

The complaint

Ms J complains that NewDay Ltd trading as Aqua lent irresponsibly when it approved her credit card application.

What happened

The background to this complaint and my initial conclusions were set out in my provisional decision. In my provisional decision I said:

Ms J applied for a credit card with Aqua and told it she was a tenant and employed with an income of £14,000. Aqua completed a credit search. It found Ms J had a County Court Judgement that was under two years old and defaults totalling around £4,000 that were around three and a half years old. Aqua found Ms J owed around £12,000 at the time of her application.

Aqua approved a credit card with a limit of £450. In October 2018 Ms J spent the majority of the £450 credit available. No payments were made and the account fell into arrears. The account was closed and a default reported on Ms J's credit file.

Ms J complained that Aqua had lent irresponsibly but it didn't agree. The complaint was referred to this service and passed to an investigator. They upheld the complaint and asked Aqua to refund all interest charged, set up a payment plan for Ms J to repay the capital she borrowed and remove any adverse information from her credit file. Aqua didn't accept and pointed out that the investigator had advised proportionate checks had been completed before it decided to lend. As Aqua didn't accept, the complaint has been passed to me to make a decision.

What I've provisionally 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.

Before a business agrees to lend, it should take reasonable steps to ensure it does so in a responsible way. There's no set list of checks a lender has to complete. In practice, this means businesses should ensure proportionate checks are carried out to make sure the customer can afford to repay the borrowing in a sustainable way. Checks should take into account various factors, like the amount of credit, the costs to the borrower each month, the cost of repaying the outstanding balance, credit history and the consumer's income and outgoings. As the relationship between lender and borrower progresses, the business may need to consider whether to complete more comprehensive checks to ensure the borrower can afford repayments in a sustainable way.

In this case, Aqua approved a credit limit of £450. There were no subsequent credit limit increases. I've looked at the information Aqua used when considering Ms J's applications. I've reached a different view to the investigator. I'm not persuaded that Aqua carried out proportionate checks when looking at Ms J's application. And had it carried out

proportionate checks, I think Aqua would've declined the application. In my view, Aqua lent irresponsibly in this case. I'll explain why.

I can seem Ms J told Aqua she was employed with an income of £14,000. Aqua's own lending assessment notes Ms J's income as being limited. Aqua also noted Ms J hadn't given details of other household income. Ms J had confirmed that she was a tenant, which means her income would've needed to support her rent, household bills and living expenses. Aqua also found Ms J owed around £12,000, a figure that was very close to her annual income, in other unsecured debts. So in addition to covering her normal living expenses each month, Ms J's income also needed to be sufficient to make repayments to her existing credit commitments.

Given the income Ms J declared and other information available to Aqua, I'm not persuaded it carried out proportionate checks in this case. In my view, it should've considered completing more comprehensive checks before deciding to proceed. As an example, Aqua could've asked for bank statements to look at Ms J's income and outgoings or obtained payslips. I've given these examples to illustrate the sort of checks Aqua could've considered, I'm aware there's no specific list of checks Aqua had to complete.

Had Aqua looked more closely at Ms J's situation, I think it would've found she was struggling financially and unable to support further borrowing. So I think Aqua would've declined to proceed.

As I think Aqua lent irresponsibly, I intend to uphold Ms J's complaint and tell it to refund all interest and charges to the account. The outstanding balance should represent the funds Ms J spent only. Aqua will need to discuss affordable repayment options with Ms J going forward.

In addition, as I think Aqua lent irresponsibly I don't agree it's fair for it to report adverse information on her credit file. Had proportionate checks been completed and the application declined no adverse information would've been recorded. So I also intend to tell Aqua to amend Ms J's credit file to remove all adverse information recorded.

I invited both parties to respond with any additional comments or information they wanted me to take into account before I made my final decision. Ms J didn't respond.

Aqua responded to say it didn't accept the provisional decision. Aqua said it had only ever charged a small amount of interest because Ms J's account quickly fell into arrears after it was approved. Aqua says Ms J is still liable to repay the funds she borrowed, if not the interest and charges applied. Aqua also said it didn't agree removing adverse information it reported about Ms J was fair because she hadn't made any payments. Aqua confirmed it can contact the new debt owner to discuss a payment plan.

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've considered the points Aqua raised in response to my provisional decision but haven't been persuaded to change my view of how to fairly resolve Ms J's complaint.

I was aware of Ms J's payment profile when I made my provisional decision. As I said, Aqua didn't complete proportionate checks and, as a result, I think it lent irresponsibly when it approved a £450 credit limit for Ms J. The fact Ms J's account quickly fell into arrears and closed reinforces my view that Aqua lent irresponsibly because it failed to carry out

reasonable checks.

Aqua says it wouldn't be fair to amend Ms J's credit file because she didn't make any payments. But, if Aqua had completed better checks I don't think it would've approved Ms J's credit card. As I still think Aqua lent irresponsibly, I still think it should remove all adverse information recorded on Ms J's credit file to fairly resolve her complaint.

Aqua says it will liaise with the new debt owner concerning Ms J's account. As I've said in my provisional decision, Aqua will have to ensure arrangements are in place to discuss options for an affordable payment plan if Ms J accepts this decision.

Aqua hasn't provided any points that change my view of how to fairly resolve Ms J's complaint. The response focuses on what happened after the credit card was approved, but my concerns are focused on the checks Aqua completed during the application and it's decision to approve the credit card. I still think Aqua lent irresponsibly for the same reasons. As a result, I'm going to proceed in line with my provisional decision.

Putting things right

- Refund all interest and charges applied to the credit card account since inception
- Within four weeks of acceptance, contact Ms J to discuss an affordable repayment plan for the capital
- Amend Ms J's credit file to remove all adverse information recorded since inception
- If NewDay has sold an outstanding balance on this account to a third-party debt purchaser, it will need to either buy the account back from the third-party and make the necessary adjustments, pay an amount to the third party in order for it to make the necessary adjustments, or pay Ms J an amount to ensure that it fully complies with this direction

My final decision

My decision is that I uphold this complaint and direct NewDay Ltd trading as Aqua to settle in line with the above guidance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 29 November 2021.

Marco Manente
Ombudsman