

The complaint

Miss M complained that NewDay Ltd trading as Aqua (Aqua) lent to her irresponsibly.

What happened

Miss M had an Aqua credit card since 2013. Between 2014 and 2016, Aqua increased her limit as follows:

Date	Old Limit	New Limit
10 June 2014	£250	£400
3 December 2014	£400	£1000
23 October 2015	£1000	£1750
5 April 2016	£1750	£2650

In August 2017, Miss M requested the account was closed, leaving a debt.

Miss M complained to this service in December 2019. She said Aqua shouldn't have agreed to increase the limits as she was in financial difficulty and wasn't able to afford the increased borrowing. She said she'd told them about this, but they hadn't replied. So, they hadn't been supportive of her situation. We asked Aqua to look at her complaint.

Aqua replied in March 2020. They said that Miss M had passed their credit tests for each increase. She had been sent a letter before each one which included an option to opt out. She hadn't. Miss M had called Aqua in August 2017. She said she could only afford to pay £70 per month. She completed an income & expenditure form. Aqua felt she could afford more than that and no payment plan was agreed. Miss M continued to make the monthly payments. In August 2017, Miss M opted out of a proposed increase in interest rates and asked that her account was closed. Interest remained at the previous level. She contacted Aqua in October 2019 and asked that her interest was stopped. But the digital conversation ended without Miss M providing any information.

Our investigator looked at what had happened. Aqua declined to allow us to look at the issue of the card in 2013, and Miss M agreed to this. So, we looked at the limit increases. In September 2020, our initial view said that Aqua had done nothing wrong. We couldn't tell Aqua how they could lend money, or what their credit approval processes were – that's a commercial decision. Aqua had sent letters to Miss M prior to the increases in limit and gave her the chance to opt-out. She hadn't. They reviewed her income & expenditure in 2017 and thought she could afford more than £70 per month. She continued to make repayments after that. She thought that Aqua acted reasonably.

Our investigator then changed her view and issued a revised opinion in December 2020. This said that there had been late payments prior to both limit increases in 2014, and before the increase in 2015. And before the increase in 2016, she had gone over her limit. Aqua's internal notes also said she was in financial difficulty. Therefore, Aqua shouldn't have offered the limit increases. She said that the interest and fees charged from July 2014 should be refunded, and any adverse information on Miss M's credit file be removed.

Aqua disagreed. That said that the missed payments took place several months before the limit increases took place. The over limit incidence took place a month before the final limit increase in 2016. No further fees were paid until September 2017, more than a year later. They said that the fees were just poor account management and isolated incidents – they didn't mean Miss M was in financial difficulty.

Aqua asked that the complaint be reviewed by an Ombudsman.

I reached a provisional decision which said:

I can't tell Aqua how they should lend money– it is up to them to decide who they lend to and how they make decisions. But our job is to decide if they have been fair and reasonable given a customer's circumstances.

In deciding whether a customer was provided with unaffordable credit or provided with credit irresponsibly, we need to understand whether reasonable and proportionate checks were carried out to be sure they would be able to repay any borrowing. And was a fair lending decision made in the circumstances? Should the lender have realised where appropriate that in some cases, to lend more money would end up harming the customer in some way?

And, these considerations must be borne in mind at the time of each of the increases in credit limit. The checks need to be more thorough the lower a customer's income and the higher the amount to be repaid.

And where a customer is in financial difficulty, businesses have an obligation to treat customers in financial difficulty sympathetically and the Financial Conduct Authority (FCA) says that businesses like Aqua should treat customers in difficulties with forbearance and due consideration.

So, I must decide whether Miss M was in financial difficulty and if so, were Aqua aware of this? Miss M has said she was in financial difficulty. I can see one reference in their notes that Aqua thought she was as a result of some credit reference data. But there is little other information which says so. Miss M called Aqua in August 2017 and told Aqua she was having problems making the repayments. The notes on her account – from the income & expenditure form - say her income was £1600 per month, with one other creditor. Aqua thought that she could afford to pay more than what she offered, based on what she told them. And Miss M then continued to make the payments which suggests that things were OK. When she contacted Aqua again in October 2019, the online chat was stopped before any information was given. The notes say she was paying £65 per month then. So Aqua couldn't really take any positive action. In an ideal world, maybe Aqua should have followed up to see if they could help, but they didn't. So, Aqua didn't really have any up to date information from Miss M which meant they could say she was in financial difficulty.

Aqua say they didn't find any other information from their credit searches to say she was in difficulty. They were therefore happy to lend more money. Miss M sent to us her credit reference agency information. This shows one other lender in default in 2015 for £3083, plus the Aqua debt of £1779. I looked at the account statements – these show that Miss M used the limits given to her, but she made most payments without too much difficulty. Between July 2014 and April 2016, she went over the limit three times and paid late four times. But that doesn't mean that her situation was really bad. So, all of this means that I can't say that she was definitely in financial difficulty.

When the increases in credit limit were offered to Miss M, she had the chance to decline them. I've seen all of them and she had 40 days to say she didn't want to borrow more money by returning a reply slip or calling them. The offers also gave the option to say if she didn't ever want to be offered any increases again. And they said "*...make sure you're comfortable with the amount you borrow and that you're confident about paying it back...*" Miss M had opted out of an offer in January 2014 and so she knew this could be done. So, I don't think there is enough evidence to say that Aqua should have considered Miss M in financial difficulty and therefore shouldn't have lent more money to her. It seems to me that if Miss M had pushed her case harder with Aqua and given them more information, then things could have been different, but unfortunately she didn't.

So, I think that Aqua acted reasonably and I won't be asking them to do anymore. If Miss M is still struggling to repay the debt with Aqua, she should now get in touch with them to discuss her situation and agree a sensible way forward.

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Aqua accepted my findings. There was no response from Miss M.

So – I now need to reach a final 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.

As Aqua accepted my findings, and Miss M made no comment, I won't be departing from what I said in my provisional decision for the reasons I gave in it. So, my final decision is that NewDay Ltd trading as Aqua don't need to take any further action.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 5 April 2021.

Martin Lord
Ombudsman