

The complaint

Miss M complains NewDay Ltd trading as Aqua irresponsibly lent to her.

Miss M is represented by a solicitors firm in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Miss M herself.

What happened

Miss M was approved for an Aqua credit card in April 2018 with a £450 credit limit. I have detailed the credit limit changes below:

August 2018	£450 to £1,350
January 2019	£1,350 to £2,750
May 2019	£2,750 to £4,750

Miss M says that Aqua irresponsibly lent to her, and she made a complaint to them. Aqua did not uphold Miss M's complaint. Miss M brought her complaint to our service.

Our investigator upheld Miss M's complaint. She said the checks Aqua completed showed that Miss M declared a gross annual income of £1,200 so further checks should have been completed. Our investigator said that further checks would have shown the lending would not be affordable or sustainable for Miss M. As Aqua did not respond to our investigator's view of the complaint, the complaint was passed to me to make a decision on it.

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 Miss M, 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 card - initial credit limit (£450)

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

The information shows that Miss M had declared a gross annual income of £1,200. She had unsecured active debt showing as around £5,355. So this was more than quadruple the gross annual income that she had declared.

Although the data showed Miss M had no defaults or public records – such as a County Court Judgement (CCJ) showing on her credit file, and she had no accounts in arrears at the time the application was approved, I'm persuaded that Aqua should have completed further checks to ensure the initial lending was affordable and sustainable for Miss M, based on the debt to income ratio being nearly 450% of her declared gross annual income, and the new credit limit would be more than a third of her declared gross annual income.

There's no set way of how NewDay should have made further proportionate checks. One of the things they could have done was to contact Miss M to get an understanding of why her debt was substantially higher than her income, and to verify if the £1,200 gross annual income was actually her gross monthly income. 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.

Miss M has provided her bank statements for the three months leading up to the approval of the account, which Aqua could have requested as part of a proportionate check. Miss M's bank statements show that she received just over £1,000 of monthly income. So it does appear she made a genuine oversight in completing her application. But that's not all the statements show. Miss M's bank statements show that she is consistently overdrawn. When her salary credits her account, she is overdrawn within less than a week of her salary crediting her account in each month.

It also appears that Miss M has more outgoings than income, so even a modest credit limit was likely to be unaffordable and unsustainable for Miss M. So if Aqua had carried out further checks for the reason I've given earlier in this section, then I'm persuaded that they wouldn't have approved the application for the Aqua account as the repayments would not be sustainable and affordable for Miss M. And by doing so, I'm persuaded they made an unfair lending decision here.

Further credit limit increases

If Miss M's application for the Aqua account did not happen, then it's probable that none of the further lending decisions would have happened after this either. So I think there is an argument for saying that Miss M's complaint about the subsequent lending decisions should be upheld without making a finding on reasonable and proportionate checks. After all, if matters had played out as the evidence suggests they should have done in April 2018, I'm not persuaded that Aqua would've added to the credit.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed at the end of this decision results in fair compensation for Miss M 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.

Putting things right

Our investigator has suggested that Aqua takes the actions detailed below, which I think is reasonable in the circumstances.

My final decision

I uphold this complaint. NewDay Ltd trading as Aqua should take the following actions:

Aqua should arrange to transfer any debt back to themselves if it has been passed to a debt recovery agent or liaise with them to ensure the redress set out below is carried out

promptly;

End the agreement and rework the account removing all interest, fees, charges, and insurances (not already refunded) that have been applied;

If the rework results in a credit balance, this should be refunded to Miss M 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 regarding this account from her credit file;

Or, if after the rework there is still an outstanding balance, Aqua should arrange an affordable repayment plan with Miss M for the remaining amount. Once Miss M has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

*If Aqua consider that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss M how much they've taken off. They should also give Miss M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 2 January 2025.

Gregory Sloanes
Ombudsman