

The complaint

Miss S is complaining about NewDay Ltd trading as Aqua. She says they lent to her irresponsibly when they gave her a credit card in August 2016, and again when they increased her credit limit in April 2017.

What happened

Miss S applied for an Aqua credit card in August 2016. On the application she told Aqua that she had annual income of £22,000, and that she was living with her parents. Aqua approved the application and gave Miss S a credit card with a credit limit of £900.

In April 2017, Aqua offered Miss S an increase to her credit limit. Miss S had the opportunity to decline the increase, but she didn't – so the increase went through automatically. The credit limit was increased to £1,650.

Miss S complained to Aqua in September 2019. By this point she was struggling with persistent debt, needing to take out loan after loan in order to meet repayments on her existing debt. Miss S said it should have been obvious in August 2016 that she couldn't afford any more debt as her debt level was more than her annual income. And she said she shouldn't have been given a credit limit increase – she said by this time she was using a number of payday loan companies and also using her Aqua credit card for a lot of gambling transactions.

Aqua didn't uphold Miss S's complaint. They said they'd considered the information Miss S had supplied, as well as information held by credit reference agencies (CRAs), and that Miss S had met their acceptance criteria for the initial limit of £900. Aqua also said the credit limit increase was offered after a risk-based assessment which took into account how Miss S was managing her account and other credit commitments. Aqua noted that Miss S had had a number of gambling or cash transactions – they said this is one of the factors taken into consideration in their risk assessment. Finally, Aqua said Miss S had the opportunity to opt out of the credit limit increase.

Miss S brought her complaint to our service and one of our investigators looked into it. Our investigator's view was that Aqua should have been concerned about the level of debt Miss S had at the time of her application (£27,900). And she noted that Miss S's credit file showed a number of credit agreements taken out within the previous twelve months, most of which were maxed out. Our investigator felt this should have prompted Aqua to look more closely at Miss S's situation before lending to her. She noted that if Aqua had looked at Miss S's bank statements they would have seen a concerning number of gambling transactions, with a high value. Our investigator said this was a clear indicator that providing Miss S with more credit would have been irresponsible.

When looking at the credit limit increase, our investigator concluded Aqua shouldn't have offered this. She said Miss S had taken out several other loans between the account opening and the credit limit increase. And she said it was clear Miss S was continually gambling. To put things right, our investigator said Aqua should refund all the interest charges applied since the account opening, and that they should remove any adverse information about the account from Miss S's credit file.

Aqua didn't accept our investigator's view and asked for an ombudsman to look at the complaint. They said they don't consider the ratio of debt to income and instead estimate

customer's disposable income to determine affordability, in line with the Financial Conduct Authority (FCA) guidance. They said they're not required to obtain bank statements prior to lending.

In relation to the credit limit increase, Aqua said Miss S managed her account well. And they said the risk data showed no arrears, or repayment or debt management plans with any external credit providers. So they disagreed with our investigator's view that they type of spend and total debt would indicate financial difficulty – instead they said from what they'd seen Miss S wasn't experiencing any financial difficulty.

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.

While I appreciate it'll be disappointing for Aqua, I've decided to uphold Miss S's complaint. I'll explain why.

The FCA sets out rules and guidance about what lenders need to do before lending to customers. In essence, they need to make reasonable and proportionate checks to ensure that a customer will be able to repay the debt in a sustainable way. The lender has to take into account the potential for the debt to adversely impact a customer's financial situation.

When Aqua considered Miss S's application in August 2016, they noted that Miss S's income was £22,000 and her unsecured debts totalled £27,900. They also noted that she had nine active credit accounts. Aqua said their assessment that the credit card would be affordable for Miss S was based on an estimate of disposable income. And, given that Miss S was living with her parents at the time, I can understand that – she'd have had limited non-discretionary expenditure.

However, I'm not happy with their approach. Miss S's debts far outweighed her annual income despite the fact that she was living with her parents and so had limited essential expenditure. This should have been a significant cause for concern for Aqua – it's a clear indicator that Miss S might have been experiencing financial difficulties.

The FCA rules anticipate that lenders will obtain more information and carry out further checks if there's any indication that the customer is experiencing financial difficulties. I'm satisfied Aqua should have obtained more information to understand Miss S's expenditure and her level of debt. I think it's fair to say Aqua should have asked for Miss S's bank statements to do this.

If Aqua had looked at Miss S's bank statements, they'd have seen that the number of gambling transactions far outweighed any other expenditure on Miss S's account. And they'd have seen that the spend on these transactions far outweighed Miss S's declared income. For example, in July 2016, Miss S's spend on these types of transactions was over £18,000 in just one month.

I'm satisfied that if Aqua had reviewed these statements, they'd have come to the conclusion that providing further debt to Miss S would adversely impact her financial situation, and that she wouldn't be able to repay the debt in a sustainable way. So they'd have declined her application.

So I've concluded that had Aqua carried out suitable checks, they wouldn't have lent to Miss S – and they need to put things right. I note Miss S has cleared her credit account with Aqua. So Aqua will need to refund all interest and charges that Miss S has paid them since August 2016. And they should ask the CRAs to remove any adverse information relating to this account from Miss S's credit file.

My final decision

As I've explained above, I'm upholding Miss S's complaint. NewDay Ltd trading as Aqua need to refund all interest and charges to Miss S. And they need to remove any adverse information relating to this account from Miss S's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 3 June 2021.

Clare King
Ombudsman