

The complaint

Mrs W complains that NewDay Ltd trading as Aqua lent irresponsibly when it approved two credit card applications she made and increased the credit limit on one of the accounts.

What happened

Mrs W applied for a credit card with Aqua in May 2014. In her application, Mrs W said she was employed with an annual income of £5,600. Aqua calculated that meant Mrs W was left with £452.67 a month after deductions were made. Aqua carried out a credit search and says it took Mrs W's existing debts into account. Aqua applied a cost of living figure of £386.64 to Mrs W's application and says that left her with around £66 a month as an estimated disposable income. No credit commitments or housing costs were applied to the application. Aqua approved a credit card with a limit of £250.

Mrs W used the credit card until around October 2015 when she repaid the outstanding balance. Mrs W incurred various overlimit and late fees during that time.

In November 2017 Mrs W applied for another credit card with Aqua. In this application, Mrs W gave an annual income of £1,400. Aqua carried out a credit search and found Mrs W owed around £2,500 to other lenders with monthly repayments of around £187. Aqua also found recent arrears recorded. Aqua's lending data doesn't show it considered Mrs W's outgoings for items like housing costs or general cost of living expenses. Aqua approved Mrs W's application and issued a credit card with a limit of £900.

Aqua increased the credit limit to £2,400 in March 2019 and £3,650 in August 2019.

Earlier this year, representatives acting on Mrs W's behalf complained that Aqua lent irresponsibly when it approved both her credit card applications and increased the credit limit. Aqua issued a final response on 24 June 2024 and partially upheld Mrs W's complaint. Aqua didn't agree it lent irresponsibly by approving Mrs W's credit card application with a limit of £250 in May 2014. But Aqua agreed it shouldn't have approved the application Mrs W made in November 2017 or increased her credit limit in stages to £3,650. Aqua agreed to refund all interest, fees and charges applied to the credit card from inception.

Mrs W's case was considered by an investigator at this service. The investigator upheld Mrs W's complaint about the first credit card she applied for in May 2014 and asked Aqua to refund the interest, fees and charges applied from inception. Despite the investigator chasing Aqua, it didn't respond. So Mrs W'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 Mrs W 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.

Aqua's supplied the lending data it used when it looked at Mrs W's application in May 2014. I can see that after taking Mrs W's income and general living expenses, Aqua said she was left with £66 a month. I note no allowance was made for Mrs W's existing debts or housing costs in the lending data provided. So it's likely Mrs W's outgoings were substantially higher. Aqua's assessment found Mrs W only had an estimated disposable income of £66 a month. In my view, that figure was very low and ought to have led Aqua to decline Mrs W's credit card application on the basis it would be very unlikely she'd be able to afford any unexpected costs that may've arisen. As I'm satisfied Aqua lent irresponsibly when it approved Mrs W's credit card application with a limit of £250 I'm upholding her complaint and directing it to refund all interest, fees and charges applied to the balance.

Aqua has already upheld Mrs W's complaint about the credit card she opened in November 2017 and agreed a settlement that refunds all interest, fees and charges applied from inception, so I'm not going to comment further.

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 below results in fair compensation for Mrs W 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 Mrs W'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 Mrs W along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding this account from Mrs W's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mrs W for the remaining amount. Once Mrs W has cleared the balance, any adverse information in relation to the account should be removed from their credit file.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mrs W 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 Mrs W to accept or reject my decision before 15 January 2025.

Marco Manente
Ombudsman