

The complaint

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

Mrs O 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 Mrs O herself.

What happened

Mrs O was approved for an Aqua credit card in January 2018 with a £300 credit limit. I have detailed the credit limit changes below:

July 2018	£300 to £900
May 2019	£900 to £1,900
October 2019	£1,900 to £3,100
April 2020	£3,100 to £3,700
July 2022	£3,700 to £250
September 2022	£250 to £3,700
November 2023	£3,700 to £4,250

Mrs O says Aqua irresponsibly lent to her. Mrs O made a complaint to Aqua, who partially upheld her complaint from the September 2022 lending decision. Mrs O brought her complaint to our service.

Our investigator partially upheld Mrs O's complaint. She said Aqua should not have increased the credit limit past £1,900. As Aqua did not respond to our investigator's view of the complaint, 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 O, 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 O'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 O had provided before approving her application. The information shows that Mrs O had declared a gross annual income of £24,000. The data showed Mrs O had no public records – such as a County Court

Judgement (CCJ) showing on her credit file, but she had a default registered on her credit file only ten months prior to her application.

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 Mrs O's application.

The data showed that Mrs O had a debt to income ratio of 59.1%, so Mrs O had unsecured debt of around £14,184. But Aqua were able to get information about Mrs O's monthly credit commitments. So they factored this into her affordability figures, and they also used modelling (which is an industry standard way of calculating expenditure), to calculate Mrs O's living costs and housing costs, and they determined Mrs O had sufficient disposable income in order to meet repayments in a sustainable manner for a credit limit of £300.

The checks also showed that despite Mrs O's fairly recent default, none of her active accounts had been in arrears in the six months prior to her application. So Mrs O didn't show signs of any arrears leading up to her application.

So I'm persuaded that the checks Aqua completed prior to approving Mrs O's application for the Aqua account were proportionate, and they made a fair lending decision to approve her account.

July 2018 credit limit increase - £300 to £900

I've looked at the information available to Aqua when they increased Mrs O's credit limit to £900. While transactions which attract a cash advance fee could, in some instances indicate financial difficulties, the data shows there was only one transaction which attracted a cash advance fee, and this is a legitimate use of the card. But Mrs O had also been late with one of her repayments, which could indicate financial difficulties.

But on this occasion, it appears as if this was an oversight on Mrs O's behalf. I say this as Mrs O did make a repayment in the month she incurred the charge. Prior to the credit limit increase to £900, she was not in any arrears on any of her active accounts, so Mrs O had brought her account up to date shortly after the missed repayment.

Mrs O's unsecured debt was similar to her debt level when her account was approved, so it doesn't appear she kept taking on more debt. So I'm persuaded that the checks Aqua completed here were proportionate, and they made a fair lending decision to increase the credit limit to £900 on the account.

May 2019 credit limit increase - £900 to £1,900

I've looked at the information available to Aqua when they increased Mrs O's credit limit to £1,900. Since the previous credit limit, Mrs O had incurred cash advance fees more frequently, which could indicate financial difficulty. But the data shows other signs of financial difficulty, as Mrs O had been late with another repayment, and she had exceeded her credit limit in two statement periods since the last credit limit increase.

Mrs O had opened three new accounts since the last credit limit increase, and her unsecured debt just prior to the credit limit increase to £1,900 had increased by over 20%. So based on all of these factors, I'm persuaded that Aqua should have carried out further checks to ensure that Mrs O could sustainably afford repayments for a £1,900 credit limit.

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 O to get an understanding of why her debt was much higher than when the credit limit was last increased, and to see why she was late with a repayment, exceeded her credit limit, and why she kept incurring cash advance fees. 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 O has provided her bank statements for the three months leading up to the £1,900 credit limit increase. Mrs O's bank statements show that although she was often overdrawn, her income was slightly more than Aqua had estimated for her. The account also showed income from a third party with a reference of "rent", so it would appear that Mrs O was not responsible for paying all of this outgoing.

Mrs O had also made recent repayments to her Aqua account which were greater than her minimum repayments, which may indicate she did have the disposable income to sustainably afford repayments for a higher credit limit.

So I'm persuaded that if Aqua would have requested Mrs O's bank statements as part of a proportionate check prior to increasing the credit limit to £1,900, then they still would have increased her credit limit. I'm persuaded that a fair lending decision was made here.

October 2019 credit limit increase - £1,900 to £3,100

I've looked at the information available to Aqua when they increased Mrs O's credit limit to £3,100. Aqua's own affordability data for Mrs O appears to show that when the affordability checks were carried out she would only have £15 disposable income, which even a slight increase in a bill could result in Mrs O not being able to sustainably afford repayments to her increased credit limit, never mind an unexpected emergency. So I'm not persuaded Aqua's checks were proportionate here.

There is an argument to say that Aqua shouldn't have increased the credit limit based on this data alone. But as Mrs O's bank statements showed previously that she earned more income than what Aqua had estimated for her, and as Mrs O has provided her bank statements leading up to the £3,100 credit limit increase, I've looked to see what further checks would have shown, to see if Aqua made a fair lending decision to increase Mrs O's credit limit to £3,100.

Mrs O's bank statements show concerning signs. I say this because there are signs of financial difficulty and a reliance on borrowing. On 9 August 2019 there is a credit for £2,298.62 from a third party lender. But by 27 August 2019 she has a returned direct debit for £128.98. I note that the returned direct debit was a direct debit for a third party bank.

And in September 2019, just prior to the credit limit increase, there is a £10,000 credit into Mrs O's bank account from a third party lender. I acknowledge that it's probable that these loans may not have showed yet on the checks from the CRA's as it will take a credit file 4-6 weeks to update typically, but at least the August 2019 loan would have been showing if Aqua had completed further checks based on the £15 disposable income they calculated Mrs O would have.

So if Aqua would have completed further checks based on what their checks showed, then they would have seen Mrs O would have more debt expenditure than they calculated, and they would have seen her financial difficulties, such as the returned direct debit. Mrs O's statements also show signs of her needing to borrow from unidentified third parties (it could be from friends/family). Mrs O's statements show that from her income and her expenditure, she couldn't sustainably afford an increase in her credit limit. So I'm not persuaded that Aqua made a fair lending decision here.

Further credit limit increases

If Mrs O'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 O'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 October 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 O 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. I have made a slight amendment to the date in the section below as the date our investigator suggested was when the credit limit increase was offered. But I'm persuaded it is fairer to use the date when the credit limit was actually increased instead.

In addition to this, if Aqua 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 in part. 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 to balances above £1,900 after 21 October 2019;

If the rework results in a credit balance, this should be refunded to Mrs O 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 Mrs O's credit file recorded after 21 October 2019;

Or, if after the rework the outstanding balance still exceeds £1,900, Aqua should arrange an affordable repayment plan with Mrs O for the remaining amount. Once Mrs O has cleared the balance, any adverse information recorded after 21 October 2019 in relation to the account should be removed from her credit file.

**If Aqua considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mrs O how much they've taken off. They should also give Mrs O 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 O to accept or reject my decision before 4 February 2025.

Gregory Sloanes
Ombudsman