

## **The complaint**

Mrs G complains that NewDay Ltd trading as Aqua irresponsibly lent to her.

Mrs G is represented by a claims management company in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Mrs G herself.

## **What happened**

Mrs G was approved for an Aqua credit card in June 2019 with a £300 credit limit. This was increased to £1,300 in November 2019, and the credit limit was increased to £3,050 in January 2020. Mrs G says Aqua irresponsibly lent to her. Mrs G made a complaint to Aqua, who did not uphold her complaint. Mrs G brought her complaint to our service.

Our investigator upheld Mrs G'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 Mrs G. The complaint was passed to me to make a decision on the complaint.

## **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 Mrs G, 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.

### *Initial credit limit - £300*

I've looked at what checks Aqua said they completed prior to accepting Mrs G's application. I'll address the credit limit increases later on. Aqua said they looked at information provided by Credit Reference Agencies (CRA's) and information that Mrs G had provided before approving her application. The information shows that Mrs G had declared a gross annual income of £26,000. The data showed Mrs G had no public records – such as a County Court Judgement (CCJ) or any defaults showing on her credit file, and she had no accounts in arrears at the time the application was approved.

But the data showed Mrs G had been in arrears on her mortgage within the last six months. Aqua's data showed that Mrs G was heavily indebted as her debt to income ratio was showing as 107.65% of her declared gross annual income, which would equate to around £27,989 of unsecured debt. So based on the level of debt Mrs G already had, then I'm

persuaded that this ought to have resulted in Aqua completing further checks to ensure the £300 credit limit would be affordable and sustainable for Mrs G.

There's no set way of how Aqua should have made further proportionate checks. One of the things they could have done was to contact Mrs G to get an understanding of why her debt was more than her annual income (and would be 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.

Mrs G 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. Mrs G's bank statements show that while the bank account is a joint account, the account each month becomes overdrawn. There is a £300 overdraft limit, which Mrs G often approaches this overdraft limit.

Mrs G's statements show that she doesn't have any affordability to even sustainably afford a £300 credit limit as prior to her salary crediting the account, she usually has utilised nearly all of her arranged overdraft limit. So I'm not persuaded she could have afforded repayments for even a small credit limit at the time. So I'm not persuaded that Aqua made a fair lending decision here. And this would have become apparent to Aqua if they had completed further proportionate checks based on what their data showed.

#### *Further credit limit increases*

If Mrs G'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 Mrs G'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 June 2019, 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 Mrs G 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. But if they do not own the debt anymore, then they should also 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.

#### **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 Mrs G 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 Mrs G for the remaining amount. Once Mrs G 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 Mrs G how much they've taken off. They should also give Mrs G 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 Mrs G to accept or reject my decision before 31 January 2025.

Gregory Sloanes  
**Ombudsman**