

The complaint

Mrs Q complains that NewDay Ltd, trading as Aqua, increased the limit on a credit card account, which she could not afford.

What happened

In March 2018 Aqua approved a credit card account with an initial limit of £250 for Mrs Q. It increased that limit three times from July 2018 until August 2019 when it reached £3,850. It would seem from the account notes that Mrs Q has had some difficulties making repayments since 2019, which became of concern in March 2021 when Aqua's collections department began writing to her. It appears that the account remains open and owned by Aqua.

After Aqua rejected her complaint, Mrs Q brought the case to our service. One of our adjudicators looked at the evidence and thought that, whilst its initial decision to open the account was fair, that Aqua should not have increased the credit limit in September 2018. So he upheld the complaint in part. Mrs Q accepted that view, but Aqua didn't respond. As a result, the case has been passed to an Ombudsman for review.

As Mrs Q has accepted the adjudicator's view, this decision will only consider whether the credit limit increases (CLIs) were fair and reasonable.

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.

Having done so, I uphold this complaint for broadly the same reasons as the investigator. I particularly bear in mind the lack of response to, or challenge of, those reasons from Aqua.

Aqua is aware of its obligations under the rules and regulations in place at the time of these credit limit increases, including the Consumer Credit Sourcebook ("CONC"), so I won't repeat them here. But, briefly, it was required to carry out sufficient checks to ensure that Mrs Q would be able to repay the borrowing it was making available to her in a sustainable way. As set out in CONC 5.3.1G(2) that means that she could manage the repayments,

"...without...incurring financial difficulties or experiencing significant adverse consequences"

Essentially, Mrs Q needed to be able to meet all her financial commitments and not have to borrow elsewhere to repay Aqua for the credit limit to be considered affordable and sustainable.

Did Aqua carry out proportionate checks?

Aqua carried out a high-level credit check before approving the first credit limit increase in September 2018. And it had asked Mrs Q about her income only six months previously. It

says that these checks were proportionate and in line with the regulations in force.

The investigator thought that Aqua ought to have carried out more in-depth checks, noting the comparatively low annual income of £14,000 declared by Mrs Q in March 2018. I agree, and also think that Aqua's checks and files raised concerns themselves. Firstly, it was clear that her overall unsecured debt, whilst not especially large, had increased substantially since the account had been opened. And also Aqua had charged a fee on the account, seemingly for a late payment.

So I think there was a substantial potential risk around affordability for Mrs Q, and Aqua needed to look into her actual situation in rather more depth to proportionately assess whether she could afford the CLI it was offering.

What would Aqua have found had it done proportionate checks?

When considering this second question, our service has had the benefit of several months of Mrs Q's bank statements to review. I accept that there was and is no requirement on a lender to obtain any particular type of information: they are permitted to source and rely on a range of evidence when assessing affordability, and so Aqua could have opted to gather more information about Mrs Q's financial position in a range of ways. However, it didn't, and, in the absence of anything else provided, I'm happy to rely on the bank statements to demonstrate what Aqua would most likely have discovered if it had completed proportionate checks.

As already explained by the adjudicator, the bank statements show that Mrs Q's outgoings exceeded her income. It appears that she avoided going into an unauthorised overdraft by borrowing from friends and family, as shown by both credits and debits on the account, many of which debits have the reference "loan" attached to them. Additionally, there are two examples of unpaid transaction fees.

I cannot see how proportionate checks could have led Aqua to conclude that this CLI was sustainable and affordable for Mrs Q. And it has offered no defence to its lending decision in the light of the adjudicator's view. It therefore follows that I don't think Aqua should have increased the limit on Mrs Q's account from July 2018, and so I uphold this complaint.

Putting things right

Whilst I'm not aware that it has, if the lending relationship has deteriorated and Aqua has sold Mrs Q's debt to a third party, it should buy it back, and then take the following steps. If it is not able to buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below. However, I believe the account remains with Aqua, and it should be able to take these steps itself.

In order to put things right for Mrs Q, I direct Aqua to do the following:

- a) Rework the account to remove all interest and charges incurred on the account since 13 July 2018 on balances exceeding £250.
- b) Calculate what Mrs Q would have owed it if the credit limit had stayed at £250.
- c) Apply any and all repayments made by Mrs Q since 13 July 2018 to that adjusted balance identified in b).
- d) If that calculation means the adjusted balance would have been cleared, Aqua must refund any remaining sums to Mrs Q with 8% simple interest*, calculated from the

date of overpayment to the date of settlement.

*HM Revenue and Customs requires Aqua to deduct tax from any award of interest. It must give Mrs Q a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

For the reasons I've explained, I uphold this complaint and direct NewDay Ltd to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Q to accept or reject my decision before 10 November 2023.

Siobhan McBride

Ombudsman