

The complaint

Miss H complains that NewDay Ltd trading as Aqua irresponsibly lent her a credit card. She says increases to the credit limit were taken out as a result of a coercive relationship. And she doesn't think Aqua has treated her fairly in seeking to recover the debt.

What happened

Miss H applied for a credit card with Aqua in November 2018. It assessed her finances and agreed to the card with a credit limit of £300. It offered her increases to the credit limit in February and again in June 2019, first to £1,550 then to £3,050. Miss H accepted the offers and increased her credit limit on both occasions.

Miss H then began to have difficulties in keeping up with the repayments. By the start of the coronavirus pandemic Miss H was in arrears having missed payments in January, February and March of that year. She then took a payment deferral until August 2020. Although Miss H paid off some of the arrears in April 2020, arrears of the equivalent of one month's minimum payment remained outstanding.

When she took the payment deferral, Aqua told Miss H that she would need to clear the arrears by the end of the deferral and also make the next month's payment. After the end of the payment deferral, when Miss H had not cleared the arrears or made a further payment, Aqua issued a default notice and terminated the account. Miss H made a large payment the following month, in October 2020, and a few payments after that, but hasn't made any payments since March 2021.

Miss H has brought a complaint to us about the card. She said that she didn't think that Aqua had properly checked whether the card, and the credit limit increases, were affordable for her. She said that she was in an abusive and controlling relationship at the time, and was coerced into taking out the card. Much of the spending on the card was for the benefit of her abusive partner, not for her benefit. And when she ended the relationship, her living expenses increased and she couldn't afford the repayments. She said that Aqua actively sold her increases to the limit, driving her further into debt.

Aqua said its credit cards were aimed at customers who had no credit history or a poor credit history – and that had to be taken into account when considering the checks it made. It said it considered the information Miss H had given in her application, as well as information from the credit reference agencies. Miss H said she was self-employed and earned around £14,700 per year. She had existing unsecured debt of £1,700 but no history of arrears or defaults, and hadn't taken products like payday loans.

It therefore accepted her application for a card with an initial credit limit of £300, with effect from November 2018. Aqua said that, given its customer base, its policy is to start with a low credit limit and increase it later if it feels the account is being well managed.

Aqua said that it regularly reviews customers' accounts, and as part of doing so may offer an increased credit limit. It noted that since she had taken out the card Miss H had not gone over the limit, missed any payments or used the card for cash withdrawals, and she hadn't

gone into arrears on credit elsewhere. So in February 2019, it offered her an increase in her credit limit to £1,550. Aqua carried out another review in June 2019, and offered a further credit limit increase to £3,050.

Our investigator thought that the original lending decision and the first credit limit increase were fair, but he didn't think Aqua should have offered the second credit limit increase. He also said that he was satisfied that part of the debt was incurred through coercive behaviour on the part of Miss H's former partner – which wouldn't have happened without the credit limit increase. He said Aqua should write off part of the debt, come to an affordable repayment arrangement with Miss H for the remainder, and pay her £150 compensation.

And it should remove any adverse information from her credit file. As Aqua didn't agree, the case came to me for a final decision. Although I broadly agreed with the investigator, some of my reasoning and the detail of my outcome was different. So I issued a provisional decision to allow the parties a further chance for comment.

My provisional decision

In my provisional decision, I said:

"I'm sorry to hear of the circumstances Miss H has described, and I've taken careful account of everything she's said.

Miss H told us that this card was her first experience of credit. She was living with her parents at the time, and had just started her self-employment business, but without a credit history she was having difficulty proving her identity, so she applied for this card.

At the same time, she was in a relationship and moved out of her parents' address in 2019. The relationship broke down in November 2019, and Miss H then lived alone.

Miss H says the relationship was abusive in many ways, including financially. Her partner required her to pay for everything in their relationship and later towards their household. Even when he was earning, he would keep his income for himself and expect her to pay for everything. He was abusive and manipulative and put her under significant emotional and psychological pressure so that she felt she had no choice but to pay for everything – leading to an increase in the balance on the Aqua card. At times, he made purchases himself using the card, though Miss H says that in general she held the card, but felt under pressure to spend the money.

Miss H says that she was in a good financial position when she took the card out, and at the time of the first credit increase. But things became progressively more difficult during 2019 and by the time she ended the relationship at the end of that year, the card was over the limit and she couldn't afford the repayments.

Miss H says that the police became involved towards the end of the relationship. She's shown us evidence of police involvement which she says resulted in a caution.

Our investigator asked Miss H to identify which transactions she said were her own spending, and which were her partner's, or entered into under coercion. This wasn't easy as there were a lot of day to day spending transactions over the months in question during 2019. However Miss H pointed to a cash advance of £250 and to other transactions for various items including fuel.

I've taken everything Miss H says into account here. There's no direct evidence of

coercive control or financial abuse during the relationship beyond Miss H's testimony. The police evidence relates to stalking and harassment following the conclusion of the relationship – although it doesn't therefore directly relate to what happened during the relationship, it is in my view supportive of Miss H's account of a difficult relationship. Overall I'm persuaded by what Miss H says. She's given a clear credible and consistent account of what happened and what independent evidence there is supports that.

However, I think it's clear from what Miss H says that the coercive relationship happened in 2019 – after she applied for the credit card initially, and after the first credit limit increase.

And even in respect of the second credit limit increase, I've not seen any evidence that leads me to conclude that Aqua was aware – or ought reasonably to have been aware – of Miss H's situation at that time.

That means Miss H's circumstances and the abusive behaviour she was subject to couldn't have been known by Aqua, and couldn't have been taken into account, at the time it offered her the card and offered her the increased credit limits.

Aqua was still under the general obligation to lend responsibly – which includes considering whether the card and the later credit limit increases were affordable for her.

The lending decisions

In making the initial lending decision, Aqua was required to carry out proportionate checks to determine whether the card was affordable for Miss H. There are no specific rules setting out what must be considered in every case – it depends on the individual circumstances. But it is required to carry out what's known as a creditworthiness assessment. This includes looking at Miss H's income and expenditure as well as other factors such as any other credit she may have.

I've taken into account the nature of the card Aqua offers and the circumstances at the time in deciding whether Aqua carried out proportionate checks and made an appropriate lending decision.

I'm satisfied that it was fair and reasonable to offer Miss H the credit card with an initial limit of £300. This is a low limit, and reflects Miss H's limited previous credit history and what Aqua knew of her income and expenditure at the time. She was self employed and while her income was relatively small, so was her expenditure. I think the checks Aqua carried out were proportionate to the application and didn't show any affordability concerns. And Miss H doesn't say this limit was unmanageable for her.

Aqua offered Miss H an increased credit limit a few months later, in early 2019. It says that given its target market, its policy is to offer a low limit to start with and then increase it later if the account is well managed and the increase appears affordable. And in general I think this is a reasonable approach.

However, before it offers an increased limit, Aqua should carry out a further creditworthiness assessment. It looked at how Miss H had conducted the account and noted that there were no concerns and that she'd made all the payments that fell due. The card was being used for day to day expenditure and there were no unusual or concerning spending patterns. Aqua looked at Miss H's credit file and noted that

she had limited other credit and no matters of concern (no payday loans, no missed payments or arrears, and so on). Her overall indebtedness had decreased since the initial application.

Aqua was satisfied that Miss H was able to manage the increased credit limit and make the repayments associated with it. And it didn't increase the limit automatically or leave it to Miss H to opt out – it offered her an increase which would only take effect if she accepted it, which she did.

However, I note that this was a substantial increase in the credit limit, from £300 to £1,550. Although this is still a relatively low level of credit overall, it's significantly more than the original credit limit involving a five-fold increase.

It's also worth noting that the increase took place only three months after Miss H took the card out. So there was relatively limited information available about her conduct of the account – she'd only needed to make two monthly payments, for example. And in the second of those months she'd spent £240 on the credit card – a large proportion of the existing limit.

Given those factors, I do have some concerns about this increase. Aqua did carry out checks before deciding to offer it. But it was – in relative terms – a large increase, and based on a very short account history.

On balance, though, I don't intend to find that this increase shouldn't have gone ahead. I think it's fair and reasonable to take into account the low initial credit limit as a relevant factor here, as well as Aqua's policy of offering a low limit to start with subject to later review. It's fair to say that Aqua could have offered a higher starting limit combined with a smaller later increase which wouldn't have given rise to the same concerns. Overall, given what it knew of Miss H's income and expenditure, and her wider credit exposure, the increased limit appeared affordable. So taken as a whole I don't think Miss H was left in an unfair position following this increase.

The second increase followed a few months later, in June 2019. This time Aqua offered Miss H a new limit of £3,050.

Again, Aqua looked at Miss H's conduct of the account. And it looked at her overall indebtedness and her wider credit file. It was satisfied that the new limit was affordable for her.

However, I'm not persuaded that this limit increase was responsible. It followed very shortly after the previous one, and meant that Aqua had doubled Miss H's credit limit in the space of five months – and increased it ten-fold in nine months. While in one sense Miss H had been managing the account, in that she had made all the payments required of her, I think there were factors that ought fairly to have given Aqua cause for concern. Since the last limit increase, Miss H had spent around £200 per month on the card, but had only made small payments. Her balance had increased from around £200 at the time of the February increase to over £750 by the time of the June increase. In the time she'd had the card, there were only two months where she'd spent less than £150, and only two months where she'd paid more than £20.

Aqua noted that Miss H's overall indebtedness had reduced since the February increase, and that she hadn't missed payments on other credit or taken out payday loans or shown other signs of financial strain. And this is a relevant factor.

Aqua didn't check Miss H's income again at this time. Miss H has confirmed to us that it hadn't increased since the initial application. But while her overall indebtedness had come down, that was substantially outweighed by the £1,500 increase on the credit limit on this card, with Miss H still on a relatively low income.

As with the first increase, I've thought not just about the amount of the increase, but also about the overall position the revised limit put Miss H in.

Having done so, I'm not persuaded that the second limit increase was fair and reasonable in all the circumstances. I think based on the information Aqua had, it ought to have questioned whether the revised limit was affordable for her – especially taking into account the pattern of the borrowing increasing each month with Miss H repaying considerably less than she spent.

It's important to think not just about whether the minimum payments, or a proportion of the debt, is affordable – it's also important to think about whether the available credit is sustainable. Aqua knew Miss H was on a relatively low income. It knew her balance was increasing month by month and that she wasn't paying much above the minimum payments. While she hadn't missed any payments, I think Aqua ought fairly to have concluded that increasing Miss H's credit limit further wasn't the right thing to have done.

Supporting Miss H in financial difficulty

By early 2020, Miss H was in financial difficulty. She'd missed some payments, and was in arrears.

In April 2020, Aqua offered Miss H a three month payment deferral, in line with the regulator's guidance at the time. It said that she would need to clear the existing arrears and make the payment that fell due at the end of the deferral. When Miss H didn't do that, in August 2020, it sent her a default notice.

I don't think this was fair and reasonable. Firstly, Aqua had written to Miss H in May 2020, acknowledging her circumstances, and offering to put her account on hold and suspend all interest and charges, and not take further collection activity, until September 2020. So it's not clear to me why in light of that letter Aqua took the action it did in August.

Secondly, the regulator allowed firms to offer a second payment deferral, up to six months. While I can't see that Miss H contacted Aqua to request an extension of the three months it had initially granted, I also can't see that Aqua made any attempt to contact her to discuss her situation at the end of the payment deferral – which might have given her the opportunity to ask for an extension.

Putting things right

I've explained that I don't think Aqua knew or ought reasonably to have known of the abusive nature of Miss H's relationship, or how that impacted her credit card account, at the time it made the decision to increase her credit limit in June 2019.

However, I've also found that based on what it did know at the time, it shouldn't have increased the limit.

So now I need to think about what Aqua needs to do to put matters right. Our general approach in cases like this is to conclude that while Aqua should not have increased

the limit when it did, nonetheless Miss H did borrow the extra money and it's fair and reasonable to expect that she pays it back – so we require Aqua to remove interest and fees on the additional borrowing, and come to an affordable arrangement for the repayment of the capital.

In this case, though, part of the additional borrowing was attributable to the coercive control Miss H faced. The increase to the credit limit coincided with the time Miss H was in the relationship. Had Aqua not increased the limit, Miss H's partner wouldn't have been able to coerce her into the spending that happened. While Aqua is not responsible for the relationship, and couldn't have been expected to know about it, the fact is that but for the increased limit, Miss H's former partner would not have been able to coerce her into further borrowing on the card.

In those circumstances, I don't think it would be fair and reasonable to expect Miss H to repay that part of the capital. She's not benefitted from it, and without the limit increase it would not have happened.

The difficulty is identifying what part of the spending following the increased limit is attributable to Miss H, or that she benefitted from, and what part she did not. It's also important to note that I'm only upholding this complaint in respect of the second credit limit increase. In respect of the first credit limit increase, I haven't found that it was unfair, and I've found that Aqua couldn't have known of Miss H's circumstances at the time.

With that in mind, I've looked at what Miss H has said and at the spending that took place in excess of the previous limit of £1,550. There are large numbers of small transactions – often several in a day – for shopping, food, fuel and transport, and other day to day items.

Miss H has identified the items she's sure are hers. But I wouldn't expect her to remember all the transactions, or to be able to identify them all. And it's also difficult to be sure to what extent Miss H did or didn't benefit from the individual transactions. For example, if Miss H was coerced into doing all the household expenditure so that her partner could retain his income for himself, it could still be said that she benefitted at least in part from that household expenditure – such as supermarket shopping to buy food for them both.

In the circumstances, I think it's impossible to know how much of the expenditure Miss H herself was responsible for, and how much she benefitted from, and how much she was coerced into spending for the benefit of her former partner. I'm satisfied that she was responsible for, or benefitted from, some but not all of the spending. But I don't think it's possible to be more precise than that.

Where it's not possible to be certain or precise, my remit allows me to do the best I can to reach a fair outcome. Bearing that in mind, I think it's fair to take a 50:50 approach.

I therefore intend to direct Aqua to calculate the amount of expenditure which happened after the second credit limit increase and which exceeded the £1,550 limit. It should then reduce the balance by half of that amount. I'm satisfied that this is a fair estimate of the financial impact on Miss H of the coercive control she experienced, leading to additional spending on the card which she did not benefit from and which would not have happened had Aqua not increased the credit limit.

I think it's fair and reasonable for Aqua to hold Miss H liable for the remaining part of

the expenditure above the second limit increase. But because the limit increase ought fairly not to have happened, I don't think Aqua should fairly charge interest or fees on this amount.

And I think it's fair and reasonable for Aqua to hold Miss H responsible for the spending – including interest – below the second credit limit increase.

I don't think it would be fair to remove the card from Miss H's credit file. It's important that credit files accurately reflect the conduct of an account. And Miss H did apply for and want this account, and is responsible for much of the spending on it. But it's not in my view fair and reasonable for Aqua to report that part of the balance I've said it should write off.

In respect of the failings in 2020, I think it's fair that Aqua pays Miss H some compensation for the distress and inconvenience caused. I think £250 is fair compensation. Aqua should also correct Miss H's credit file so that it is as if it had offered a second payment deferral, making six months in total.

Miss H also asks that Aqua remove the more recent default from her credit file. But I don't think I can fairly ask it to do that. Even without the credit limit increase that shouldn't have happened, there would still have been a balance to repay in 2020 and 2021, and Miss H hasn't been able to do that. So even without the increase, I think it's likely Aqua would still have applied a default."

The responses to my provisional decision

Miss H accepted my provisional decision. Aqua did not – it said it remained of the view that it had not lent irresponsibly. But it referred back to the arguments it had made previously rather than making fresh arguments or providing new evidence.

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 carefully considered again everything I said in my provisional decision alongside all the evidence in the case. I note Aqua doesn't agree – but also that it hasn't made any further arguments beyond those I took into account in my provisional decision. In those circumstances, I'm not persuaded to change my mind and my view of this case remains the same.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct NewDay Ltd trading as Aqua to:

- Rework Miss H's account, writing off half the capital expenditure above the £1,550 credit limit and removing all interest charged on the remaining half;
- Work with Miss H to reach an affordable repayment arrangement for the remaining balance, taking into account her finances, circumstances and vulnerability;
- Adjust Miss H's credit file in the way I've set out;
- Pay Miss H £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 14 February 2023.

Simon Pugh
Ombudsman