

## **The complaint**

Mrs H complains that NewDay Ltd trading as Aqua irresponsibly lent to her.

## **What happened**

Mrs H was approved for an Aqua credit card in May 2022 with an initial credit limit of £450. The credit limit was increased to £1,300 in November 2022. Mrs H says Aqua irresponsibly lent to her as she had recently had a debt relief order and other debt. Mrs H made a complaint to Aqua.

Aqua did not uphold Mrs H's complaint, and they said they considered the income and other information provided in her application alongside the information available to them including Credit Reference Agency (CRA) data. Mrs H brought her complaint to our service.

Our investigator did not uphold Mrs H's complaint. He said the checks that Aqua carried out for the application and credit limit increase were proportionate and Aqua made fair lending decisions. Mrs H asked for an ombudsman to review her complaint. She said had they completed appropriate checks they would have seen a loan had been added to her credit report in September 2022, and a new credit card added in November 2022. She said that she believes her insolvency would have still been visible on her credit file at the time of her application showing she'd struggled with her finances in the past.

## **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.

Before agreeing to approve or increase the credit available to Mrs H, Aqua needed to make proportionate checks to determine whether the credit was affordable and sustainable for her. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances. I've listed below what checks Aqua have done and whether I'm persuaded these checks were proportionate.

### *Acceptance for the Aqua credit card - initial credit limit (£450)*

I've looked at what checks Aqua said they did when initially approving Mrs H's application. I'll address the credit limit increase later on. Aqua said they looked at information provided by CRA's and information that Mrs H had provided before approving her application.

The information showed that Mrs H had declared a gross annual income of £13,000. But that's not all Aqua's data showed. The data showed that Mrs H had unsecured debt that she was paying £55 a month towards.

But the data from the CRA also shows that Mrs H previously had at least one County Court Judgment (CCJ) and at least one default registered on her credit file, with the CCJ last being

registered 67 months prior to her application, and the default last being registered 62 months prior to her application.

It may help to explain here that, while information like a CCJ or default on someone's credit file may often mean they're not granted further credit – they don't automatically mean that a lender won't offer borrowing. So I've looked at other information that Aqua had as part of their checks.

There is no indication of a debt relief order showing from the data from the CRA Aqua used. The information also shows no bankruptcy in the last three years or any Individual Voluntary Arrangement in the last three years.

Aqua had estimated Mrs H's disposable income to be £316.17 a month. But the checks from the CRA does show some concerning data which I think should have prompted further checks from Aqua.

I say this because the credit file data shows that within the last six months, an agreement which had been two months in arrears. And even at the point of the application being approved, Mrs H was in arrears on an account. So it would not be clear why, if Aqua thought that Mrs H would have around £316.67 disposable income a month, that she would be in arrears on an agreement just prior to her application.

So I do think that this should have prompted further checks from Aqua. There's no set way of how Aqua should have made further proportionate checks. One of the things they could have done was to contact Mrs H to get an understanding of why she couldn't keep up to date with her agreements. Or they could have asked for her bank statements as part of a proportionate check to ensure the lending was sustainable and affordable for her.

So I asked Mrs H if she could provide her bank statements leading up to the approval of her Aqua account, which I'm persuaded that Aqua could have done as part of a proportionate check when they knew she was in arrears on an account at the point her application was accepted.

Mrs H's bank statements show that prior to the application being accepted that her account appears to be well run. She is never overdrawn, I couldn't find any instances of returned direct debits, and at times she has a three or four figure credit balance in her account. There are also occasions where her salary and benefit income total more than what Aqua had calculated for her net monthly income.

So if Aqua had requested Mrs H's bank statements as part of a proportionate check, then I'm satisfied the bank statements would have evidenced that Mrs H would be able to make sustainable and affordable repayments for a £450 credit limit. So I'm satisfied they made a fair lending decision in approving her application.

#### *November 2022 credit limit increase - £450 to £1,300*

I've looked at the information Aqua would have had available to them prior to them increasing the credit limit to £1,300 to see if they made a fair lending decision here.

Aqua's data shows that Mrs H's unsecured debt is significantly higher from when they received total unsecured debt figures from the CRA's to just prior to the £1,300 credit limit increase. So I'm persuaded that since the unsecured debt went from around 10% of Mrs H's declared income to over 50% of her declared income, that this should have prompted Aqua to complete further checks to ensure Mrs H wasn't relying on borrowings to meet her outgoings.

Again, there's no set way of how Aqua should have made further proportionate checks. One of the things they could have done was to contact Mrs H to get an understanding of the increase in her unsecured borrowings prior to the increased credit limit. Or they could have asked for her bank statements as part of a proportionate check to ensure the lending was sustainable and affordable for her.

So I asked Mrs H if she could provide her bank statements leading up to the approval of the £1,300 credit limit, which I'm persuaded that Aqua could have done as part of a proportionate check when they knew her unsecured debt had significantly increased prior to the increased credit limit. Mrs H's bank statements show again that she wasn't overdrawn in this timeframe, and I couldn't find any instances of returned direct debits.

I can see that a loan was paid into her account for £3,500 on 6 September 2022. But Mrs H's statements also show she made payments to what appears to be a savings account to a third party bank on 21 September 2022 for £1,000, and for £400 on 22 September 2022. Mrs H's bank statements also show her paying amounts to repay debt, at higher than what her minimum payments would be. So I'm not persuaded her bank statements show any sign of financial difficulty prior to her credit limit being increased to £1,300.

But Aqua would have also been able to see how Mrs H managed her account from account opening. Mrs H often made significantly higher repayments than what her minimum payments were every month since her account was opened, so again, this would be a sign that Mrs H would be able to afford repayments for an increased credit limit.

So I'm persuaded that if Aqua had requested Mrs H's bank statements as part of a proportionate check, they still would have approved the credit limit increase to £1,300. And based on the information that would have been available, I'm persuaded that Aqua made a fair lending decision to increase the credit limit to £1,300.

But if Mrs H is currently suffering from financial difficulty, I would urge her to contact Aqua to see how they can assist her moving forward.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I can't conclude that Aqua lent irresponsibly to Mrs H or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here. So it follows I don't require Aqua to do anything further.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 22 November 2024.

Gregory Sloanes  
**Ombudsman**