and it issue a final response. Aqua said it had carried out the relevant checks before deciding to lend and didn't uphold Mr B's complaint.

An investigator at this service upheld Mr B's complaint. Whilst they thought Aqua had carried out reasonable and proportionate checks when assessing Mr B's original application and increasing the credit limit in stages to £2,500 they noted new adverse credit found on Mr B's credit file before the decision to increase the credit limit to £3,000 in October 2022. The investigator thought that should've led Aqua to decline to increase Mr B's credit limit and asked it to refund all interest, fees and charges applied to balance over £2,500 from October 2022 onwards. When, after two weeks, no response was received the investigator contacted both parties on 4 December 2024 to confirm Mr B' case would be passed to an ombudsman. As no response has been received from Aqua to confirm whether it accepted the investigator's recommendations Mr B's case 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.

Mr B provided details of his circumstances in his application and confirmed he was working with an income of £12,500 a year. I can see Aqua carried out a credit check and found no evidence of adverse information, like defaults or County Court Judgements. Aqua also found Mr B had a low level of credit, owing around £382 to another lender with monthly repayments of £23. I can also see Aqua made reasonable deductions for Mr B's cost of living expenses and housing. The outcome was that Aqua found Mr B had an estimated disposable income of £315 a month.

Overall, I'm satisfied Aqua completed reasonable and proportionate checks before agreeing to lend and that a disposable income of £315 a month was sufficient to be able to sustainably make repayments to a credit card with a limit of £250.

Aqua increased the credit limit to £1,000 in August 2021 and £2,500 in November 2021. Aqua's systems information shows Mr B was making payments on time and generally in excess of his minimum payment. Aqua used a credit scoring system that gave a strong likelihood that Mr B would be able to afford the increased repayments for credit limits at £1,000 and £2,500. Overall, I'm satisfied the level and nature of the checks Aqua completed were reasonable and proportionate to the credit limit increases and Mr B's account history. I haven't been persuaded Aqua lent irresponsibly when it increased the credit limit to £1,000 then £2,500.

In my view by October 2022, when the credit limit was increased again (this time to £3,000), there were signs Mr B was overcommitted and wasn't managing his finances as well. Mr B's credit file shows he started to miss payments for some of his other credit. Arrears built throughout 2022 and in July 2022, a new default was recorded on Mr B's credit file. I also note that Mr B now owed around £3,000 in unsecured debt, an increase from £382 when he first applied. In addition, Mr B incurred an overlimit fee in June 2022 and late fee in August 2022. Given the recent default on Mr B's credit file and issues with recent payments, I haven't been persuaded the decision to increase the credit limit to £3,000 was reasonable. In my view, Aqua lent irresponsibly when it increased Mr B's credit limit to £3,000 in October 2022.

The credit limit was increased to £3,850 in March 2023 and £4,000 in July 2023. I haven't seen anything in the information provided that would indicate the credit card or increased credit limits became more affordable for Mr B during this time. And I can see Mr B's unsecured debts increased further, reaching around £4,800 in July 2023, which could indicate Mr B had become reliant on credit to make ends meet. That view is somewhat reinforced by the fact that once Mr B's credit limit was increased to £4,000 he almost continually exceeded the credit limit, incurring regular fees from Aqua. Having considered all the information Aqua had available before increasing the credit limit to £3,850 in March 2023 and £4,000 in July 2023, I haven't been persuaded that it lent responsibly. In my view, there was sufficient information already available that showed Mr B wasn't in a position to sustainably meet increased repayments to his credit card.

As I'm satisfied Aqua lent irresponsibly when it increased the credit limit to £3,000 then £3,850 and £4,000, I'm going to tell it to refund all interest, fees and charges applied to balances over £2,500 from October 2022 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 £2,500 from October 2022.

- 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 October 2022 regarding this account from Mr B's credit file.
- Or, if after the rework the outstanding balance still exceeds £2,500, 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 October 2022 in relation to the account should be removed from their credit file.

\*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 5 February 2025.

Marco Manente  
**Ombudsman**