

## The complaint

Miss M complains NewDay Ltd trading as Aqua irresponsibly lent to her.

Miss M 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 Miss M herself.

## What happened

Miss M was approved for an Aqua credit card in September 2020 with a £1,200 credit limit. I have detailed the credit limit changes below:

March 2022	£1,200 to £2,700
July 2022	£2,700 to £3,950
October 2022	£3,950 to £4,950
June 2023	£4,950 to £5,550
December 2023	£5,550 to £5,950

Miss M says that Aqua irresponsibly lent to her, and she made a complaint to them. Aqua did not uphold Miss M's complaint. Miss M brought her complaint to our service.

Our investigator partially upheld Miss M's complaint. She said the checks Aqua completed were fair apart from the last lending decision where Aqua's own data suggested the increase to £5,950 should not have been approved. As Aqua did not respond to our investigator's view of the complaint, the complaint was passed to me to make a decision on it.

## 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 Miss M, 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.

### *Acceptance for the Aqua card - initial credit limit (£1,200)*

I've looked at what checks Aqua said they did when initially approving Miss M'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 Miss M had provided before approving her application.

The information shows that Miss M had declared a gross annual income of £20,000. She had unsecured active debt showing as around £1,870. But the data showed that the CRA reported that Miss M had a public record, such as a County Court Judgement (CCJ) and a default registered on her credit file 58 months prior to the 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 – they don't automatically mean that a lender won't offer borrowing. So I've looked at what other checks Aqua made to see if they made a fair lending decision.

The data showed that Miss M was not in arrears on any of her active accounts, and she hadn't been for at least the six months prior to her application. The new credit limit would be 6% of her declared annual gross income, so I'm not persuaded that this would be excessive even when it was combined with Miss M's other unsecured debt.

So I'm persuaded that the checks Aqua made prior to approving Miss M's application were proportionate, and they made a fair lending decision to approve her application.

#### *March 2022 credit limit increase - £1,200 to £2,700*

I've looked at what checks Aqua made before approving this lending decision. The CRA's Aqua used reported no new adverse information from Miss M's credit file. Aqua would have also been able to see how Miss M used her account since account opening.

Miss M incurred no late, overlimit fees or cash advance fees, and she often made repayments which were a lot higher than her minimum payment, which could suggest she had the affordability to be able to sustain a higher credit limit. Her active unsecured debt was similar to the level it was at the last lending decision.

So I'm satisfied that the checks Aqua carried out prior to this lending decision were proportionate, and they made a fair lending decision to increase the credit limit on her account here.

#### *July 2022 credit limit increase - £2,700 to £3,950*

I've looked at what checks Aqua made before approving this lending decision. The CRA's Aqua used again reported no new adverse information from Miss M's credit file. Aqua would have also been able to see how Miss M used her account since their last lending decision.

Miss M again incurred no late, overlimit fees or cash advance fees, and on one occasion she made total repayments which were a lot higher than her minimum payment, which could suggest she had the affordability to be able to sustain a higher credit limit.

Miss M's total active unsecured debt had slightly increased since the last credit limit increase, however, I note that she was using around 11% of her available revolving credit (such as credit/store cards and overdrafts). So Miss M did not appear to be reliant on credit at this time.

So I'm satisfied that the checks Aqua carried out prior to this lending decision were proportionate, and they made a fair lending decision to increase the credit limit on her account here.

#### *October 2022 credit limit increase - £3,950 to £4,950*

I've looked at what checks Aqua made before approving this lending decision. The CRA's Aqua used again reported no new adverse information from Miss M's credit file. Aqua would have also been able to see how Miss M used her account since their last lending decision.

Miss M again incurred no late, overlimit fees or cash advance fees. Miss M's total active unsecured debt had increased since the last credit limit increase, and it was showing as being around £5,456, which would be around 27% of her originally declared gross annual income. She was using around 47% of her available revolving credit (such as any credit/store cards or overdrafts). So Miss M did not appear to be overly reliant on credit at this time.

So I'm satisfied that the checks Aqua carried out prior to this lending decision were proportionate, and they made a fair lending decision to increase the credit limit on her account here.

#### *June 2023 credit limit increase - £4,950 to £5,500*

I've looked at what checks Aqua made before approving this lending decision. The CRA's Aqua used again reported no new adverse information from Miss M's credit file. There were no CCJ's, or defaults being reported on her credit file either. Aqua would have also been able to see how Miss M used her account since their last lending decision.

Miss M did exceed her credit limit and she incurred an overlimit fee. So this could be a sign of financial difficulty, or it could have just been a genuine oversight from Miss M. It does appear to be a genuine oversight from Miss M. I say this because this was the only time since the account opening that Miss M exceeded her credit limit, and she made her repayment in the same month. She did not exceed her credit limit again prior to the new lending decision, and this occurred over six months prior to the new lending decision. So it does appear to have been a genuine error.

Miss M incurred no late or cash advance fees, and in two statement periods she made repayments to her accounts which were substantially higher than her minimum payment, which could suggest she had the affordability to be able to sustain a higher credit limit.

Miss M's total active unsecured debt had increased by quite a lot since the last credit limit increase, as it was showing as being around £15,596 since the last credit limit increase. So this could indicate Miss M was reliant on credit. So I've looked closer into the breakdown of her unsecured debt.

At the last credit limit increase, Miss M had revolving unsecured debt balances of £4,616, and non-revolving unsecured debt (such as personal loans) balances of £840. But when Aqua completed the checks for this lending decision, Miss M had revolving balances of £5,528 and non-revolving balances of £10,068.

So it would appear that Miss M had been approved for a personal loan elsewhere between the last lending decision and this lending decision. Her credit card balances were £912 higher, which considering the last credit limit increase was for £1,000, then I don't find this to be unusual.

Aqua had completed an affordability assessment prior to this lending decision. The expenditure was calculated using information from a CRA for Miss M's credit commitments, and modelling (which is an industry standard acceptable way of calculating expenditure). So even though Miss M had been approved for a large amount of lending since the last credit limit increase, Aqua were able to include the loan repayments into the affordability figures.

And they concluded that even with the higher borrowings, Miss M would be able to afford the credit limit increase.

The checks showed that despite Miss M's new personal loan, her credit card usage was showing as 38%. So it didn't appear that Miss M was reliant on the available credit on her credit cards.

So I'm satisfied that the checks Aqua carried out prior to this lending decision were proportionate, and they made a fair lending decision to increase the credit limit on her account here.

#### *December 2023 credit limit increase - £5,550 to £5,950*

Aqua carried out another affordability assessment prior to this credit limit increase. But I'm not persuaded that they made a fair lending decision here. I say this because Aqua have sent us their processes regarding affordability. There's no evidence that Aqua were able to use Current Account Turnover (CATO) with this lending decision, which they had been able to use with previous lending decisions, as there is a non-applicable status next to Miss M's assessed income.

So based on Aqua's processes, they would revert to an affordability score that they had calculated for Miss M. Based on Aqua's processes, they show they would decline a credit limit increase when the affordability score is under a certain percentage. Miss M's affordability percentage was less than the percentage they would decline a credit limit increase for. So based on this, Aqua should not have approved the last credit limit increase, so I'm not persuaded they 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 Miss M 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 I also think it would be fair for Aqua to 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. I have also made a slight amendment to the date that our investigator suggested, as I'm persuaded it is fairer to use the date of the actual credit limit change for the last lending decision.

### **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 £5,550 after 29 December 2023;

If the rework results in a credit balance, this should be refunded to Miss M 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 M's credit file recorded after 29 December 2023;

Or, if after the rework the outstanding balance still exceeds £5,550, Aqua should arrange an affordable repayment plan with Miss M for the remaining amount. Once Miss M has cleared the balance, any adverse information recorded after 29 December 2023 in relation to the account should be removed from her credit file.

*\*If NewDay considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss M how much they've taken off. They should also give Miss M 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 Miss M to accept or reject my decision before 14 February 2025.

Gregory Sloanes  
**Ombudsman**