

The complaint

Ms W complains that Aqua lent irresponsibly when it approved her credit card application and later went on to increase the credit limit. Ms W also complains that Aqua sold her debt to a third party despite being aware she was vulnerable.

What happened

On 3 June 2015 Aqua assessed Ms W's credit card application and approved a credit limit of £250. Ms W's application said she was a tenant and employed, earning £26,781. Aqua carried out a credit search and found Ms W had two defaults, the newest of which was registered 40 months before the application.

In October 2015 Aqua increased Ms W's credit limit to £1,250.

In June 2016 Ms W wasn't able to make the credit card payment. Ms W discussed her credit card with Aqua and advised that she is disabled, was suffering from a chronic illness, was in chronic pain, was heavily medicated, was unable to walk, unable to work and was waiting for an operation on a broken foot. Ms W told Aqua she wasn't able to make her credit card payment. Aqua says it sent Ms W an income and expenditure assessment to complete. Aqua contacted Ms W again on 15 July 2016 both by phone and letter but didn't receive a response.

Due to the arrears, the credit card was defaulted and in December 2016 the debt was sold to a third party to collect.

In December 2019 Ms W contacted this service to raise a complaint about Aqua's actions. In response, Aqua told us it wanted to make Ms W an offer. Aqua agreed it shouldn't have increased the credit limit in October 2015 and offered to refund interest Ms W incurred from October 2015 to December 2016, when the account defaulted, totalling £376.68. Aqua also offered to refund £96 of fees. Aqua said Ms W had told it she was vulnerable in June 2016 and that it sold the debt in December 2016 because the correct process wasn't followed. Aqua offered Ms W £100 to apologise for the error.

Our investigator looked at Ms W's complaint and upheld it. They pointed out that industry guidelines say a debt shouldn't be sold when the consumer is vulnerable. The investigator recommended that Aqua increase the award for the distress and inconvenience caused from £100 to £300. Aqua didn't agree and said Ms W hadn't responded with the income and expenditure assessment it asked her to complete. Aqua said that, on balance, Ms W wouldn't have provided medical evidence to verify what she had told it. As Aqua asked to appeal, I've been passed Ms W's complaint 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 a lender approves credit it has to make sure the debt is affordable and sustainable for the borrower. It can do that in a range of ways. In this case, Aqua looked at Ms W's credit file and the information she provided in her application. The application form said Ms W was employed with an income of £26,781. Whilst the credit file noted Ms W had some defaults, they were over three years old when she applied and Aqua has confirmed it will accept applications from people with some adverse credit. Overall, the information Aqua obtained indicated Ms W could afford the repayments on a credit card with a £250 credit limit. I'm satisfied the application was reasonably approved.

Aqua accepts it shouldn't have increased Ms W's credit limit to £1,250 because she was in arrears on another credit commitment. I think Aqua's offer to refund all the interest and charges Ms W incurred from the date it increased the credit limit to the date of default is reasonable. Aqua has confirmed the £376.68 interest and £96 fee refund will be used to reduce the outstanding balance of the debt. I'm satisfied Aqua's offer in respect of the refund is fair.

Our investigator quoted industry guidance in their findings. The guidance says a lender shouldn't sell a debt if it has medical evidence that the borrower has ongoing mental health problems or a critical illness that impacts their ability to repay the debt. Our investigator says Aqua shouldn't have sold the debt because it was aware Ms W was vulnerable in June 2016. The investigator thought Ms W had been caused unnecessary distress by Aqua's decision to sell her account and asked it to increase the award to £300.

Aqua said it didn't think Ms W would have responded with medical evidence if asked. Whilst I note Aqua's comments, I have to take into account that Aqua didn't ever ask Ms W to provide any medical evidence to support the comments she made in June 2016. I understand that Aqua sent Ms W a budget planner on 15 June 2016 and followed that up a month later with another request. But, I that's not the same as asking for medical evidence.

Ms W was willing to provide medical evidence to this service in support of her complaint. On balance, I think it's more likely than not that she would've provided medical evidence to Aqua if it had asked. I'm unable to agree with Aqua's claim that Ms W wouldn't have provided any medical evidence to verify what she had told it.

I've considered the level of compensation our investigator has awarded. Whilst I note Aqua's response, I agree with the investigator. I can see Ms W gave information about a very difficult period in her life when she called Aqua in June 2016. I'm not persuaded that Aqua has dealt with Ms W fairly or that its decision to sell the account was reasonable. I agree with the investigator that Aqua's actions did cause additional distress to Ms W and that £300 more fairly reflects the impact on her. As a result, I'm going to uphold Ms W's complaint, in line with the investigator's proposed settlement.

In response to the investigator, Ms W said she would like to repay Aqua, not the third party it sold her debt to. I'm sorry to disappoint Ms W but I'm not going to tell Aqua to retrieve her account from the third party. Any business that acquires a debt has to ensure it treats the borrower fairly and agrees affordable repayment options. Should Ms W have any concerns about the owner of her debt, she has the option of raising her concerns with that business. I agree the decision to sell the debt caused Ms W distress and, as I've said above, I've factored that into the settlement.

Ms W has also asked whether the original facility could be reinstated. It's not now possible to reinstate the credit card facility after it was defaulted. At that point, Ms W's agreement with Aqua ended. So I can't tell Aqua to reopen her account.

Putting things right

To put things right, Aqua should:

- Refund all interest applied from date credit limit was increased to £1,250 in October 2015, to the date it was sold in December 2016 - £376.68.
- Refund all fees from October 2015 to December 2016 totalling £96.
- Pay Ms W £300 for the distress and inconvenience caused.

My final decision

My decision is that I uphold Ms W's complaint and direct NewDay Ltd trading as Aqua to settle in line with the above guidance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 8 December 2020.

Marco Manente
Ombudsman