

The complaint

Miss M complains that NewDay Ltd trading as Aqua (Aqua) repeatedly increased the credit limit on her credit card to an unaffordable level.

What happened

Miss M opened a credit card with Aqua on 19 June 2012. Miss M's credit limit was increased in October 2012, February 2013, August 2014, January 2015, and July 2015.

Miss M says she informed Aqua of her financial difficulties in October 2015, but it did not act. In October 2016 Aqua sent Miss M a default notice and later sold the debt.

In January 2020 Miss M complained that the lending was unaffordable, and that the debt was sold too soon for her to have a chance to make repayments. Suffering from stress and anxiety, Miss M complained that Aqua had taken advantage. She asked Aqua to write off her debt and compensate her for the treatment she'd received.

Aqua disagreed, it explained that it wasn't required to verify Mrs M's income and that the affordability model it used was enough. It also felt that some of the points Miss M complained about were brought too late. Miss M referred the complaint to our service.

Our Investigator thought the credit limit increases in October 2012 and February 2013 were brought to our service too late to consider. They did however think we could investigate the credit limit increases from August 2014 onwards, and thought that Aqua hadn't done enough to check that they were affordable.

Miss M accepted our Investigator's opinion, including that the first two credit limit increases were brought too late to consider.

Aqua disagreed with our Investigator – it felt that it wasn't required to verify Mrs M's income through statements and that it still believed its affordability model, along with data provided by a Credit Reference Agency, was enough. It also highlighted that Miss M had the option to opt out of these increases and the benefit of the use of the money. It asked for an Ombudsman to review the complaint.

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.

It's not in dispute that the 2012 and 2013 increases have been brought out of time, and as Miss M has accepted this, I won't comment on them further. Instead my decision will focus on the parts of the complaint our service is able to investigate.

Before agreeing to approve any credit limit for Miss M, Aqua needed to make proportionate checks to determine whether the credit was affordable and sustainable for her.

These checks needed to be a borrower focussed consideration of the impact of the lending on Miss M – not just an assessment of the likelihood of the debt being repaid. Miss M should've had the ability to repay the lending without excessive difficulty, whilst meeting other commitments and avoiding the need for further borrowing to meet payments.

Checks can include but are not limited to: the type and amount of credit, the customer's income and credit history, the amount and frequency of repayments, as well as the customer's personal circumstances.

Aqua have confirmed that it used its own affordability model to assess if further credit could be extended to Miss M, including internal account management and information from an external credit reference agency. It says that when using these methods there was no indication about Miss M's financial difficulties at the times her limit was increased. It also doesn't believe it required bank statements as evidence of income and expenditure to make its decision.

So, I've considered whether the checks Aqua carried out were proportionate to the level of credit Miss M was offered at each stage. If I'm persuaded there are factors which should've made Aqua question the increase and make further checks, I'd expect it to put things right.

August 2014 limit increase from £1250 to £2200

The data covering the time leading up to the increase in 2014 shows Miss M was often using her credit card to make cash withdrawals. This is an expensive way to obtain cash and can be an indicator of financial difficulties, particularly when used frequently. In the five months leading up to this increase Miss M had withdrawn a total of £710 in cash.

Whilst Miss M made large payments towards her outstanding balance – it was in part then withdrawn again as cash. Within five months of paying off her balance in March 2014, Miss M had spent her full available balance again and requested a limit increase of £950.

I disagree with Aqua that there were no financial difficulty or affordability indicators being reported to them at the time. I think this pattern of repayment followed by frequent cash withdrawals is enough of an indication that Miss M may have been borrowing funds elsewhere and didn't have enough funds to keep up her payments without further borrowing.

I'm not satisfied that Aqua had enough information to carry out a reasonable and proportionate assessment. I'm persuaded that as part of a proportionate check Aqua should've requested further information from Miss M about her finances, such as recent bank statements. I've considered whether its lending decision likely ought to have been any different if these proportionate checks had taken place.

Had Aqua looked at Miss M's bank statements, I'm satisfied it would've prompted further discussions with Miss M which would've brought to light Miss M's financial situation. This is because the statements would've shown a friend was regularly making payments into Miss M's account before payments to credit providers were due.

Proportionate checks would've revealed that Miss M could not sustainably repay any further credit on her income alone. I think it was irresponsible for Aqua to approve the credit limit increase considering these circumstances. So, I think Aqua need to do more to put things right.

January 2015 limit increase to £2950

I'm also persuaded that had Miss M's circumstances been recognised in August 2014, Aqua wouldn't have approved further lending five months later without first checking whether there was evidence to show her circumstances had significantly improved. And I'm satisfied that wasn't the case, but I'd like to explain why.

Miss M spent all her available credit within a month of her limit being increased, and information provided by an external credit reference agency to Aqua showed her balances on credit cards elsewhere were also increasing.

Miss M's bank statements show a monthly income of around £1000 which was supplemented by friends and funds from short-term loan companies. For example, in December 2014 Miss M borrowed £330 to pay her mortgage and other bills. Miss M's bank account was also regularly overdrawn. Miss M's debt was increasing, and she was relying on further lending to maintain her payments.

I'm satisfied proportionate checks would've shown this further limit increase also wasn't affordable or sustainable for Miss M. Aqua shouldn't have approved further lending for this reason. I think Aqua need to do more to put things right.

July 2015 limit increase to £3700

Again, I'm persuaded that had Miss M's circumstances been recognised previously Aqua wouldn't have approved further lending six months later without first checking whether there was evidence to show her circumstances had significantly improved. And I'm satisfied that wouldn't have been the case.

Miss M had withdrawn a further £790 in cash as soon as her limit was increased to £2950, bringing her account over its limit. By July 2015 Miss M's account had gone over the agreed limit in four of the five months leading to the new increase, Miss M paid two late fees and £48 in over limit fees.

The information provided by an external credit reference agency to Aqua showed Miss M's other credit card balances had continued to increase, indicating again that Miss M was increasingly in debt.

So, considering everything stated above, I don't think Aqua carried out reasonable and proportionate checks to satisfy that Miss M would be able to repay the increased lending in a sustainable way. And I'm satisfied that further lending shouldn't have been approved due to Miss M's circumstances at the time.

Defaulting the account and selling it too quickly

Guidance from the Information Commissioners Office suggests that accounts should be defaulted when they are between three months and six months in arrears. Miss M's account fell into arrears in November 2015, and a default wasn't registered until November 2016.

The default could have been registered sooner – but I don't think it was unreasonable for Aqua to provide further chances for Miss M to repay the debt in this instance.

I say this because a repayment plan was agreed in April 2016 and interest and fees on the account were frozen. So, Miss M was not falling further into debt due to this delay. Once the plan started no payments were received, but Miss M was in contact directly with the business, attempting to arrange new payment plans and registering complaints about the original default notice. I can understand why the default proceedings didn't continue until after these two discussions were resolved.

Once these discussions had ended and no payment was received, Aqua wrote to Miss M on 25 October 2016 to explain that her account had been closed and would be defaulted. The default was put in place on 30 November 2016 and the debt was sold at the same time.

Aqua had a duty to report accurate information about the account that Miss M held, so I can't say that it was wrong for it to apply the default when Miss M had stopped making payments. Aqua also provided Miss M with adequate warning and the opportunity to resolve the issue by making payments. So, at the point of sending Miss M's default notice it was clear that Miss M was unable to make her contractual payments. Aqua registered the default at the point it felt the relationship had broken down.

I appreciate that Miss M is unhappy that her account was sold so soon after it was defaulted, but Aqua is correct in saying that this was something it could do. I do think that Aqua acted reasonably by providing Miss M with adequate notification of its intentions and time to address the matter by making payments.

Putting things right

Aqua acted reasonably when defaulting and selling Miss M's account. But Aqua also approved three limit increases for Miss M which I'm satisfied proportionate checks would've prevented, and this has impacted the account's trajectory since August 2014.

In order to put things right for Miss M Aqua should:

- a) Remove all interest and charges on the account arising from transactions made on or after the date of the August 2014 credit limit increase; and
- b) Add the capital cost of any transactions made after this increase to the outstanding balance Miss M owed prior to the increase
- c) Treat any payments Miss M had made since the increase as payments towards the balance calculated in the a + b
- d) If this clears the balance any funds remaining should be refunded to Miss M along with 8% simple interest[†] calculated from the date of the overpayments to the date of settlement or if an outstanding balance remains, Aqua needs to treat Miss M sympathetically and fairly, which may mean agreeing an affordable repayment plan; and
- e) Remove any negative information about the account from the August 2014 limit increase date onwards from Miss M's credit file once any amount owed has been settled

As the debt has been sold to a third party, Aqua should either repurchase it and ensure the above steps are carried out or liaise with the third party to bring these changes about. Aqua has already refunded £103.21 in interest and charges to the third party in order to reduce Miss M's debt, so this amount should be deducted from any refund due. Aqua also offered Miss M £40 as a good will gesture – which she has now accepted. This should also be paid if it hasn't been already.

[†]HM Revenue & Customs requires Aqua to take off tax from this interest. Aqua must give Miss M a certificate showing how much tax it has taken off if she asks for one. If Aqua intends to use the refunds to reduce an amount Miss M owes, it must do this after tax.

My final decision

My decision is that I uphold this complaint, NewDay Ltd trading as Aqua should calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 7 January 2022.

Paul Clarke
Ombudsman