

The complaint

Miss H believes that NewDay Ltd, trading as Aqua, provided both a credit card and a personal loan to her when her financial circumstances at the time of the applications were such that these financial products were unaffordable for her.

What happened

In December 2012, Miss H was approved for a credit card with Aqua with an initial credit limit of £250. In April 2013 the credit limit on the card was increased to £600, and in November 2013 the credit limit was increased again, this time to £1000.

Further credit limit increases took place from 2014 onwards. However, Aqua have already acknowledged that these later credit limit increases shouldn't have taken place and have offered to reimburse all interest and charges incurred on the account in relation to these. In January 2018, Miss H was approved by Aqua for a personal loan of £5,500 and she received the loan funds from Aqua that same month.

In January 2020, Miss H made a complaint to Aqua because she felt that both the credit card and the loan were unaffordable for her at the time they were applied for.

Aqua looked at Miss H's complaint. They felt that the affordability checks that they'd conducted demonstrated that the credit card has been affordable for Miss H at the time that she'd applied for it, and that the credit limit increases in both April and November 2013 had also been affordable for Miss H. Aqua also felt that the loan that Miss H had applied for in January 2018 had also been affordable for Miss H. So, they didn't uphold her complaint.

Miss H wasn't satisfied with the response from Aqua, so she referred her complaint to this service. One of our investigators looked at this complaint. They felt that the approval of the credit card in December 2012, with a £250 credit limit, was affordable for Miss H at that time. But they felt that the credit limit increases in April and November 2013 weren't affordable for Miss H at those times.

Our investigator also felt that the loan in 2018 wasn't affordable for Miss H at that time. So, our investigator upheld the complaint and recommended that Aqua reimburse all interest and charges accrued on both the credit card and the loan from the relevant dates. Aqua didn't agree with the recommendation put forward by our investigator, so the matter was escalated to an ombudsman for 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.

I issued a provisional decision on this complaint on 19 April 2021 as follows:

I find that the arguments put forward by Aqua, that the credit limit increases in April and November 2013 were affordable for Miss H at that time, to be persuasive, and so

I will provisionally not be upholding this aspect of Miss H's complaint.

However, I will be provisionally upholding this complaint as it relates to the loan that Miss H was approved for in 2018, and this is because I'm of the opinion that the loan was unaffordable for Miss H at that time and so should not have been approved. I will explain my position on both the credit card and the loan below.

Credit Card

When Miss H first applied for the credit account in December 2012 it appears from the information available to me that she didn't have any other credit at that time. This, in conjunction with the £250 credit limit that was being applied for, which is relatively low, means that I'm satisfied that this initial line of credit was affordable for Miss H.

In order for me to consider that the subsequent credit limit increases in 2013 weren't affordable for Miss H, I'd need to be satisfied that her financial circumstances at those times were such that she couldn't be reasonably expected to make payments to her credit account sufficient to reduce the outstanding balance on the account, if that balance were taken by Miss H to the maximum amount of credit permitted.

Additionally, if it were the case that Miss H's financial circumstances were such that the credit limit increases weren't materially appropriate for her at those times, I'd also need to be satisfied that Aqua ought reasonably to have been aware that this was the case. In short, as well as Miss H's financial position being unsuitable for the credit limit increases, there must have been information available to Aqua that should have given it cause to conclude that this was indeed the case.

In the months immediately following the opening of the credit account and leading to the first credit limit increase in April 2013, Miss H appears to manage that account without major incident. Miss H did make a series of minimum payments to the account during this time, but she didn't miss any payments or exceed the credit limit at any time such that she incurred any fees on the account for these reasons.

It's difficult for me to conclude that there is anything in the account behaviour that I've described above that should have given Aqua cause to suspect that Miss H was experiencing financial difficulties. And while it was the case that Miss H did make a cash transaction on the card on one occasion, and while the use of cash transactions by a customer can be an indicator of financial difficulty, I'm not convinced that this singular event, for a relatively small amount of money, should have given Aqua cause to suspect that Miss H was experiencing financial difficulty at that time, especially when it's considered that Miss H continued to manage the card without major incident in the months following that cash transaction.

So, I'm satisfied that there was nothing in Miss H's management of the credit account that should have given Aqua cause for concern in the months immediately preceding the offer to increase Miss H's credit limit to £600 in April 2013.

I also note that Aqua conducted an affordability assessment before issuing the credit limit increase offer to Miss H in April 2013, and this assessment - which included reviewing Miss H's credit file to gain an understanding of Miss H's overall financial position - demonstrated to Aqua that the higher credit limit amount would be affordable for Miss H at that time. It follows from this that I'm satisfied that, from the information that Aqua had available to them in April 2013, that it was reasonable for them to consider that Miss H could afford the credit limit increase from £250 to £600.

In the period between the first credit limit increase in April 2013 to the next credit limit increase in November 2013 the picture is slightly muddier. It's true that Miss H did exceed the credit limit on the account on two occasions, that she made late payments, also on two occasions, and that she also made cash transactions on the card on two further occasions. But this is tempered by the fact that there appears to be no pattern to these events. For instance, Miss H went over the limit on the account in June 2013 and then again in September 2013.

If it were the case that there was a pattern of consecutive months of account difficulty I may view matters differently, but I'm not convinced that the management of the account by Miss H between the months of April 2013 and November 2013 was such that Aqua shouldn't have considered offering Miss H a further credit limit increase to £1000, especially when it's considered that in September 2013 Miss H made a payment to the account of over £600, which cleared the outstanding balance on the account in full and left the account slightly in credit.

It's difficult to see how Aqua, having received such a significant payment on the account, shouldn't have concluded that Miss H had the means to manage her credit account responsibly, especially when a further affordability assessment conducted by themselves prior to offering the second credit limit increase to Miss H again demonstrated that the proposed credit limit increase would be affordable for her.

So, on balance, I'm satisfied that it was reasonable for Aqua to conclude that this second credit limit increase was affordable for Miss H, and it follows from this that I provisionally won't be upholding this aspect of Miss H's complaint.

Following the credit limit increase to £1000 in November 2013, further credit limit increases did take place, beginning in November 2014. However, following their own review, and prior to this complaint being referred to this service, Aqua have acknowledged that these later credit limit increases weren't appropriate for Miss H because of her financial circumstances at those times and shouldn't have been offered to her.

On this basis, Aqua made an offer to Miss H to reimburse all fees and interest on the credit account from November 2014 onwards. This offer feels fair to me, and it is in line with what this service would expect here, given the circumstances. It's my understanding that Miss H has not yet formally accepted this offer, but that it remains open for her to do so. And I must note that my provisional decision operates on the assumption that Miss H will be free to accept this offer once the review of her complaint by this service has reached its conclusion.

Personal Loan

Aqua have acknowledged that the credit limit increases on Miss H's credit card account post November 2014 weren't suitable, in consideration of Miss H's financial circumstances at that time. And it must be noted that these include credit limit increases that took place in January and July 2017.

It's difficult then to rationalise why Aqua consider that the provision of a personal loan to Miss H in January 2018, for an amount of £5,500, should be considered as being appropriate for Miss H, when they acknowledge that an increase to the credit limit on Miss H's credit card account six months previously was not.

Our investigator put forward a compelling argument in her view of this complaint as to why the loan should be considered as being unsuitable for Miss H at that time. I won't

repeat verbatim here exactly what our investigator said but will summarise as follows: At the time that the loan was offered to Miss H in January 2018, Miss H had over £16,000 of other borrowing and had been utilising pay day loans to manage her financial affairs. Miss H was also struggling to manage her credit card account, which at that point had a credit limit of £4,750, and had missed several payments on the credit card account in the period leading up to the provision of the loan.

In response, Aqua have stated that their assessment of Miss H's income and expenditure at that time demonstrated that Miss H had disposable income of £270 per month, which when contrasted to the loan instalment amount of £152 per month meant that the loan was affordable for her.

It's notable that Aqua have explained their process for gathering Miss H's income and expenditure information, and that this process, at least on the expenditure side, is based on automated information gathering from third party sources. Aqua contend that there is no evidence to suggest that this information wasn't correct, but I'm not convinced that it's possible for this methodology to take account that a person might potentially be underpaying other credit obligations – such as it appears that Miss H was doing at that time – which might lead to an underestimation of that person's monthly financial commitments.

However, I feel that perhaps the most important point of consideration here is that Miss H took this loan to pay off the outstanding balance on her Aqua credit card, which she did shortly after the loan funds were received by herself.

At first glance this may appear to benefit Miss H, because the interest rate on the personal loan was lower than the interest that she was being charged on the credit card account.

But it must be remembered that Miss H was using this loan to pay off a balance on a credit card account that had blossomed to approximately £4,700, and had done so because of credit limit increases that Aqua have acknowledged should never have been offered to Miss H.

Indeed, Aqua have offered to reimburse Miss H all interest and charges accrued on the credit card account post November 2014, as described above, and which relate to the credit card account once the credit limit was increased beyond £1000.

This means that if it were the case that this loan were to be considered as being suitable for Miss H, and it weren't the case that I was to instruct Aqua to reimburse all interest and fees on this loan, then it would be the case that Miss H would have incurred, and had to pay, interest and fees on a loan that she took to clear a credit balance on which interest and fees are being reimbursed because it is recognised as being offered when unaffordable for her. This doesn't feel fair to me.

It follows then, in consideration of everything that I have explained above, that I will be provisionally upholding this aspect of Miss H's complaint.

In my provisional decision letter, I invited both Miss H and Aqua to provide any comments or additional information they might wish me to consider, before I moved to a final decision. Aqua confirmed that they had nothing further to add. However, Miss H, in relation to the credit card aspect of her complaint, provided additional information and made several points that she asked me to consider.

In essence, while Miss H accepted that the initial issuance of the credit card account with a

£250 credit limit by Aqua was fair and reasonable, she maintained that the subsequent credit limit increases under consideration, from £250 to £600 in April 2013 and from £600 to £1,000 in November 2013, were unaffordable for her at that time and as such shouldn't have taken place.

In relation to the first credit limit increase in April 2013, Miss H referenced her usage of the card and the level of payments that she made towards the account in the period preceding the credit limit increase. Miss H also referenced the cash advance fee incurred shortly after the card was issued. While I can appreciate Miss H's concerns on this matter, this is information I've already considered, and it remains my opinion that it was reasonable for Aqua to conclude that the first credit limit increase, from £250 to £600 in April 2013, was affordable for Miss H at that time.

However, Miss H has provided additional information that has caused me to change my opinion on the fairness of the second credit limit increase - from £600 to £1,000 in November 2013. This new information includes the fact that Miss H contacted Aqua in November 2013, before the credit limit was increased to £1,000, and requested that the credit limit on her account be lowered back to £250. And Miss H has also provided Aqua account statements showing that the credit limit was lowered by Aqua to £250 as requested by Miss H, only to be increased to £1,000 by the following month.

I've asked Aqua for their comments on this matter and Aqua have explained that the offer to increase Miss H's credit limit to £1,000 was made on 17 October 2013, and that it was following this, on 1 November 2013, that Miss H called to request that the credit limit on her account be decreased to £250.

Aqua also acknowledged that it appears that their internal systems didn't recognise Miss H's request to lower the credit limit as a rejection of the offer made by Aqua to increase it, and even though Miss H had successfully reduced the credit limit on her account to £250, this resulted in the credit limit being increased to £1,000 on 27 November 2013 – in line with the offer made on 17 October 2013.

In my previous provisional decision, while I acknowledged that the situation with the second credit limit increase was slightly muddier than that with the first, I ultimately concluded that it had been fair for Aqua to have considered that the second credit limit increase had been affordable for Miss H at that time, and as such I didn't provisionally uphold this aspect of Miss H's complaint.

But this new information casts a different light on this credit limit increase, and it's difficult for me to now consider that this credit limit increase should have taken place, given that Miss H specifically requested the exact opposite – that her credit limit be reduced, rather than raised – shortly before the credit limit on her account was increased to £1,000.

Because of this, I issued a second provisional decision on 24 May 2021 in which I provisionally upheld this aspect of Miss H's complaint.

Once again, in the second provisional decision letter, I gave both Miss H and Aqua the opportunity to comment and provide additional information if they so wanted to. However, both Miss H and Aqua confirmed that they had nothing further to add, and so I see no reason for my final decision not to be an uphold of Miss H's complaint on the basis explained above.

Putting things right

Aqua must reimburse to the account all interest, charges, and fees incurred on the loan to Miss H for the full term of the loan to date.

If this results in Miss H's loan account having a credit in Miss H's favour, then Aqua must pay this credit amount to Miss H along with 8% simple interest calculated from the date of the relevant interest, fee, or charge.

Aqua must also remove all adverse information relating to this loan from Miss H's credit file, if such adverse reporting exists.

Aqua must reimburse to the account all interest, charges, and fees incurred on the loan for the balance above £250 from 23 November 2013, when the credit limit was increased to £1,000 – taking into account any reimbursements already made by Aqua in relation to later credit limit increases.

If this results in Miss H's credit card account having a credit in Miss H's favour, then Aqua must pay this credit amount to Miss H along with 8% simple interest calculated from the date of the relevant interest or charge.

Aqua must also remove all adverse information relating to this credit account from Miss H's credit file from 23 November 2013 onwards, if such adverse reporting exists.

Finally, Aqua must make a payment to Miss H of £200 as compensation for the distress and inconvenience she has incurred.

My final decision

My final decision is that I uphold this complaint against NewDay Ltd, trading as Aqua, on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 30 June 2021.

Paul Cooper
Ombudsman