

## **The complaint**

Ms T complains that NewDay Ltd – trading as Aqua – were irresponsible in approving a credit card for her because she thinks it was unaffordable, and she says she was vulnerable due to her poor mental health at the time.

When I refer to what Ms T has said, and Aqua have said, it should also be taken to include things said on their behalf.

## **What happened**

In April 2016 Ms T took out a credit card with Aqua. Ms T says that, at the time, Aqua should have never offered her a credit card because she thinks, if they checked her credit record, they would have seen she was struggling and was late with payments for things such as rent and council tax. Ms T says, had Aqua checked her credit record properly and done proper affordability checks before giving her the credit card, they would have seen that the offered credit was unaffordable.

Ms T says Aqua later increased the credit limit on this credit card irresponsibly at the time when she was using a very high level of her credit limit, and she says this should have indicated to Aqua she couldn't repay her balance within a reasonable length of time. Ms T says that, by increasing her credit limit, Aqua made her financial position even worse. She says that Aqua took her vulnerable position for granted and she has suffered a great deal of distress, which in turn had a negative impact on her mental health.

In April 2019 Aqua wrote to Ms T and said they are a second chance lender and allow for negative information on a credit report, as these accounts have been designed for helping consumers with a lower credit rating. They said that, as a responsible lender, when deciding to offer credit they considered the information Ms T supplied on her application and the information held at the credit reference agencies. They said that, when they made the credit assessment as part of her application, Ms T informed them she was self-employed with a gross annual income of £20,000 and had other household income of £2,400. They said that, at the time she was not in arrears and had no public records on her credit report. They said, while they appreciated that she had a default, this was seven months prior to her application and the amount was within the limits of their policy. So, they stated that she met their acceptance criteria to be provided with a credit card that had a credit limit of £600.

In this correspondence they go on to say that, as part of their commitment to responsible lending, they regularly review how their customers are using their cards, along with how they are managing their other credit commitments, and they make risk-based assessments to ensure they are lending appropriately. They say this type of review may result in either an increase or a decrease in the credit limit. In November 2016 Ms T's account was reviewed, and she became eligible for a credit limit increase from £600 to £1,000. So, they said they wrote to her and provided the opportunity to 'opt out' of the increase which they say she chose not to do. They say a further account review took place in March 2017 and again they say Ms T was eligible for a credit limit increase from £1,000 to £1,500. And, once again, they say they have no record of Ms T contacting them to 'opt out'. Regarding Ms T's personal circumstances or her medical conditions present at the time of her credit application, Aqua

said they would have no way of knowing about these because this line of questioning does not form part of their application process. And, they said that, had Ms T made them aware of her situation, they may have taken this into consideration.

Ms T was unhappy with this, so she brought her complaint to this service.

Our investigator thought the complaint should be upheld. Aqua disagreed with the investigator. So, the complaint has been passed to me to decide.

### **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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

Amongst other things, I have considered the rules and guidance for lenders set out in the Consumer Credit Sourcebook (CONC) within the Financial Conduct Authority's handbook.

When looking at this type of a complaint I need to consider three main questions in order to decide what is fair and reasonable in the circumstances of the complaint.

The first question is:

1. Did Aqua complete reasonable and proportionate checks to satisfy themselves that Ms T would be able to repay the borrowing in a sustainable way?
  - a. If reasonable and proportionate checks were completed, did Aqua make a fair lending decision bearing in mind the information gathered and what they knew about Ms T's circumstances?
  - b. If reasonable and proportionate checks were not completed, would such checks have shown that Ms T would be able to sustainably repay the borrowing?

The second question is:

2. Bearing in mind the circumstances at the time of each credit limit increase, was there a point where Aqua ought reasonably to have realised they were increasing Ms T's indebtedness in a way that was unsuitable or otherwise harmful, and, as such, should not have provided further credit?

The third question I need to consider is:

3. Did Aqua act unfairly or unreasonably in some other way?

And if I think Ms T has been disadvantaged in any way by Aqua's actions, then I will consider what is a fair way to put things right.

Did Aqua complete reasonable and proportionate checks to satisfy themselves that Ms T would be able to repay the borrowing in a sustainable way?

Aqua were required to carry out reasonable and proportionate checks to assess Ms T's ability to repay the borrowing in a sustainable way. These, sometimes called 'affordability

checks', need to be borrower-focussed (considering Ms T's specific circumstances) and, in addition, to the creditworthiness assessment, to see if she could have afforded to repay the borrowing in a sustainable manner. So, Aqua needed to consider the impact of any credit payments on Ms T, and not just the likelihood of getting their money back.

There is no set list of checks Aqua needed to complete. But the checks should have been proportionate to the circumstances, and what is reasonable and proportionate will vary depending on a number of factors such as, but not limited to the:

- Amount of credit;
- Duration (or likely duration) of the credit;
- Frequency of the repayments;
- Amounts of repayments;
- Total amount payable;
- Total charge for credit; and
- Consumer's individual circumstances, including their lending history.

The list above is not exhaustive, and what is considered proportionate may vary as any of the above factors (or others) might influence what a reasonable and proportionate check ought to be.

Did Aqua complete reasonable and proportionate checks to satisfy themselves that Ms T would be able to repay the borrowing in a sustainable way?

Aqua say that Ms T declared that she had an annual income of £20,000, and that the credit reference agency that they used, confirmed no arrears or public records. They say that, whilst there was a default, it was seven months prior and for £100, so they say it was within their policy and they accepted Ms T for an Aqua account with a credit limit of £600.

Aqua says that they didn't request bank statements at the time, as they believe that they were not required to do so. Instead, they used scoring methods to assess Ms T's credit worthiness and, when assessing suitability for a credit limit increase, they say they used an internal account management data and external information provided by multiple credit reference agencies. They also say that there was no indication from Ms T in regard to her medical conditions at the time. So, although they say they sympathise with Ms T's circumstances, the account opening was done in line with their policy at the time.

I've considered the above, but Aqua, in addition to a creditworthiness assessment, needed to see if Ms T could have afforded to repay the borrowing in a sustainable manner considering her circumstances. I understand that Aqua feels that because Ms T declared that she was self-employed with an annual income of £20,000, and had other household income of £2,400, they say the repayments would have been affordable considering that the limit was only £600. But it is Aqua that were required to carry out a reasonable and proportionate checks of Ms T's ability to repay the borrowing in a sustainable way. I don't think it is reasonable for them to rely solely on the information given by Ms T, and this does not absolve them of their responsibility to carry out appropriate and proportionate checks.

Aqua says that Ms T's default was seven months prior and only for £100, so they say it was within their policy to still provide her with a credit limit of £600. But I think, considering that

the default was for a very low amount, and it was only seven months prior to the credit application being completed, this ought to have raised flags for Aqua that Ms T might have been struggling financially. This in turn, should have made Aqua do more to understand Ms T's circumstances at the time, as I don't think they had enough information to enable them to carry out a reasonable creditworthiness assessment.

I can see that Aqua on their underwriting notes indicated they considered Ms T had approximately £1,400 total unsecured credit debt before approving her for the £600 credit limit. But they had no other information regarding her other commitments. They noted she was renting but have not indicated how much she was paying in rent. They have also not taken into consideration Ms T's other commitments and expenditures such as day to day living expenses. I see that outside of her credit commitments, Aqua did not know what other committed expenditure Ms T had. So, without this information, I don't think Aqua could reasonably conclude that the credit was affordable and sustainable for Ms T. And considering they already knew that seven months prior, she had a default potentially due to having difficulties paying off small credit amounts, I think it would have been reasonable for them to find out more about her situation.

I acknowledge Aqua noted in their file that Ms T declared that she was self-employed for five years and making £20,000 gross plus an addition income of £2,400. But they themselves identified that this was below average. So, considering this, and the fact that outside of her credit commitments, they knew nothing of her other obligations, I think it would have been reasonable for Aqua to have verified Ms T's income. Especially as they also knew that she had recently got a default for not paying back a very small amount of money.

So, considering all of the above, I do not think Aqua carried out reasonable and proportionate checks to satisfy themselves Ms T would be able to repay the borrowing in a sustainable way.

#### Would reasonable and proportionate checks have shown that Ms T could sustainably repay the borrowing?

As I've concluded that Aqua didn't carry out reasonable and proportionate checks, I will now consider whether their lending decision likely ought to have been any different if proportionate checks had been carried out.

I can't be certain what evidence, information or what questions Aqua would have asked and reviewed had they picked up on the concerns I've mentioned above. But I think if they asked Ms T about her expenses at the time, they most likely would have found out that her rent payment was £1,250 per month, and that her electricity bill was £130 per month. She was also spending about £250 on food and clothing per month, plus £100 for medication each month. In absence of anything else, I think the information available from Ms T is a reasonable indicator of the type of evidence or information Aqua would have likely found out about Ms T's expenditures, had they completed reasonable and proportionate checks at the time of borrowing.

So, it appears that her ongoing commitments totalled around £1,730 a month. To this we need to add a repayment amount for her credit facilities. Ms T's credit facilities had a total credit limit of around £1,400, so I think any reasonable estimate of what a sustainable repayment Ms T might have been required to make on these, would have been around £60 a month. That would mean that her total monthly expenditure, not including the Aqua credit card she was applying for, would be around £1,790 a month. Her total gross declared annual income was £22,400, which would be approximately £1,530 net a month. As such, it seems she would be left with no disposable income. So, I don't think Ms T could sustainably repay

any further credit, and I think Aqua would have likely found this out, had they completed reasonable and proportionate checks at the time of borrowing.

I know Aqua has questioned how Ms T has been able to maintain payments to them and other creditors for over two years, considering the figures above. But Ms T has told us that her daughter has been helping her out financially, including paying for her council tax and rent. I have been provided with a copy of Ms T's bank statements from the time of the borrowing. And, I have reviewed the monthly statements for the six months prior to Ms T being granted the credit card. I'm not saying that Aqua should have asked for bank statements. I only asked Ms T for bank statements because I wanted to clarify if her daughter was helping her at the time. And I can see that a significant portion of the incoming money into Ms T's bank account seems to be from cash deposits and payment transfers from her daughter. So, I'm satisfied that is why Ms T was able to maintain certain payments.

Taking everything into consideration, had Aqua done more to establish Ms T's financial circumstances by carrying out reasonable and proportionate checks, I think most likely they wouldn't have approved her for the credit card. From the above it is clear that the credit card in question was not affordable, and Ms T couldn't sustainably repay this credit without relying on borrowing or on family for help. I know family would've wanted to help if they could, but people's circumstances can change, so they may not have been able to do so indefinitely.

Bearing in mind the circumstances at the time of each credit limit increase, was there a point where Aqua ought reasonably to have realised they were increasing Ms T's indebtedness in a way that was unsuitable or otherwise harmful and as such, should not have provided further credit?

Aqua say they were receiving regular payments and there were no financial or affordability indicators being reported to them, and no payday loans shown on the credit report they checked. They say that based on this and that fact that Ms T's overall indebtedness was low, she was offered two credit limit increases; applied in November 2016 and March 2017. They also say that there was no contact from Ms T in respect of her medical conditions or her financial difficulties, and they have continued to receive regular payment from 2016 to early 2019. They say they sympathise with Ms T's circumstances, but the account opening, and credit limit increases were done in line with their policy at the time.

As I've found that Ms T shouldn't have been approved for the credit card, it follows that the two subsequent credit limit increases also should be automatically upheld. I say this because had the initial credit not been granted, it wouldn't have been possible for Ms T to be applicable for the limit increases. However, I think it would be helpful for me to set out why I think Aqua ought to have realised with both credit limit increases that further credit was unsustainable for Ms T.

#### *First credit limit increase from £600 to £1,000*

This unsolicited credit limit increase was given to Ms T in November 2016. So approximately seven months after Ms T got approved for the credit card. In four of the seven months, prior to this limit increase Ms T was over her credit limit. And she was late with her minimum payment on two occasions, the last one being in the month prior to the credit limit increase.

Aqua was required to monitor Ms T's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties. I think being above the credit limit on four different statements out of seven and being late with two minimum payments would most likely constitute possible repayment difficulties. So, I disagree with Aqua that there were no financial or affordability indicators being reported to them. And I don't think it was

enough for them to rely on the fact that there were no payday loans shown on her credit report.

Also, they could see that Ms T's £1,400 total unsecured credit balance had now increased by approximately £1,000 to around £2,400. It seems that she was using a lot more credit compared to seven months prior when they approved her for the credit card. So, I think considering this and her repayment history over the previous seven months was enough to flag to them that there were possible repayment difficulties. At least this should have flagged to them to do further checks before approving any credit limit increases.

I can't be certain what evidence, information or what questions Aqua would have asked and reviewed had they picked up on the concerns I've mentioned above. However, I have been provided by Aqua with a copy of Ms T's credit card statements for the relevant months. So, I have reviewed these. In the absence of anything else, I think the information available from these statements was a reasonable indicator of the type of evidence or information Aqua would have likely found out had they done further checks, especially that they had access to these. From the credit card statements, I can see that in the first month she spent most of her entire credit limit on online gambling transactions. This, combined with the fact that she was above the credit limit on four different statements out of seven, late with two minimum payments, and utilising £1,000 more credit, in my opinion, would have most likely signified to Aqua that Ms T was experiencing financial difficulties. And the way in which Ms T was using her credit, most likely, would have indicated to Aqua that she was potentially having a gambling problem. So, taking all of the above into consideration I think Aqua should have known that Ms T was unlikely to be able to repay any of the credit in a sustainable way, and they shouldn't have offered the credit limit increase to her.

#### *Second credit limit increase from £1,000 to £1,500*

This second unsolicited credit limit increase was given to Ms T in March 2017. As such, Ms T had the £1,000 credit limit for only four months before she was given access to another £500 of credit. During this short time, I can see that she managed to keep up with her minimum payments. But I do see that she maximised this credit limit within approximately two months. I think this should have been a concern for Aqua when they were considering whether to give her another credit limit increase. I say this because that information, together with the repayment history, should have raised concerns for them. Ms T was over the credit limit on four occasions, and was late with two minimum payments, within 11 months of being approved for the credit card. And right after she was given the last limit increase, she spent it within a short period of time. All this taken together most likely should have raised concerns for Aqua that Ms T might be experiencing financial difficulties. So, they should have done further checks before giving her the second credit limit increase.

Once again, I think the information in Ms T's credit card statements would have been a reasonable indicator of the type of evidence or information Aqua likely would have found out had they done further checks. From these they would have noticed that once again most of her prior credit limit increase was spend on gambling transactions. They also would have noticed that she is getting further into debt and not repaying her credit in a sustainable way. So, considering all of the above, I think it was not reasonable for Aqua to give Ms T a further credit limit increase.

#### Did Aqua act unfairly or unreasonably in some other way?

I've not been presented with anything persuasive to make me think it is more likely than not that Aqua acted unfairly or unreasonably towards Ms T in some other way.

#### **Putting things right**

Ms T has had the benefit of being able to use the money Aqua lent to her. So, it is fair that she repays the capital. But Ms T shouldn't have been given the credit card and the two further credit limit increases. So Aqua should refund to Ms T any interest, fees and charges she has paid.

### **My final decision**

For the reasons mentioned above, I uphold this complaint and direct NewDay Ltd trading as Aqua to:

1. Rework the account balance to refund all interest, to reflect the fact that no lending or further credit limit increases should have been provided. All late payments and over limit fees should also be removed;
2. The payments Ms T made from the inception of financing onwards (including any since the debt was sold) should then be deducted from the reworked account balance. Any extra that was paid should be treated as overpayments and refunded to Ms T;
3. Simple 8% interest per year should be added on top of any overpayments, if there were any, from the date they were made to the date of settlement;
4. Remove any adverse information recorded on Ms T's credit file in relation to this credit.

From what I've seen it appears that Aqua sold the outstanding balance on this account to a third-party debt purchaser. So, they either need to buy the account back from the third party and make either of the following: make the necessary adjustments; or pay an amount to the third party in order for it to make the necessary adjustments; or pay Ms T an amount to ensure that it fully complies with what I've recommended.

Also, Aqua should arrange a suitable repayment plan with Ms T, if an outstanding balance remains on the account after all adjustments have been made.

If Aqua considers tax should be deducted from the interest element of my award, it should provide Ms T with a certificate showing how much they have taken off so she can reclaim that amount, if she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 10 September 2021.

Mike Kozbial  
**Ombudsman**