

The complaint

Miss C complains that NewDay Ltd trading as Aqua lent irresponsibly when it approved her credit card application and later increased the credit limit.

What happened

Miss C applied for a credit card with Aqua in May 2020. In her application, Miss C said she was employed with an annual income of £12,000 that Aqua calculated left her with around £900 a month. Aqua carried out a credit search and says Miss C was making monthly repayments of £223 to her existing creditors. No recent missed payments or adverse credit was found on Miss C's credit file. Aqua applied a rent figure of £212.35 and cost of living estimate of £437.33 to Miss C's application. When all Miss C's regular outgoings were taken into account, Aqua found she had an estimated disposable income of £13.52 a month. Aqua approved Miss C's application with a credit limit of £900.

Aqua went on to increase the credit limit to £1,900 in January 2021, £3,400 in May 2021, £4,650 in September 2021 and £6,150 in June 2022.

Earlier this year, representatives acting on Miss C's behalf complained that Aqua lent irresponsibly and it issued a final response on 3 May 2024. Aqua said it had carried out the relevant lending checks before deciding to approve Miss C's credit card application. Aqua didn't uphold Miss C's complaint.

An investigator at this service looked at Miss C's complaint and upheld it. They thought that because Aqua found Miss C's estimated disposable income was very low at £13.52 a month it should've declined her application and not approved a credit card. The investigator asked Aqua to refund all interest, fees and charges applied to Miss C's credit card balances from the date the account was opened onwards.

Miss C's representatives confirmed she accepted. Despite chasing Aqua for a response, it didn't come back to the investigator to say whether it accepted or not. As no response was received from Aqua, Miss C's complaint has been passed to me to make a decision.

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 lend or increasing the credit limit, the rules say Aqua had to complete reasonable and proportionate checks to ensure Miss C could afford to repay the debt in a sustainable way. These affordability checks needed to be focused on the borrower's circumstances. The nature of what's considered reasonable and proportionate will vary depending on various factors like:

- The amount of credit;
- The total sum repayable and the size of regular repayments;
- The duration of the agreement;

- The costs of the credit; and
- The consumer's individual circumstances.

That means there's no set list of checks a lender must complete. But lenders are required to consider the above points when deciding what's reasonable and proportionate. Lenders may choose to verify a borrower's income or obtain a more detailed picture of their circumstances by reviewing bank statements for example. More information about how we consider irresponsible lending complaints can be found on our website.

In this case, Aqua looked at Miss C's income and used a net figure of £900 a month. Aqua also made estimates for Miss C's rent and general living expenses. And Aqua found Miss C was making monthly repayments of around £223 to her existing creditors. When Aqua applied its lending criteria, it found Miss C only had an estimated disposable income of £13.52 a month after meeting her existing commitments. In my view, that figure is substantially below the amount Miss C would've needed to be able to sustainably afford repayments to a new credit card with a limit of £900.

If Miss C were to borrow to her credit limit, a payment of 5% of that balance would be £45 a month, which is substantially more than the estimated disposable income figure Aqua found when looking at her application. So it should've been clear to Aqua that approving the credit card would likely put an unreasonable level of strain on Miss C's finances and cause her some financial difficulties. As a result of the information I've seen, I'm upholding Miss C's complaint from the point her application was approved by Aqua in May 2020.

I've thought about the subsequent credit limit increases in stages to £6,150 by June 2022. It follows that if I think the original decision to approve Miss C's application was irresponsible, I think the same about the credit limit increases Aqua went on to approve until it reached £6,150 in June 2022. I note Aqua didn't respond to the investigator's view of Miss C's complaint with any counter points. And I haven't seen evidence that persuades me Aqua lent responsibly when it increased Miss C's credit limit in stages to £6,150 by June 2022.

As I haven't been persuaded Aqua lent responsibly, I'm upholding Miss C's complaint and directing it to refund all interest, fees and charges applied from the date the account was opened onwards.

I've considered whether the business acted unfairly or unreasonably in any other way including whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Miss 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.

My final decision

My decision is that I uphold Miss C's complaint and direct NewDay Ltd trading as Aqua to settle as follows:

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 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 Miss C's credit file.
- Or, if after the rework there is still an outstanding balance, Aqua should arrange an affordable repayment plan with Miss C for the remaining amount. Once Miss C has

cleared the balance, any adverse information in relation to the account should be removed from their credit file.

*HM Revenue & Customs requires Aqua to deduct tax from any award of interest. It must give Miss C a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 15 January 2025.

Marco Manente
Ombudsman