

The complaint

Miss G complained that NewDay Ltd trading as Aqua ("Aqua") should not have provided her with a credit card and then increased the credit limit, as it was not affordable for her.

What happened

Miss G applied for and was given a credit card with Aqua in May 2016, with a credit limit of £250. Aqua then increased Miss G's limit: to £400 in around December 2016; to £650 in around July 2017; to £1,350 in around June 2018; and £2,250 in around May 2019.

Miss G complained to Aqua in September 2019 about irresponsible lending. She said it should not have allowed her to take out a credit card. Miss G said Aqua should have checked her credit file to see that she had raised her overdraft limit and taken out two other credit cards the month before taking out the Aqua card. Miss G also said in the first year of having her Aqua card, she had increased her limits on a variety of other borrowing and was missing payments. She also said when her credit limit was raised in 2019 she had a very low credit score. Miss G said trying to make minimum payments was a struggle.

Aqua responded to Miss G. It said it raised the credit limit on Miss G's card in August 2017 and prior to that she had missed payments and increased her credit limits on other credit facilities. It said despite Miss G only making the minimum payment towards her account, it increased the credit limit further in 2018. Aqua said Miss G was a student at the time and had a limited income and it was apparent from Miss G's credit file that trying to make the minimum payment was a struggle. It said by June 2019 it was clear Miss G's spending was more than her income. Aqua didn't uphold Miss G's complaint but, as a gesture of goodwill, refunded all over limit fees applied since the credit limit was raised in June 2018.

Miss G was unhappy with what Aqua said and so referred her complaint to this service. She said she regularly missed payments and had significant charges added to her account. She asked that Aqua refund all interest and late payment charges and that any late payment and default markers should be removed from her credit file.

Our investigator upheld Miss G's complaint. She said when Miss G initially applied for the card she was asked for income details, and a credit search showed she had no CCJs or short-term lending. So our investigator thought the initial checks were proportionate and Aqua acted responsibly when it offered Miss G the credit card with a £250 limit, and also when it increased the credit limit to £400 in December 2016. However, our investigator thought that by July 2017 Miss G had exceeded her credit limit several times and said Aqua shouldn't have increased her limit to £650. And that all credit limit increases after this point shouldn't have been provided either.

In order to put things right, our investigator said Aqua should refund all interest and charges since the £650 credit limit increase; add 8% simple interest from the date of each repayment to the date of settlement; remove any adverse credit file information since the credit limit increase of £650 and arrange an affordable repayment plan if any capital was owed.

Aqua didn't agree with the outcome and said when the credit limit was increased to £650 Miss G's overall indebtedness had decreased. And that high utilisation on its own is not considered a reason not to increase a credit limit. Aqua also said 8% interest should only be paid where a consumer has been deprived of the use of the money, and that's not applicable here as Aqua is still owed the money and Miss G hasn't engaged with it in trying to work out a repayment plan.

Because Aqua didn't agree with the outcome, this came to me for a decision.

I contacted both parties and told them I intended to come to a slightly different conclusion to that of our investigator. I said I thought it was reasonable for Aqua to offer Miss G the credit card and to increase the credit limit to £400 and then to £650. But I thought from then onwards, further increases should not have been offered. I said I intended to say that Aqua should do the following:

- Refund all interest, over limit charges, late payment and debt collection fees since the credit limit was increased in June 2018, less any over limit charges already refunded.
- The refunds should be deducted from the total amount owed by Miss G. If this resulted in an overpayment on the account, then any overpayments should be refunded to Miss G with 8% simple interest.
- Remove any adverse credit file information from the date of the credit limit increase in June 2018. This is because I think it's unlikely Miss G would be in the position she's in, were it not for the credit limit increases that were unaffordable.
- But any adverse credit file information that pre-dates this increase does not need to be removed. And Aqua should be allowed to continue to report to credit reference agencies on how Miss G is managing her debt with it, once it has carried out what I have asked it to do and given Miss G the opportunity to enter into a payment plan with it or its agents.

Miss G responded and agreed with the suggested outcome.

Aqua responded and said it agreed with the first two points made, but made the following comments:

- It said with these types of cases, it's usually required to refund interest charges proportionately, so interest charged by it only on the increased balance following the credit limit increase. And this is because interest charged on any balance to £650 has been fairly charged.
- It said the proportionate refund is £1,812.46 against a balance of £2,622.36, so 8% simple interest is not due.
- It has tried to contact Miss G to arrange payment, but she has not responded. So if credit file information is amended and Miss G continues to not engage and no arrangement is agreed, then adverse information will need to appear on the credit file again. And adverse information is recorded elsewhere, so it didn't agree that it should do this.

I am now in a position to issue 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.

Having done so I am upholding this complaint.

In coming to my decision, I have taken into account the regulatory rules and good industry practice at the time the card was initially taken out and the credit increases were offered, and whether Aqua's actions were fair, given Miss G's circumstances.

The rules concerning lender's obligations when it comes to providing credit are set out in the FCA Consumer Credit Sourcebook rules (CONC). It follows these general principles:

A lender must carry out proportionate checks to determine whether credit (and significant increases to credit limits) was, as far as the lender could tell, affordable and sustainable and would not adversely affect the customer. A proportionate check will depend on many things, such as what a lender knows about the customer, size of credit, term for repayment, and their lending history. The detail sought while considering an increase would be expected to be more in-depth the more significant the increase is.

I agree with what our investigator said about Aqua having carried out proportionate checks when Miss G first applied for the credit card, and that it acted responsibly when it offered the card to her. And I'm satisfied that it was reasonable for Aqua to offer the credit limit increases to £400 and then to £600.

I say this because Miss G was employed with an income of around £8,500 and credit agency checks showed there were no arrears, arrangements or defaults. And when Miss G's credit limit was increased to £650, her overall level of indebtedness had decreased and Miss G was more often than not paying more than the minimum amount. And although Miss G had occasionally gone over her credit limit, she had only done so by a marginal amount.

But I'm satisfied Aqua should not have offered Miss G the credit limit increase to £1,350 in June 2018, and the increase to £2,250 in May 2019. I say this because I can see that once the limit increased to £650, Miss G was more often than not over her credit limit. And she was increasingly making only the minimum monthly payment. In addition, by around June 2018 – when the increase to £1,350 happened – Miss G's level of external indebtedness had almost doubled. Given this, I'm satisfied Aqua should not have offered to more than double her credit limit. I think there was enough information available to Aqua at this point that it should have questioned whether the increased credit limit, and the debt that would have come with it, was unaffordable to Miss G.

Miss G has had the benefit of the money borrowed, so she will need to repay the principal amount.

I've taken on board what Aqua said about refunding a proportionate amount of the interest fees charged, and so the following are the steps Aqua need to take to put things right:

- Refund interest charges applied to the increased balance following the credit limit increase to £1,350 in June 2018.
- Refund over limit charges, late payment and debt collection fees since the credit limit was increased in June 2018. I understand the over limit charges may already have been refunded.
- Had there been an overpayment following the above refunds being deducted from Miss G's account, then this would have needed to be repaid with 8% simple interest. Aqua has already calculated the refund amount and no monies are owed to Miss G. So interest is not applicable here.
- Remove any adverse credit file information from the date of the credit limit increase to £1,350 in June 2018. This is because I think it's unlikely Miss G would be in the

position she's in were it not for the credit limit increases that were unaffordable. But any adverse information that pre-dates this increase does not need to be removed. And Aqua should be allowed to continue to report to credit reference agencies on how Miss G is managing her debt with it, once it has carried out what I have asked it to do and given Miss G the opportunity to enter into a payment plan with it or its agents.

My final decision

I am upholding this complaint and require NewDay Ltd to carry out the actions outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 21 October 2021.

Martina Ryan
Ombudsman