

## The complaint

Mrs C complains that NewDay Ltd trading as Aqua (Aqua) lent to her irresponsibly.

## What happened

Mrs C applied for a credit card from Aqua in April 2016 and it was agreed with a limit of £300. There were subsequent increases in the limit as shown:

Date	Limit
April 2016 (new card)	£300
September 2016	£950
February 2017	£2,000
June 2017	£3,500
October 2017	£4,000

The account was paid off and closed in May 2022.

Mrs C complained that Aqua didn't do sufficient checks when they agreed to give her the card and then the limit increases. She said there wasn't any income & expenditure analysis done, they didn't ask to see her bank statements. She had defaults and a CCJ on her credit file at the time. The CCJ was in 2014, so Aqua must have seen that. The rapid increases weren't justified. She said she was only making minimum payments and so all she was doing was only paying interest rather than paying off the debt. She said all interest should be refunded and 8% per annum added to the refund.

Aqua said they considered a range of information when lending to customers, including information from credit reference agencies (CRAs), account behaviour with Aqua and the information on Mrs C's application. When Mrs C applied for the card, she said she had a gross income of £15,000 p.a., and unsecured debt of £2,100. There was a default from 26 months before (for £1,300) but otherwise there were no other problems with accounts in arrears. Mrs C conducted her account well and so was offered increases in limits. Each time, she was offered the increase – she could've opted out but didn't. Aqua's checks at each increase included – how she had conducted her account – which was good; instances of exceeding the credit limit; late or missed payments; limit utilisation; and other external debts. And based on this information, Aqua said they did the necessary checks and lent responsibly.

Mrs C brought her complaint to us. Our investigator said Aqua lent responsibly when issuing the card, and for the first three increases up to and including June 2017. But by the time of the last increase – to £4,000 in October 2017 – Mrs C had other external debt of £12,300

(increased from £5,400 in June 2017). So – she said that Aqua should've asked more questions for the October 2017 increase, including seeing Mrs C's bank statements. If they had, they would've seen she had taken out a new loan of £3,000 shortly before that, with payments of £200 per month.

She said Aqua should refund all interest and fees applied for balances above £3,500, together with 8% p.a. interest; and remove any adverse information recorded on her credit file.

Mrs C didn't agree and asked that an ombudsman look at her complaint. And so it has come to me to do that.

### **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.

All lenders have an obligation to lend money responsibly. We have to check whether Aqua acted in line within the Financial Conduct Authority (FCA) rules on creditworthiness assessment as set out in its handbook, (CONC) section 5.2. These say that a firm must undertake a reasonable assessment of creditworthiness, considering both the risk to it of the customer not making the repayments, as well as the risk to the customer of not being able to make repayments. We look at:

- Whether the lender completed reasonable and proportionate checks to satisfy itself that the borrower would be able to repay any credit in a sustainable way?
- If reasonable and proportionate checks were completed, did the lender make a fair lending decision bearing in mind the information gathered and what the lender knew about the borrower's circumstances?
- And a reasonable and proportionate check would usually need to be *more* thorough:
  - the lower a customer's income, and the higher amount to be repaid.
  - the greater the number of loans and frequency of loans.
  - the longer the term of the loans

It's important to note that the checks must be proportionate to the amount being lent – so the higher the amount, the greater the checks must be, and the lower the amount, then fewer checks can be made. Also – there isn't a requirement to see bank statements, unless there is information which suggests that Aqua needed to find out more information about Mrs C's situation.

*Issue of the card (April 2016):* I looked at the information that Aqua got when they issued the card and thereafter. In April 2016, Mrs C put on her application that she earned £15,000p.a. She was in rented accommodation. Aqua could see that she had other borrowing of £2,100 – which was low. There was a default on her credit records – from 26 months before, for £1300. So that was quite a long time before her application. So, overall, I'm satisfied that Aqua did the necessary checks to issue the card with a limit of £300.

*Limit increases to £950 (September 2016); and £2,000 (February 2017) :* I looked at Aqua's data they had at the time of these increases. Aqua could see that Mrs C's external debts had risen to £5,049 by February 2017 – more than double what it was a year before. There were ten other lenders. But on the other hand, Aqua could see she was managing those debts well – there were no arrears or defaults reported. And they could also see that her balances

with Aqua were low compared to the limits. She used only about 25% of the limit of £950. And she had made all payments on time. There were no over-limit occurrences. So – I can see it was reasonable for Aqua to offer the increases in limits to Mrs C.

*Limit increase to £3,500 (June 2017):* I wanted to look at this increase – as this was a large increase when compared to the original limit when the card was first agreed. And - by this time, Mrs C's other debts had risen to £5,865. There were still ten other lenders, and again, all payments had been made on time to them, and there were no defaults. And Aqua's card was still being paid on time each month. There were no over-limit occurrences. Mrs C's use of the limit had gone up to between 50% and 65% - but I think that was still acceptable from Aqua's point of view.

I can see that Aqua wrote to Mrs C ahead of each proposed increase in limit. And she could've opted out of the offer each time – but didn't.

*Limit increase to £4,000 (October 2017):* I agree with our investigator that by this time, Aqua should've looked more closely at Mrs C's situation. Her other debts had increased to over £12,000 – this was a large increase compared to four months before. And Mrs C had 11 accounts with other lenders. But equally, Mrs C had paid Aqua on time since the previous increase, and her use of the previous limit was less than 40%. But – on balance, the large increase in other debts should've meant that it would've been reasonable for Aqua to look more closely at Mrs C's finances – including looking at her bank statements at that time. If they had, they would've seen she had taken a new loan of £3,000 with payments of £200 per month. And Aqua could've asked questions about the affordability of all of Mrs C's debts. If they had - I think it's likely that Aqua wouldn't have offered the last increase in limit to Mrs C.

Mrs C has argued that there was a CCJ (County Court Judgement) on her credit records dating from 2014. And that Aqua must have seen that when she applied for the card in 2016 and when the increase in limits were offered. We asked Mrs C for any evidence she had of the CCJ – but unfortunately, she couldn't provide definite confirmation of the CCJ. And having looked at Aqua's records, there wasn't a CCJ showing on their credit searches. So – I can't say that Aqua should've seen CCJ on Mrs C's credit records, and so couldn't take that into account.

We noticed on Mrs C's credit file that there was a loan from a debt management company. We wanted to know more about that - because if she had entered a debt management agreement, that might have meant she had consolidated several large debts, which we would've expected Aqua to have taken into account. Mrs C sent to us an extract from her credit file. This showed the debt was for £478 and taken out in November 2015. It was repaid in September 2017. So – this looks like one of the debts that Aqua were aware of when they did their credit searches. And - it was for a relatively small amount and was being repaid by monthly instalments at the time that Aqua increased Mrs C's limits. So – I don't think that would be a reason for Aqua not to have increased the limits.

## **Putting things right**

My decision is that Aqua shouldn't have increased Mrs C's limit to £4,000 in October 2017 – and so the remedies I propose date from then. Aqua should re-work Mrs C's account to refund interest and charges paid on Mrs C's borrowing over £3,500 from October 2017 to when the account was repaid and closed. Looking at Mrs C's account, it's fair to say that there were only five or six months where this was the case, and so the amount of the refund may not be as large as Mrs C wants to see. But on the balance of evidence, I'm satisfied that this is a fair decision in the circumstances of Mrs C's complaint.

Our investigator said that Aqua should remove any adverse information from Mrs C's credit file. Having looked at her account, as she paid on time and there were no overlimit situations, I doubt there was anything notified – but for good order, I am asking Aqua to check this.

## **My final decision**

I uphold this complaint. NewDay Ltd trading as Aqua must:

- Refund interest and fees on borrowing over £3,500 from October 2017 to the date the borrowing was repaid.
- Remove any adverse information notified to credit reference agencies from October 2017 to the date the borrowing was repaid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 6 June 2023.

Martin Lord  
**Ombudsman**