

The complaint

Ms C complains that NewDay Ltd (trading as Aqua) was irresponsible to lend to her.

What happened

Ms C was approved for an Aqua credit card in April 2015, and then six credit limit increases as follows:

	<u>Date</u>	<u>Credit Limit</u>
Opening	29 Apr 2015	£250
Increase 1	21 Sep 2015	£1,250
Increase 2	29 Feb 2016	£2,450
Increase 3	29 Jul 2016	£3,450
Increase 4	3 Apr 2017	£4,550
Increase 5	3 Nov 2017	£5,650
Increase 6	19 Oct 2018	£7,150

Ms C says she told Aqua about her financial problems and that was she was struggling to make her monthly repayments, but that it increased her credit limit resulting in more debt. She says the credit limit increases were actioned without relevant affordability checks and she is now in an Individual Voluntary Arrangement (IVA) via a debt charity.

Aqua said it asked Ms C about her financial circumstances and verified it with external data sources. It says Ms C's application met its criteria and the account was opened with a £250 limit. Aqua said further in-depth assessments of Ms C's financial performance were conducted for each credit limit increase and that she had the option to opt out if required. It adds that Ms C did not tell it of her financial difficulties until August 2019 – after the last credit limit increase.

Aqua also asserted that the account opening, and first three credit limit increases, were out of our jurisdiction as they happened more than six years before Ms C complained. However, an ombudsman has considered this objection and has found that this service can consider all aspects of Ms C's complaint.

Our investigator recommended the complaint should be upheld in part. Although he found that the initial credit limit and first two limit increases appeared to be affordable to Ms C, he considered proportionate checks would have found subsequent credit limit increases to be unsustainable.

Aqua responded to say, in summary, that the evidence of Ms C's financial circumstances was from three months prior to the third limit increase, and it had no information from July 2016 on which to assess whether the third increase was 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.

I need to take into account the relevant rules, guidance and good industry practice.

Bearing this in mind, in coming to a decision on Ms C's case, I have considered the following questions:

- Did Aqua complete reasonable and proportionate checks when assessing Ms C's application and credit limits to satisfy itself that she would be able to repay the credit in a sustainable way?
 - If not, what would reasonable and proportionate checks have shown?
- Did Aqua make fair lending decisions?
- Did Aqua act unfairly or unreasonably in some other way?

Account Opening

When Ms C applied for the Aqua card, I've seen evidence to show that Aqua checked her credit file and asked her about her income and personal circumstances. These checks showed:

- A declared income of £15,000 per year;
- Ms C was divorced, employed and living in rented accommodation;
- She had three credit accounts with unsecured debt of £200;
- No arrears or County Court Judgements;
- One defaulted account, for £200, from six years earlier.

As the card was approved with a modest credit limit, I consider these checks were proportionate and it was reasonable for Aqua to have considered the limit affordable and to have approved Ms C's application.

First and Second Credit Limit Increases

These were significant limit increases so I would have expected proportionate checks to have included further assessments of Ms C's updated financial situation.

Ms C's income was largely unchanged during this period, but I can see that her credit commitments began to increase with two new credit cards having been taken out in July 2015 and August 2015. Ms C had also taken out two loans in early 2016 but I find it more likely than not that these would not have been apparent to Aqua at the time it was carrying out its checks prior to the second credit limit increase.

As Ms C's Aqua account was being well-managed and her monthly repayments were above the minimum required, I don't find that there was anything in the information that was likely to have been available to Aqua to indicate the new credit limits were unaffordable to her.

Third Credit Limit Increase

Before Aqua increased Ms C's limit by a further £1,000 – at this point a total increase of £3,200 in little over a year – I consider it should have carried out more detailed checks as her credit file showed increasing reliance on credit. This time, Aqua would have seen:

- Three loans taken out since January 2016;
- Three credit cards taken out since the Aqua card;
- Repayments on the loans were at least £300 per month.

Based on this information, I find Aqua should have carried out an analysis of Ms C's income and expenditure and, had it done so, I think it likely it would have shown:

- An income of less than £1,000 per month;
- Regular monthly payments of £300;
- Around £150 per month spent on utilities;
- A regular fortnightly payment of £200 (£433 per month) – consistent with rental costs;

Adding in Ms C's loan repayments, credit card commitments and spend on food and petrol, it was clear that she was already struggling financially.

I accept that some of the information is from bank statements dated March 2016, but I'm satisfied this is a reasonable approximation for Ms C's circumstances at the point of the third credit limit increase. I say that because:

- There are consistent weekly payments from her employment of £223 from January 2016 onwards. Although I can't be sure what she was earning in July 2016, I have also seen a payslip from 2017 which shows income of £219;
- Her regular payments are on items including council tax, insurance, broadband, DVLA and TV Licensing and would have been fairly consistent going forwards;
- Ms C would still need to pay for rent, utilities, food and petrol;
- Her loan agreements extended beyond July 2016.

So I don't find Aqua made a fair lending decision at the point of the third credit limit increase, although I don't consider it acted unfairly or unreasonably in any other way.

My final decision

My decision is that I uphold this complaint in part. NewDay Ltd (trading as Aqua) should:

- Rework the account removing all interest and charges that have been applied on balances above £2,450 from 29 July 2016:

- If the rework results in a credit balance, this should be refunded to Ms C along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. Aqua should also remove all adverse information recorded after 29 July 2016 regarding the account from Ms C's credit file;
- Or, if after the rework there is still an outstanding balance, Aqua should arrange an affordable repayment plan with Ms C for the remaining amount. Once Ms C has cleared the balance, any adverse information recorded after 29 July 2016 in relation to the account should be removed from her credit file.

*HM Revenue & Customs requires Aqua to deduct tax from any award of interest. It must give Ms C 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 2 April 2024.

Amanda Williams
Ombudsman