

The complaint

Mr T says that NewDay Ltd trading as Aqua (Aqua) lent to him irresponsibly when it increased his credit limits four times over a 14 month period. Mr T wants a refund of all interest paid and any late payment charges.

What happened

Aqua opened Mr T's account in December 2014 with a credit limit of £900. The following credit limit increases were then applied:

Date	May 2015	August 2015	February 2016	July 2016
Credit limit	£1,500	£1,800	£2,800	£3,550

On each occasion, Aqua wrote to Mr T letting him know about the credit limit increase. Mr T continued to make minimum monthly repayments and, when Mr T told Aqua about difficulties he was having, it took steps to help him make repayments.

Mr T provided us with his credit report. I've set out details of how Mr T was performing on his Aqua account as well as three other accounts in the month prior to each of the credit limit increases by Aqua.

Aqua

Month/year	April 2015	July 2015	January 2016	June 2016
Credit limit (£)	900	1,500	1,800	2,800
Balance (£)	881	1,483	1,774	2,753
Payment (£)	34	52	64	100

Account 1

Month/year	April 2015	July 2015	January 2016	June 2016
Credit limit (£)	950	950	950	950
Balance (£)	935	931	936	929
Payment (£)	33	35	45	34

Account 2

Month/year	April 2015	July 2015	January 2016	June 2016
Credit limit (£)	3,000	3,000	3,000	3,500
Balance (£)	2,965	3,067	3,114	2,954
Payment (£)	150	250	300	155

Account 3

Month/year	April 2015	July 2015	January 2016	June 2016
Credit limit (£)	1,500	1,500	1,500	1,500

Balance (£)	1,512	1,491	1,512	1,478
Payment (£)	43	37	55	36

The credit file also shows Mr T had taken out a number of unsecured loans and advances against income with other lenders in the months leading up to the first credit limit increase by Aqua. There is further similar borrowing in periods between the dates of the three further credit limit increases.

Our investigator looked into things for Mr T. Aqua told us that prior to each of the increases, Mr T had kept up his payments. Aqua said that this, together with the information it received from a credit reference agency, meant that Mr T became eligible for an increase. Aqua confirmed it did carry out an assessment at every credit increase. Aqua also said that its relationship with the credit bureau had changed over the years. Aqua said it wasn't informed of any financial difficulties during the time of the credit limit increases and there was no indication that Mr T was struggling to pay.

Aqua accepted it did have enough information, prior to the fourth increase, to show that Mr T may have been overstretched and it should've tried to get a better understanding of his finances. Aqua offered to refund a proportion of each monthly interest charged on the increased balance from August 2016, which was £823.46. It also offered to refund 8% simple interest on any monthly overpayment payment after the last increase, which is £184. Aqua explained it couldn't remove any adverse data as it has a duty to provide a true account of a customer's payment history.

After considering all of the evidence, I issued a provisional decision on this complaint to Mr T and Aqua on 8 October 2020. In my provisional decision I said as follows:

"We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Aqua needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should've carried out proportionate checks to make sure that Mr T could repay the credit in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate. But certain factors might point to the fact that Aqua should fairly and reasonably have done more to establish that any lending was sustainable for a consumer. These factors include:

- the lower a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);*
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);*
- the greater the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable). There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.*

The first point I will address is whether I think Aqua carried out reasonable and proportionate checks. Section 5 of the Consumer Credit (CONC) sourcebook in place at the time outline that the assessment that Aqua needed to complete should've been

dependent on, and proportionate to, a number of factors – including the amount and cost of the credit and the consumer's borrowing history.

CONC also provides guidance on the sources of information Aqua may have wanted to consider as part of making a proportionate assessment. It then gives examples of factors a firm must consider and refers to whether the information the firm has is sufficient and whether to obtain additional information from the customer and any other sources of information to use.

Aqua is free to decide how to set its lending criteria but it should complete proportionate checks to ensure borrowing is sustainable. In this case, I don't think the checks Aqua completed went far enough. In relation to the first increase in May 2015, I understand that Aqua may not have had full details of Mr T's other credit because of the nature of the credit checks it completed. But, in line with the rules I have mentioned above, it could've taken other approaches, like asking to see his full credit file for example.

I've seen the information which Aqua say it took into consideration when applying credit limit increases. While I understand why Aqua took into account that Mr T had kept up his payments in line with the terms of the agreement and there had been no late fee or over limit charges, this only shows activity on one account and didn't create a complete picture of Mr T's financial situation. Aqua has told us about changes which took place in March 2016 which then gave them access to more information. While I take this into account, the fact remains that Aqua could've obtained more information from Mr T and other sources to better understand Mr T's financial situation. CONC also makes reference to "significantly increasing" credit limits and I can see that Aqua increased Mr T's credit limit by 400% over 14 months. So, I don't think Aqua did enough to carry out significant creditworthiness checks.

There is a further argument for saying that Aqua should've carried out more thorough checks in this case. When opening Mr T's account, Aqua was aware that his gross salary was £18,200 and he had a total unsecured balance of £12,300. This was the position five months before Aqua applied the first credit limit increase. This information alone was already enough to show that Mr T might not be in a position to make repayments in a sustainable manner against a higher credit limit. On that basis, I intend to take the view that reasonable and proportionate checks weren't completed.

The next point to consider is, had reasonable and proportionate checks been carried out, whether they would've shown that Mr T was more likely than not unable to sustainably repay the credit. The information I have seen shows that Mr T did later run into difficulties with repayments and was given a payment holiday. This happened in 2018 so it wouldn't be fair to take this into account because I need to consider the position at the point the credit limits were increased. So, given that I have said that Aqua should've got Mr T's credit file, I will focus on the information this would've shown them.

At the point, all four increases were made, Mr T already had open accounts with other lenders. These accounts were running right up to the limit. The tables above show the position in relation to three accounts.

In May 2015, when the first increase was made, the credit file shows that Mr T, in the month before, had an account where he had gone over the limit by £12. And, in relation to another account, his balance was £2,965 which was £35 short of his credit limit. Mr T was also consistently making small payments towards the outstanding

balances on these three accounts for at least the 12 months prior to May 2015. This position continued throughout the period the three further credit limit increases were made by Aqua.

The credit file also shows significant short term borrowing by Mr T in the form of unsecured loans and advances against income. Had Aqua taken this information into account, I feel it would've pointed towards Mr T being in a difficult financial position and needing short term loans to either meet other repayment liabilities or to otherwise make ends meet. This would've highlighted that Mr T wouldn't be able to repay the extra credit in a sustainable manner and without any undue difficulty.

Taking everything I've seen into account, I don't think the decision to approve the increase to £1,500 in May 2015 was reasonable. And, from what I've seen, I think Aqua failed to complete proportionate checks to ensure the borrowing it approved was sustainable. I think it's likely that if Aqua had done better checks it wouldn't have offered Mr T the £1,500 limit.

As I think the limit increase to £1,500 was irresponsible, it follows the subsequent increases to £1,800, £2,800 and £3,550 were irresponsible as well. I say this for the very same reasons I have given in respect of the May 2015 increase. Again, I've looked at the information Aqua had available as well as the types of questions it could've asked.

The additional point I would make however in respect of the later three increases made by Aqua is that the information shows Mr T used the extra credit very shortly after it was made available to him. While this, on its own, might not suggest an issue, it would raise a concern about Mr T's finances given the other short term borrowing which was taking place at the time. Had Aqua carried out more thorough checks, which I feel it should've, then I don't think it would've approved any of the four credit limit increases.

I can see that Mr T later found himself in a position where he couldn't keep up his repayments to Aqua. Aqua did take reasonable steps to help Mr T out during this time. It's not clear what the change in circumstances was and whether Aqua was a cause of this, but the fact remains that, at the point Mr T asked for help, he was over his increased credit limit with Aqua - a limit which, for the reasons set out above, I feel shouldn't have been in place. So, I think it's reasonable for Aqua to pay compensation of £100 to reflect the trouble and upset to Mr T.

Mr T has said that he had a gambling addiction and Aqua should've picked up on this from his credit card statements. Mr T's statements do show regular payments being made to a gambling company around the time he received the credit limit increases although I can't see any information which shows that Mr T made Aqua aware of his gambling addiction. I also haven't seen any evidence which shows that Aqua did check Mr T's statements so it would've been unaware what the credit card was being used for. There is no doubt this has been a difficult time for Mr T and it's good to hear that he has recovered from the problems he has mentioned. I believe that even without this additional financial pressure it still wasn't appropriate for Aqua to increase Mr T's credit limits."

So, subject to any further comments from Mr T or Aqua, my provisional decision was that I was minded to uphold this complaint.

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.

Having done so, I've decided to uphold the complaint for the reasons set out in my provisional decision and copied above.

Following my provisional decision, Aqua responded to say they have nothing further to add. Mr T responded and explained he's hoping to borrow in the future and a query showing on his credit file could be viewed as a problem. I've taken this into account and can see there is adverse information showing on Mr T's credit file.

As I've decided that proportionate checks would have shown that Mr T couldn't sustainably repay the loan following the credit increases, I feel it's reasonable that Mr T's credit file shouldn't have any adverse information recorded about this credit. I've decided there came a point where Aqua should have realised that any further lending was clearly unsustainable, so Aqua should get any adverse information removed from Mr T's credit file completely.

Putting things right

I've taken the view that Aqua lent irresponsibly to Mr T when it increased his credit limit four times over 14 months. I therefore consider this is irresponsible lending and Aqua should put this right. I've also taken the view that Aqua should pay compensation for trouble and upset caused to Mr T by increasing his credit limits.

Mr T's credit file shows status markers for a missed payment and an arrangement to pay in relation to the Aqua account. I understand Aqua's point about a credit file showing a true account of a customer's payment history. My view is that Aqua lent irresponsibly and his account shouldn't have reached the credit limit it did. So, Aqua should get any adverse information, which has arisen following the credit limit increases, removed from Mr T's credit file completely.

My final decision

My final decision is that I uphold the complaint. NewDay Ltd trading as Aqua must:

- Refund the interest and any charges incurred as a result of the credit card limits being increased from May 2015 to the date the account was brought to a nil balance;
- Pay simple interest on this amount at the rate of 8% a year*;
- Remove any adverse information about this credit from Mr T's credit file; and
- Pay compensation to Mr T in the sum of £100 for the trouble and upset caused

* HM Revenue & Customs requires NewDay Ltd trading as Aqua to take off tax from this interest. NewDay Ltd trading as Aqua must give Mr T a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 24 December 2020.

Paviter Dhaddy
Ombudsman