

The complaint

Ms C complains that NewDay Ltd trading as Aqua irresponsibly lent to her.

What happened

Ms C was approved for an Aqua credit card in April 2022 with a £1,200 credit limit. Ms C says this was irresponsibly lent to her. Ms C made a complaint to Aqua, who did not uphold her complaint. Ms C brought her complaint to our service.

Our investigator upheld Ms C's complaint. She said the checks Aqua completed prior to the account being opened weren't proportionate. She said proportionate checks would have shown the repayments wouldn't have been affordable and sustainable for Ms C.

Aqua asked for an ombudsman to review the complaint. They said they assess the customers affordability and creditworthiness using Current Account Turnover (CATO) data, credit report data from Credit Reference Agencies (CRA's), and customer-declared costs combined with in-house affordability models. They disagreed their checks weren't proportionate.

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 the credit available to Ms C, 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.

Aqua said they looked at information provided by CRA's and information that Ms C had provided before approving her application. The information shows that Ms C had declared a gross annual income of £14,000. The data showed Ms C had no 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. But the data showed Ms C had previously defaulted on a credit agreement 49 months prior to her application, and this was only for £100, which could suggest Ms C may not be able to manage even small amounts of credit.

It may help to explain here that, while information like a default on someone's credit file may often mean they're not granted further credit – it doesn't automatically mean that a lender won't offer borrowing. So I've looked at what else Aqua's information showed them, to see if they made a fair lending decision to accept Ms C's application.

Ms C had unsecured active debt showing as around £4,300, which was nearly a third of her gross annual income. And the new credit limit was £1,200 which was nearly 10% of her

gross annual income that she declared. So with this added to the existing debt of £4,300, this would be a sizeable debt to income ratio.

So even though Aqua had verified Ms C's income with CATO which would have shown them the income would be as Ms C declared, and used affordability models, based on the amount of debt Ms C had relative to her modest income, and her previous struggles defaulting on just £100, then I'm persuaded that this ought to have resulted in Aqua completing further checks to ensure the £1,200 credit limit would be affordable and sustainable for Ms C.

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 Ms C to get an understanding of why her debt was a large part of her annual income (and would be much higher after the approval of the Aqua credit card). 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.

Ms C 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. Ms C's bank statements show that her income is from benefits including child tax credits, and child benefits, so it would be expected that this money would be used towards her child/children.

Ms C's bank statements appear to show that she borrows money from an individual to meet her outgoings and she does pay some of the money back as it includes "*repayment*" in the transaction. But I note that she doesn't repay all of the money back which credits her account.

Ms C's statements also show £30 being paid to a credit union each week. I am mindful that this could be to a savings account, albeit this would seem unlikely based on the statements. So I asked Ms C what this payment was for. Ms C confirmed that the £30 a week was to repay a credit union loan.

Ms C's statements appear to show more outgoings for credit commitments than what Aqua had calculated for Ms C. While they would be entitled to rely on information from a CRA about Ms C's credit outgoings, if they had made further checks, which would have been proportionate in this instance based on the reasons I've given, then they would have been aware that Ms C had less disposable income than they thought she had.

Ms C's statements also show that she had taken out a short term loan which credited her account on 3 February 2022. Based on how long a credit file can take to update, there's also the possibility that the loan repayments for this loan weren't also taken into account in Aqua's affordability calculations. Again, I couldn't hold Aqua responsible for not being aware of this if it didn't show up in the data from the CRA, but if they had completed further checks, which would have been proportionate in this instance, then they would have known about this loan which also shows Ms C was reliant on borrowing to meet her outgoings.

In addition to this, Ms C's bank statement shows that for the full three months she is overdrawn. So based on all of these factors, if Aqua had completed further checks, which would have been proportionate based on the reasons I documented earlier in this decision, it would have been apparent to Aqua that the lending would not be affordable and sustainable for Ms C. So I'm not persuaded that Aqua made a fair lending decision here.

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 Ms C 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 Ms C 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 Ms C for the remaining amount. Once Ms C 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 Ms C how much they've taken off. They should also give Ms C 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 Ms C to accept or reject my decision before 10 January 2025.

Gregory Sloanes
Ombudsman