

The complaint

Ms R complained that NewDay Ltd (trading as 'Aqua') acted irresponsibly when they provided her with a credit card, increased its limit on two occasions and agreed to provide her a loan.

What happened

Ms R applied online to Aqua for a credit card in July 2016. Aqua agreed her application and provided a credit limit of £250.

On 27 February 2017, Aqua wrote to Ms R to say that they'd like to increase her credit limit to £500. The new limit was made effective in April 2017.

On 27 April 2018, Aqua wrote to Ms R again to say that they'd like to increase her credit limit to £1,300. This new limit was made effective in May 2018.

On 6 August 2018, Ms R applied to Aqua for a loan of £7,500 over 24 months. Aqua agreed to provide the loan as requested.

In November 2018, Ms R contacted Aqua to explain that she was experiencing financial difficulties. She wanted to agree a fixed repayment for her credit card account. Aqua sent an income and expenditure form to Ms R for her to complete and return. They also placed her account on hold for 30 days. Aqua didn't receive the completed form back from Ms R.

Also, in November 2018, Aqua agreed to a payment arrangement of £100 per month in respect of the loan Ms R had taken with them. In February 2019, Aqua transferred the outstanding loan to an external debt collection company.

In June 2019, Ms R contacted Aqua again to explain that she was experiencing financial difficulties. They agreed a payment arrangement for the credit card debt of £34 per month. They also stopped charging interest on this. The payment amount was increased to £40 in April 2020 and continued at this amount thereafter.

Ms R discussed her financial situation with a third party. She believed that Aqua had acted irresponsibly. She said that she couldn't afford the credit card and loan. She also said that at the time, she was increasing her debt to meet day to day expenditure and repayments on other debts she owed.

So, Ms R complained to Aqua. She wanted them to refund all interest and charges and to wipe off any remaining debt and pay statutory interest. She also wanted them to remove any adverse information that they'd recorded on her credit file.

Aqua replied to Ms R's complaint in February 2020. They didn't agree with Ms R. They said that they hadn't done anything wrong. Ms R didn't agree so she referred her complaint to this service.

One of our investigators looked into Ms R's complaint. He didn't think that Aqua had done anything wrong when they agreed to provide Ms R with a credit card and increase her credit limit to £500. But he did think that Aqua had been irresponsible to increase Ms R's credit limit to £1,300. He also thought that Aqua had been irresponsible to agree to provide Ms R with the loan of £7,500.

To put things right, he said that Aqua should refund all interest and charges on Ms R's credit card account for any balance owed above the first £500. He also said that Aqua should agree a suitable repayment plan with Ms R for any residual balance owed. Alternatively, if the refunds resulted in a balance being owed to Ms R, they should refund this together with 8% simple interest.

As regards the loan, our investigator thought that Aqua should refund any and all charges and interest and deduct any payments made by Ms R from the loan balance. He also thought that Aqua should agree a repayment plan with Ms R for any remaining amount owed.

In both cases, our investigator thought that Aqua should backdate any of the entries on Ms R's credit file to reflect these changes.

Aqua didn't agree with our investigator's findings. So, they asked for Ms R's complaint to be reviewed by an Ombudsman for a final decision.

Having reviewed Ms R's complaint, I reached a different outcome to that of our investigator. Because of that, I issued a provisional decision on 8 June 2021 – giving both Ms R and Aqua the opportunity to respond to my findings below, before I reach a final decision.

In that decision, I said:

Aqua have provided the details used to assess Ms R's original credit card application. This shows information provided by Ms R and also obtained from credit reference agencies. Ms R's application shows that she had gross income of £21,000 per annum. It also says that there was additional household income of £21,000. Credit file information suggests there was no recent adverse public information. It does show that Ms R had two defaults totalling £100 but there had been nothing within the preceding two years. There was nothing to suggest that Ms R was experiencing any financial difficulties at the time of her application.

Aqua say that their credit card is aimed at customers who are trying to rebuild and improve their credit rating. They say that it isn't unusual to see customers with a poor or absent credit history. This is their choice, but it is important that in each case, Aqua follow the rules and guidance laid down in CONC 5.2A when assessing an application.

Given the information available, I believe that Aqua's decision to provide Ms R with a credit card and a small starting limit was reasonable. The checks that Aqua completed appear proportionate to the facility requested and level agreed. So, I don't think that Aqua did anything wrong here.

Following the agreement, Ms R used her card and Aqua's records show that she exceeded the agreed limit in September and October 2016. She was also late with a payment. Aqua charged fees for these.

Aqua state that it's their policy to exclude customers for limit increase offers if they are over their limit at the time of the increase. Also, where they have incurred an over limit fee for three of the three months prior to the increase. They adopt a similar policy where their customers are late with their credit card payments.

Looking at Aqua's records, Ms R hadn't exceeded her limit for five months before the increase to £500 in April 2017. She also hadn't been late with any payments for six months before. So, this appears to meet Aqua's policy. However, I also note that Ms R's credit file shows that she was late with payments on other debts in five of the eight months following Aqua's original agreement. This included the three months prior to Aqua increasing Miss R's credit card limit to £500. March 2017 records show that she was two months late with a payment.

It appears that Ms R's account with Aqua hadn't breached their policy above. But there was clear evidence that she had been late with other debt payments immediately prior to Aqua increasing her limit. This information was available to Aqua. So, on balance, I believe that the proportionate response would've been for Aqua to undertake additional detailed tests and checks to better understand Ms R's financial situation at the time. I can't see that Aqua did that here. Had they, I believe that they would've established a better understanding of her financial situation. I also believe that it is more likely, than not, that a responsible lender wouldn't have offered to increase Miss O's limit here. I don't think that Aqua would've offered a limit increase if the late payments had related to Ms R's account with them.

At the point where Aqua offered to increase Ms R's credit limit to £1,300, her account appeared to meet their policy previously mentioned. But during the 12 months following the increase to £500, credit file records show that Ms R's debts had increased from £3,841 to a peak of £10,633. She'd also exceeded her Aqua card limit on six occasions and incurred two late payment fees. I can also see that Ms R had used her card to make cash withdrawals in eight of the 12 months. The UK Cards Association best practice guideline suggests that frequent cash withdrawals using a credit card is a potential risk indicator of financial difficulty.

So, once again, I believe that the proportionate response here would've been for Aqua to undertake further detailed tests and checks to better understand Ms R's financial situation. But again, I can't see that Aqua did this. If checks had been made, I believe that it is more likely, than not, that a responsible lender wouldn't have offered to increase Miss O's limit to £1,300.

Following this, Aqua agreed to provide a loan of £7,500 to Ms R. This was only three months after the credit limit increase to £1,300. Given my findings above, I believe that it was important that Aqua completed further detailed checks and assessments before agreeing to further borrowing.

Aqua have said that their decision to agree the loan was based upon information provided by Ms R together with information held at the credit reference agencies and their own internal risk strategies. Having already established that there were warning signs that should reasonably have prompted Aqua to undertake more detailed assessments, I would expect the same to apply here.

Aqua did provide details of a calculation for Ms R's surplus income. However, they later said that this wasn't used to assess Ms R's suitability for this loan. Aqua also said that they'd obtained evidence of Ms R's income at the time of the application. They offered to provide copies of this. Unfortunately, they have been unable to trace it although their notes suggest that they'd requested "*a wage slip*".

It's worth me saying here that I accept that Aqua likely followed its own processes and procedures in making their assessment of affordability. But, as with any system or process that doesn't involve direct interaction with a customer – there will be occasions where this results in an unfair outcome in individual circumstances. Given what I've already established, that's what I think happened here. I think that some of the factors that CONC outlines could only be reliably and proportionately assessed as a result of some more direct interaction with Ms R. But I can't see that this happened. I believe that such interaction was likely to have revealed more than the data and statistical information used in this case and would've been a proportionate step to take in all the circumstances here.

Taking all of this into account, I don't believe that a responsible lender would've agreed Ms R's loan if more detailed checks and assessments had been completed. So, I agree with our investigator and think that Aqua need to put things right. But unlike our investigator, I don't believe that Aqua acted responsibly when agreeing the

first credit card limit increase to £500. So, I will be looking for them to address that too.

I think that Aqua should put things right by calculating the interest and charges specifically applied to the limit increases on and after the increase to £500 in April 2017 and refund this amount. If after recalculating the account in line with the above, this results in a credit balance being due to Ms R in relation to her credit card debt with them – then 8% simple interest should be payable on that amount.

As regards the loan, I believe that Aqua should refund all interest and charges applied from when the loan was first taken to date. The amount remaining should equate to £7,500 less any repayments already made by Ms R.

Ms R wants Aqua to wipe off any remaining debt. Whilst I appreciate that Ms R will be disappointed, I can't agree. She has received benefit from the money borrowed so, she will remain liable for any remaining amount outstanding.

Ms R also wants Aqua to remove any adverse information that they've recorded on her credit file. I think it's fair to say that the position with this account on her credit file is accurate, in that it represents that Ms R owes the outstanding amounts and has entered into repayment plans for the outstanding amounts. So, for this reason, I shall only be asking Aqua to amend and backdate any records on Ms R's credit file to reflect the interest and charges refunded and ensure that any outstanding amounts are correctly reported.

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.

In my provisional decision, I asked both parties to respond with any new information or comments they wanted me to consider. I've now received both parties' comments.

I was pleased that Ms R has confirmed that she does now understand that she will have to repay the money that she borrowed. But she has asked that I consider whether the default can be removed from her credit history. She believes this wouldn't have arisen had she not been offered the loan.

While I do understand and appreciate Ms R's view here, where a payment arrangement is agreed in place of the original lending agreement, it means that the original agreement has effectively defaulted. An individual's credit reference file must be an accurate reflection of what actually happened. This is important as the information may be referred to and used by other lenders as part of any future application assessments. While it's fair to say that a default may not have occurred, had Aqua not lent to Ms R, the reality is that they did. Ms R received benefit and ultimately defaulted under the original agreement. So, it's important that her credit file reflects this accurately here. So, while I know that Ms R will be disappointed, I can't agree to her request.

Aqua responded in relation to my comments about the first credit card limit increase to £500, They said that they *"do not obtain evidence of income and expenditure and we are not required to do so. This isn't standard industry practice"*. They say *"there's no exhaustive list of what reasonable checks should be..."* They suggest that *"the kind of things one would expect to be considered include, but are not limited to; the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well the consumer's personal circumstances. All of which have been evidenced"*.

I agree with Aqua that there is no prescribed requirement to obtain evidence of income and expenditure. But where there's sufficient cause to justify additional tests and checks, it's

important that these are completed. Including, where appropriate, information from the customer. Aqua haven't provided anything to suggest that they did that here.

Aqua say that the external arrears weren't present at the time of the increase. They say that *"this short period of external arrears...alone would not be sufficient grounds to withdraw the increase that became available"*.

Unfortunately, I don't agree with Aqua here. Their own policy says that they will not offer a limit increase where there have been either late payments or limit excesses in three of the three months on a customer's Aqua account prior to any increase. They've provided copies all the information available to them at the time. Ms R's credit history shows late payments to other credit providers in three of the three months prior to the increase to £500. While these don't relate to Ms R's Aqua account, I remain of the opinion that this provides sufficient cause to undertake further checks before offering an increase. I can't see that Aqua did that here.

In relation to my comments about the increase to £1,300, Aqua say that *"it is unrealistic and unreasonable to consider information after the increase had taken effect"*.

My comments relate to Ms R's 12-month account and credit history before Aqua increased her limit to £1,300. I can see that this information was available to Aqua. I'm of the opinion that the combination of limit excesses, late payments and regular cash withdrawals against a backdrop of rising external debt was sufficient to prompt Aqua to undertake further tests and checks. But Aqua haven't provided anything to suggest that they did that here.

Having considered everything that Ms R and Aqua have said, following my provisional decision, I've not seen anything that persuades me to change my mind here. So, my decision will remain as detailed in my provisional decision of 8 June 2021.

My final decision

For the reasons set out above, I require NewDay Ltd (trading as Aqua) to:

- calculate and refund all interest and charges, other than those that would have been incurred, had the limit not been increased to £500 in April 2017,
- pay 8% interest on any credit balance that may end up being due to Miss O as a result of this,
- calculate and refund all charges and interest applied to Ms R's loan ensuring that the remaining balance reflects the original principal amount of £7,500 less any payments already made by Ms R to date,
- amend any previous credit file records reported to reflect any debt balance reduction from all interest and charges refunded.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 21 July 2021.

Dave Morgan
Ombudsman