

## **The complaint**

Miss L complains that NewDay Ltd trading as Aqua lent irresponsibly when it approved her credit card application and went on to increase the credit limit.

## **What happened**

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

*Miss L applied for a credit card with Aqua in October 2018. In her application, Miss L said she had an income of £20,000. No employment status was recorded and no information about Miss L's residential status or living costs were provided. Aqua carried out a credit search and found Miss L owed around £400 in other unsecured debts. Aqua says it used Miss L's income figure and an estimate of her living expenses and found she had around £583 of disposable income each month. Aqua approved a credit card with a limit of £900.*

*In February and March 2019 Aqua applied £12 over limit fees to Miss L's account. In April 2019 Aqua increased the credit limit from £900 to £1,650. Miss L continued to make repayments but the outstanding balance quickly increased. In August 2019 Aqua increased the credit limit to £2,400. Aqua says that on both occasions it checked Miss L's credit file and account history before taking the decision to increase the credit limit and that they were applied in line with its lending criteria.*

*Miss L's payments fell behind. Aqua closed the credit card in December 2023 with an outstanding balance of £2,340 and recorded a default on Miss L's credit file.*

*Last year, Miss L complained that Aqua had lent irresponsible when it approved her application and increased the credit limit. Aqua issued a final response but didn't uphold Miss L's complaint.*

*An investigator at this service looked at Miss L's case but wasn't persuaded that Aqua lent irresponsibly and didn't ask it to take any further action. Miss L asked to appeal and said her circumstances had changed very quickly after accepting the Aqua credit card in October 2018. Miss L said she'd become reliant on credit and was paying a substantial amount of her limited monthly income each month to Aqua. Miss L explained she was only in receipt of benefit income by the time the credit limit was increased and that Aqua's actions had caused a lot of stress and pressure. As Miss L asked to appeal, her case 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 agreeing to lend or increasing the credit limit, the rules say Aqua had to complete reasonable and proportionate checks to ensure Miss L could afford to repay the debt in a sustainable way. These affordability checks needed to be focused on the borrower's*

*circumstances. The nature of what's considered reasonable and proportionate will vary depending on various factors like:*

- The amount of credit;*
- The total sum repayable and the size of regular repayments;*
- The duration of the agreement;*
- The costs of the credit; and*
- The consumer's individual circumstances.*

*That means there's no set list of checks a lender must complete. But lenders are required to consider the above points when deciding what's reasonable and proportionate. Lenders may choose to verify a borrower's income or obtain a more detailed picture of their circumstances by reviewing bank statements for example. More information about how we consider irresponsible lending complaints can be found on our website.*

*When Miss L applied for the credit card she gave details of her income of £20,000 a year. The application data I've seen doesn't include anything that says whether Miss L was employed or self employed or provide any information about her residential status and living costs. With that said, I can see Aqua used estimates of Miss L's outgoings as part of the original application process. And I can see Aqua carried out a credit search that showed Miss L owed around £400 to other creditors. There was no evidence of any missed payments or adverse credit at the time of Miss L's application.*

*Overall, whilst the information Aqua had was somewhat limited, I'm satisfied it carried out reasonable and proportionate checks before deciding whether to lend. I think the credit limit of £900 was reasonably modest and I haven't seen anything that would've caused Aqua to take any further steps with Miss L's application before deciding whether to proceed. I'm sorry to disappoint Miss L but I haven't been persuaded that Aqua lent irresponsibly when it approved her credit card application in October 2018.*

*I've reached a different decision to the investigator concerning the credit limit increases. The affordability and credit file data provided by Aqua shows she was charged over limit fees of £12 in February and March 2019, the months before her credit limit was increased. Given how new the card was, I'm satisfied that's something Aqua should've considered. In addition, Miss L's unsecured debt levels increased substantially. When Aqua carried out its credit search in October 2018 she owed £400. But in the month before the credit limit was increased, Aqua's records show her unsecured debt had increased to £1,833. Given the over limit fees and increase in Miss L's unsecured borrowing, I think it would've been reasonable for Aqua to have carried out more comprehensive checks before deciding whether to increase her credit limit.*

*As noted above, there's no set list of checks a lender has to complete. One option is to review a borrower's bank statements to get a better picture their circumstances. Miss L has sent us copies of her bank statements for the three months before the credit limit increases took place. I've looked at those.*

*It's clear from Miss L's early 2019 bank statements that she wasn't working at that time. Miss L's income was made up of universal credit and child benefit during this time at a substantially lower level than the income figure Aqua had on file. I can see that Miss L appears to have received ad hoc payments and transfers from third parties to help ends meet. But they aren't consistent and I'm satisfied income of that nature isn't something Aqua would've considered for lending purposes. On average, in the three months before Miss L's credit limit was increased in April 2019, her benefit income was around £590. Miss L's average outgoings for direct debits and regular bills was around £500 a month. That doesn't include day to day spending or items like fuel and food. I also think it's fair to note that Miss*

*L's bank statements show her overdraft limit was increased during this period and that various direct debits were returned unpaid due to insufficient funds.*

*Overall, I'm satisfied that if Aqua had looked at Miss L's bank statements or carried out some other kind of additional checks it would most likely have found that further borrowing was unsustainable and likely to cause financial harm. In my view, Aqua lent irresponsibly by increasing the credit limit to £1,650 in April 2019.*

*It follows that if I think it was irresponsible to increase the credit limit to £1,650 in April 2019 I think the same about the decision to increase the credit limit to £2,400 four months later. Aqua's data shows Miss L quickly increased her outstanding balance without making any overpayments above the minimum payment. And Miss L's confirmed her circumstances remained the same, with her only regular income coming from benefits that were substantially below the income figure noted in the application.*

*In my view, the information available to Aqua should've shown Miss L was borrowing in an unsustainable way and that an increase to her credit limit was unlikely to be affordable in the long term. In my view, Aqua lent irresponsibly when it increased Miss L's credit limit to £2,400 in August 2019.*

*I've considered whether the business acted unfairly or unreasonably in any other way including whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Miss L in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.*

*As I think Aqua lent irresponsibly, I intend to uphold Miss L's complaint and direct it to refund all interest, fees and charges applied to balances over £900 from April 2019.*

I invited both parties to respond with any additional information or comments they wanted me to consider before I made my final decision. Neither party responded.

### **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.

As no new information has been submitted for me to consider, I see no reason to change the conclusions I reached in my provisional decision. I still think Miss L's complaint should be upheld, for the same reasons.

### **My final decision**

My decision is that I uphold Miss L's complaint and direct NewDay Ltd trading as Aqua to settle as follows:

- Rework the account to refund all interest, fees and charges applied to balances above £900 from April 2019 onwards
- If the rework results in a credit balance on the account, this should be refunded to Miss L along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement. And, NewDay should remove any adverse information reported to Miss L's credit file about this account after April 2019.
- Or, if after the rework an outstanding balance remains, NewDay should arrange an affordable repayment plan with Miss L for the remaining amount. Once Miss L has

cleared the outstanding balance, any adverse information recorded after April 2019 in relation to the account should be removed from her credit file.

- If NewDay has sold the debt to another business it will need to either buy it back or liaise with the new owner to ensure the above settlement is put in place.

\*HM Revenue & Customs may require NewDay to take off tax from this interest. If it does, NewDay must give Miss L a certificate showing how much tax it's taken off if she should ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 22 August 2024.

Marco Manente  
**Ombudsman**