

The complaint

Ms Q complains that NewDay Ltd trading as Aqua (Aqua) lent to her irresponsibly.

What happened

Ms Q applied for a credit card from Aqua in July 2018 with a limit of £450. Further increases were agreed as follows:

Date	Limit
July 2018	£450
November 2018	£1350
March 2019	£2100
October 2019	£2850

Aqua refunded interest and charges of £572.60 in September 2020. A Notice of Default was sent to Ms Q in October 2020 with the balance £2504.60.

Ms Q complained that the limit increases shouldn't have been given to her. She said the issue of the card was OK, as was the first limit increase to £1350. But after that, she couldn't afford to borrow the money. She can't now afford to pay back the debt. She was now suffering from mental health issues as a result.

Aqua said that the issue of the card was justified. Ms Q's application showed she had an income of £17450 per year, with an unsecured debt of £500. There were defaults on her credit file, but these were over 35 months before. There was a public record of a default also, but this was 13 months before. So, the card was issued. The limit increases were proactively offered by Aqua and Ms Q accepted these – she could've opted out and declined them. The first limit increase was affordable – there were no arrears with any other lender and there were no active payday loans taken out. They agreed though that the increase to £2100 shouldn't have been given – as she was showing signs of financial difficulty. She'd exceeded her Aqua limit in the two months before, and there were arrears with another lender. Aqua refunded all charges applied after the increase (£51), and a proportion of interest - £521.60. Ms Q's account was closed, and she was asked to get in touch with Aqua's customer care team to agree a payment plan.

Ms Q brought her complaint to this service. Our investigator said that she believed the issue of the card wasn't appropriate. There were eight accounts showing as defaulted and there was also a CCJ. She thought there were no arrears showing because the accounts had likely been written off. She agreed the increase in March 2019 wasn't affordable – because Ms Q had exceeded the previous limit. So, she said all charges and interest on Ms Q's account should be refunded since the card was first issued in July 2018.

Aqua disagreed and asked that an ombudsman look at Ms Q's complaint.

I reached a provisional decision where I said:

I take a different view to our investigator. I think the first issue of the card was OK, as was the first increase of limit to £1350 in November 2018. But the subsequent increases shouldn't have been given.

When Ms Q applied for the card in July 2018, she said she had an income of over £17000 per annum, with only £500 of other debts. She was single. Aqua's research showed she had had eight defaults before – but these were over three years before, so that was OK. Our investigator believed that these may have been written off, so there were no arrears showing – but I don't think we've seen the information which shows this (e.g. Ms Q's credit file), so it's not fair to conclude that. And, importantly, Ms Q said in her complaint to us that the card with a limit of £450 "*was affordable*". So, for Aqua to issue the card with a modest limit of £450 was OK.

The increase to £1350 in November 2018 also looks OK. There hadn't been any late payments, over limit situations or cash withdrawals – all signs of difficulty. And again, in her complaint, Ms Q said the increase to £1350 "*was still reasonable*". And – she didn't opt out of the offered increase but accepted it.

Turning to the increase to £2100 in March 2019 – Aqua in their final response letter, agreed it shouldn't have been offered to Ms Q. She was showing signs of financial difficulty. She'd exceeded her Aqua limit in the two months before, and there were arrears with another lender.

It follows that the further increase to £2850 in October 2019 also shouldn't have been given – unless there had been an improvement in Ms Q's situation by then. But there was a new payday loan taken out in April 2019, and there were nine cash advances in April to May 2019. Also, Ms Q had paid late in May 2019. So, I could see no signs that Ms Q's financial situation had improved.

So – my provisional decision is that Aqua should refund all fees and interest from the time of the limit increase to £2100 in March 2019 to the date of a final decision. This only applies to the amount of borrowing over £2100 – as the issue of the card and first limit increase to £1350 was OK. Interest of £521.60 and fees of £51 have already been refunded, so Aqua must refund any further interest and fees.

Aqua said in their final response – and have told us also – that Ms Q should now get in touch to tell Aqua about her circumstances, complete an income and expenditure form and agree a repayment plan for her remaining borrowing (after the interest and fees refund). This is the right thing to do for both Ms Q and Aqua.

Responses to the provisional decision:

Ms Q didn't make any comments. But Aqua said (in summary):

- They'd already made refunds of interest and fees up to September 2020, and asked Ms Q to engage with them to agree a payment plan, but she hadn't done so.
- So – it doesn't seem right that they are being asked to refund further interest and fees since September 2020 – when Ms Q hasn't been in touch with them. And if she had, it's likely that they would've agreed an interest and fee-free arrangement anyway.

- The refunds that the provisional decision asks for amounts to late fees of £24 and interest of £74.44 – because of the previous refunds made.

So – I now need to make 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 hear what Aqua have said in response to the provisional decision – and I agree that it's in Ms Q's interest to contact Aqua and agree a payment plan for the repayment of the remaining borrowing – so in sending this final decision, she must do that. But – Aqua's comments don't change my provisional decision and so my final decision is unchanged from it – and for the reasons I gave within the provisional decision.

My final decision

I uphold this complaint, and NewDay Ltd trading as Aqua must:

- Refund interest and charges for any borrowing over £2100 from March 2019 to the date of a final decision, noting that refunds up to September 2020 have already been made. This to be credited to Ms Q's card account.
- Ms Q should also contact Aqua to agree a repayment plan for the remaining debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Q to accept or reject my decision before 3 August 2021.

Martin Lord
Ombudsman