

The complaint

Miss M complains that NewDay Ltd trading as Aqua ("Aqua") irresponsibly provided her with a credit card and limit increases. In bringing her complaint, Miss M is represented by a business that I will refer to as T.

What happened

In December 2020, Miss M applied for a credit card with Aqua. Aqua conducted checks and provided Miss M with a card that had a credit limit of £900. Following this, Miss M's credit limit was increased on three occasions. The first was increased to £1500 in May 2021, the second to £3000 in August 2021 and finally it was increased to £4200 in January 2022.

T complained on behalf of Miss M to Aqua that the lending was irresponsible. It said Miss M should never have been given the unaffordable lending. given her the credit. Aqua responded on 13 October 2023. In summary, it said adequate checks were completed to ensure the lending was affordable. – Miss M had no adverse data such as defaults or public records so she met their acceptance criteria when they gave her the initial limit of £900.

They went on to discuss the increases that were provided to Miss M. They said they carried out an in-depth review of how Miss M managed the account with Aqua, and also how she was managing her credit externally, and the results of those checks meant that the increases were also affordable for Miss M.

Miss M was unhappy with the response, so she referred the complaint to our service. An Investigator looked into things. They said the initial lending for £900 was affordable and the checks Aqua carried out were reasonable and proportionate. However, they felt the increases from May 2021 onwards were irresponsible. They said that because Miss M's external indebtedness had increased, Aqua should never have increased the amount she owed.

Aqua didn't agree with the opinion – so the case was passed to me for review and a decision.

I previously issued a provisional decision which said the following:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And as I mentioned at the start, I'm minded to reach a different outcome to the Investigator. I appreciate this is likely to come as a disappointment to Miss M, but I hope my reasoning will help her to understand why I'm minded to change the outcome.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Miss M's complaint.

Having carefully considered everything, I'm not currently persuaded to uphold Miss M's

complaint. I'll explain why in a little more detail. Aqua needed to make sure it didn't lend irresponsibly. In practice, what this means is Aqua needed to carry out reasonable and proportionate checks to be able to understand whether Miss M could afford to repay any credit it provided. Our website sets out what we typically think about when deciding whether a lender's checks were reasonable and proportionate.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So, we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

When granting Miss M with a credit limit of £900, Aqua asked Miss M some questions and carried out a credit check. Miss M declared an annual salary of £30,000 and the credit check showed she had no arrears, no adverse data and other external debt of around £6000.

Because Aqua were offering a moderate limit of £900, I think their checks were reasonable and proportionate and they made a fair decision to lend.

Aqua went on to conduct credit checks at the point of each increase. These credit checks did show Miss M's overall external indebtedness had increased. However I've had to think about whether this alone was enough to suggest to Aqua that additional lending would be unaffordable or unsustainable.

A part of being a responsible lender is a need to follow the rules and regulations set out by the Financial Conduct Authority (FCA). The rules in relation to lending can be found in The Consumer Credit Sourcebook (CONC). One of the rules I've considered when thinking about Miss M's complaint is CONC 5.2A.23. It says:

"The firm may have regard, where appropriate, to information obtained in the course of previous dealings with the customer. However, the firm should also consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it."

What this means in practice is, when deciding to provide additional credit to their customers, Aqua can rely on how the account itself is being managed. And if there's enough to suggest in the way the account is managed that further lending is affordable and sustainable, Aqua isn't required to do additional credit checks. Looking at Miss M's account management, in the 15 months she had the card from December 2020 to February 2022 Miss M only paid the minimum repayment amount twice. The rest of the months she made significant overpayments, occasionally clearing the statement balance and paying more than double the expected amount.

When I've considered Miss M's repayment record and account management, alongside CONC 5.2A.23, I believe that Miss M was demonstrating to Aqua that she could not only afford, sustainably, the limit she had currently, but that she had the capacity to afford significantly more.

It wasn't until after the final increase in March 2022 that Miss M stopped making repayments and fell into financial difficulty. I've thought about whether there were any indicators prior to March 2022 that should've put Aqua on notice that Miss M may have been facing financial difficulty. But Miss M had been managing the account well and the external indebtedness appeared to also be being maintained up until this point, so there's nothing that would cause Aqua to step in and offer assistance. Even the month prior, February 2022 Miss M's requested minimum payment was for £131.14 and Miss M paid £236.89. So I'm satisfied Aqua weren't to know Miss M was facing financial hardship.

I've also considered the second point of CONC 5.2A.23 regarding whether the passage of time could bring into question the validity of the information Aqua held, and whether it was appropriate to update it. And I'm satisfied that as the credit limits were increased over a relatively short period of time, Miss M's circumstances were unlikely to have changed that significantly, meaning Aqua were fair to lend to Miss M.

I'll remind Aqua of their obligations to support their customers when they're in financial difficulty and encourage Miss M to reach out to Aqua if she requires assistance. I know this is likely to come as a disappointment to Miss M, but I'm not currently minded to decide Aqua have acted unfairly in the circumstances of this complaint."

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.

Neither Aqua or Miss M have responded to my provisional decision.

I appreciate how disappointing this is likely to be for Miss M, but given that both parties haven't provided any information that changes things, I see no reason to depart from the findings I reached in my provisional decision.

It follows that I'm not upholding Miss M's complaint – Aqua didn't conducted reasonable and proportionate checks when lending to Miss M, and they didn't need to obtain further information when increasing the limits as they had enough information regarding her account management internally to make a fair lending decision. I see nothing else to suggest they treated Miss M unfairly.

My final decision

It's my decision that I do not uphold Miss M's complaint against NewDay Ltd trading as Aqua ("Aqua").

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

Meg Raymond
Ombudsman