

The complaint

Mrs D says that NewDay Ltd (trading as “Aqua”) didn’t carry out appropriate checks when lending to her and if it had, the checks would have shown the lending was unaffordable for her.

What happened

In January 2020, Mrs D was provided with an Aqua credit card with a limit of £300. In January 2021, Mrs D complained to Aqua that her credit limit was too high and at the time the lending was approved, she already had two other credit cards with high limits, a few payday loans and a large overdraft. She said the lending was unaffordable, she had to borrow from elsewhere to make the minimum repayments and she was struggling to pay the balance of the credit card. She said she wanted Aqua to refund any interest and charges paid and her credit file amended.

Aqua looked into Mrs D’s complaint in February 2021. But it didn’t think the lending was unaffordable. It said it carried out proportionate checks before lending and these checks showed Mrs D could afford to repay what she was lent. It also closed Mrs D’s account so she wouldn’t be able to use it going further. And it refunded £24 of late payment fees as a gesture of goodwill.

Unhappy with this, in March 2021, Mrs D referred her complaint to our service. She said Aqua shouldn’t have lent to her. And her expenditure outweighed her income at the time of lending, due to her personal situation and the amount she owed to other creditors.

Our investigator looked into the complaint. He considered both the information Aqua had provided and bank statements and a credit file provided by Mrs D. Our investigator thought that based on this information, Aqua lent irresponsibly. He thought Aqua should refund all interest and charges, pay Mrs D 8% simple interest on any remaining amounts if the refund resulted in her having a credit balance and remove all adverse information from Mrs D’s credit file.

Aqua disagreed. It said it didn’t obtain Mrs D’s bank statements or credit file when it made the decision to lend – and it wasn’t required to. It said the information it had obtained meant that Mrs D met its lending criteria and so it approved the lending to her.

Aqua remained in disagreement, so the case was passed to me to decide. I issued a provisional decision on 28 September 2021, in which I said the following:

“We’ve set out our approach to unaffordable/irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law. I’ve considered this approach while deciding Mrs D’s complaint.

Before deciding to lend, Aqua needed to carry out reasonable and proportionate checks, to satisfy itself that Mrs D would be able to repay what she borrowed in a sustainable way. A proportionate check is dependent on a number of factors including – but not limited to - Mrs D’s particular circumstances (e.g. her financial history, current situation and outlook, and

any indications of vulnerability or financial difficulty) and the amount / type / cost of credit she was looking to obtain. The checks should be “borrower focused” and Aqua needed to ensure the payments under the lending agreement wouldn’t cause Mrs D any undue difficulty. There may also be other factors which could influence how detailed a proportionate check should have been – such as any indications of borrower vulnerability and any foreseeable changes in future circumstances.

Mrs D was also given a credit facility where there was an expectation that she’d repay what she borrowed plus the interest due within a reasonable period of time. The relevant rules, regulations and guidance in the period Aqua lent to Mrs D don’t set out what a reasonable period of time is. So I think it’s important to note that a reasonable period of time will always be dependent on the circumstances of the individual case.

I’ve kept all of this in mind when thinking about whether Aqua did what it was required to do before agreeing to lend to Mrs D.

When deciding to lend to Mrs D, Aqua says that Mrs D provided income details on her application and she passed its affordability checks, which were based on external credit bureau data.

The application shows Mrs D had confirmed she was working as a part time contractor and her gross annual income was around £20,000. Aqua has provided information to show what the credit search showed. At the time of lending, Aqua obtained information about the number of accounts Mrs D had, her outstanding unsecured loan balance, whether she had any accounts in arrears, the number of defaults she had and when these accounts were last defaulted. As the information showed Mrs D’s unsecured lending was relatively low and she had no missed payments or arrears since the default 43 months previously, Mrs D’s application fell within Aqua’s lending criteria.

I’ve reviewed the information Aqua obtained about Mrs D before lending to her. Mrs D’s declared income at the time, together with there not being anything too concerning on her credit file, leads me to think that it was fair for Aqua to conclude Mrs D would be able to repay £300 within a reasonable period of time. In addition, I don’t think there was anything in the information Aqua obtained that would suggest to it that Mrs D wouldn’t be able to repay the amount she borrowed sustainably. So I don’t think Aqua did anything wrong when it decided to provide Mrs D with a credit card that had a limit of £300.

I appreciate Mrs D has provided our service with her bank statements and her credit file from the time of lending. However, given the factors Aqua had to take into account at the time of lending, it wasn’t required to obtain this information. And I don’t think it needed to, given that I think it obtained reasonable and proportionate information to enable it to make a fair lending decision.

Aqua has said Mrs D has been making monthly repayments towards her account and so her outstanding balance has reduced. Its asked Mrs D to contact it if she is finding it difficult to make payments. If Mrs D does choose to contact Aqua, I’d remind it of its obligations to treat her with forbearance and due consideration if she is in financial difficulties.”

Aqua responded to say it agreed with my decision. Mrs D didn’t respond.

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.

As no new evidence has been provided for me to consider following my provisional decision, it follows that there is no reason for me to reach any different conclusion than set out in my provisional decision. So, for the reasons given in my provisional decision, which I have outlined above, I don't uphold Mrs D's complaint.

My final decision

I don't uphold Mrs D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 26 November 2021.

Sonia Ahmed

Ombudsman