

## **Complaint**

Mrs H has complained about a credit card and subsequent limit increases which NewDay Ltd (trading as “Aqua”) provided to her. She says the account was unaffordable.

## **Background**

Aqua provided Mrs H with a credit card which had a credit limit of £250 in December 2012. The credit limit was increased to £450 in December 2018, £950 in May 2019, £1,450.00 in November 2019, £2,950.00 in August 2020 and finally £3,350.00 in June 2021.

One of our investigators reviewed what Mrs H and Aqua had told us. And she thought Aqua didn’t act unfairly when initially providing the credit card or increasing the limit on the first occasion in December 2018. However, she also thought that Aqua ought to have realised that it shouldn’t have provided Mrs H with the limit increases from May 2019 onwards and therefore recommended that the complaint be partially upheld. Mrs H didn’t disagree with the assessment. But Aqua disagreed and asked for an ombudsman to look at the complaint.

As the parties are in agreement over the decisions to initially provide the credit card and the first limit increase, this decision is only considering whether Aqua acted fairly and reasonably from May 2019 onwards.

## **My findings**

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

We’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. I’ve considered all of this when deciding Mrs H’s complaint.

Having carefully considered everything, I’m upholding Mrs H’s complaint. I’d like to explain the reasons for my conclusion.

Aqua needed to make sure that it didn’t lend irresponsibly. In practice, what this means is Aqua needed to carry out proportionate checks to be able to understand whether Mrs H could afford to repay before advancing any credit.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

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.

For the purpose of what is left for me to decide on this complaint, Mrs H was provided with a credit card limit increase to £950. And as this was a revolving credit facility, Aqua was required to understand whether Mrs H could repay £950 within a reasonable period of time.

Aqua says it decided to increase Mrs H's credit limit because of the usage on her account as well as what it saw on credit searches. On the other hand, Mrs H says that this card was unaffordable for her and caused her debt. I've carefully thought about what Mrs H and Aqua have said.

Aqua may argue that the relatively low monthly payments required to repay a credit limit of £950 meant that a light touch assessment of affordability was proportionate here. But I'm mindful of what Aqua ought to have seen after it increased Mrs H's credit limit to £450 in January 2019. The information Aqua has provided shows that Mrs H was over her credit limit in two of the three months between the January 2019 limit increase and further increase being offered. Furthermore, Mrs H was at the upper end of her limit in the month she wasn't over the limit too.

Aqua says that it didn't consider this problematic as Mrs H wasn't over the limit for three months in a row. It's not clear why it has referred to this three-month period – although it might be in relation to when a lender typically begins to think about defaulting an account. However, while this might have been sufficient in relation to it not taking action to terminate the account, I still consider this pattern of usage was problematic when considering the decision to more than double a credit limit Mrs H was clearly having difficulty with.

I'm also mindful that this took place against a backdrop of Aqua having information which showed that Mrs H's indebtedness was also increasing elsewhere. I say this because the information Aqua has provided shows that Mrs H's overall indebtedness, at the time this limit increase was applied, grew by more than 150% from what it was just before the limit had been increased in January 2019.

For the avoidance of doubt, I want to be clear in saying that I don't think that Aqua should automatically have considered defaulting Mrs H's credit card simply because she had been over her limit. But given Mrs H was an existing Aqua customer and it had access to all of the information that I have referred to, I would have expected it to have taken this into account.

I'm therefore satisfied that Aqua ought reasonably to have realised that Mrs H was unlikely to be able to sustainably repay the additional amount she could owe as a result of a limit increase to £950, within a reasonable period of time. I'm also satisfied that Aqua ought reasonably to have realised that it would be increasing Mrs H's indebtedness in a way that was likely to be unsustainable or otherwise harmful for her.

Overall and having considered all of the information provided, I'm satisfied that Aqua shouldn't have provided a credit limit increase to Mrs H in May 2019. As I've not seen anything to indicate that Mrs H's overall position improved after this – indeed the information Aqua has supplied shows that her indebtedness elsewhere increased as well as her balances with Aqua - I'm satisfied that it shouldn't have provided the later limit increases either. I'm therefore upholding Mrs H's complaint.

Mrs H ended up paying interest, fees and charges as a result of Aqua providing her with limit increases it shouldn't have provided her with. So I'm satisfied that Mrs H lost out because of what Aqua did wrong and that it should put things right.

In reaching my conclusions I've also considered whether the lending relationship between Aqua and Mrs H might have been unfair to Mrs H under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct below results in fair compensation for Mrs H given the overall circumstances of her complaint. I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

### **Fair compensation – what Aqua needs to do to put things right for Mrs H**

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Mrs H's complaint for Aqua to put things right by:

- reworking Mrs H's account to ensure that from May 2019 interest is only charged on the first £450 outstanding - to reflect the fact that the second credit limit increase as well as all the subsequent ones should not have been provided. All late payment and over limit fees should also be removed;
- if an outstanding balance remains on Mrs H's account once all adjustments have been made Aqua should contact Mrs H to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mrs H's credit file, it should backdate this to when it shouldn't have provided the additional credit in question in the first place;
- if the effect of all adjustments results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mrs H along with 8% simple interest† on the overpayments from the date they were made until the date of settlement. If no outstanding balance remains on Mrs H account after all adjustments have been made, then Aqua should remove any adverse information it (not any third party) has recorded from Mrs H's credit file.

† HM Revenue & Customs requires Aqua to take off tax from this interest. Aqua must give Mrs H a certificate showing how much tax it has taken off if she asks for one.

### **My final decision**

For the reasons I've explained, I'm upholding Mrs H's complaint NewDay Ltd (trading as "Aqua") should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 16 December 2024.

Jeshen Narayanan  
**Ombudsman**