

Complaint

Mrs D has complained that NewDay Ltd (trading as “Aqua”) irresponsibly provided a credit card as well and the subsequent credit limit increases to her. She says that they were unaffordable and became unmanageable.

Background

Aqua initially provided Mrs D with a credit card, which had a limit of £250, in October 2016. The limit was subsequently increased to £600 in November 2017, £1,500.00 in May 2018, £2,500.00 in October 2018 and finally £4,000.00 in April 2019.

One of our investigators reviewed what Mrs D and Aqua had told us. And she hadn't seen enough to be persuaded that proportionate checks would have shown Aqua that it shouldn't have provided the credit card or subsequent credit limit increases. So she didn't recommend that the complaint be upheld.

Mrs D disagreed and asked for an ombudsman to look at her complaint.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mrs D's complaint.

Having carefully considered everything, I've not been persuaded to uphold Mrs D's complaint. I'd like to explain why in a little more detail.

I think that it would be helpful for me to start by setting out that we consider what a firm did to check whether any repayments to credit were affordable (asking it to evidence what it did) and then determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments to an agreement was affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

Aqua says it initially agreed to Mrs D's application after it obtained information on her income and carried out a credit search. And the information obtained indicated that Mrs D would be able to make the low monthly repayments due for this credit card. Due to Mrs D's account being relatively well managed and the information on the credit checks it carried out, Mrs D was then subsequently offered her credit limit increases.

On the other hand Mrs D says that the credit limit became unmanageable and so she shouldn't have been lent to.

I've considered what the parties have said.

What's important to note is that Mrs D was provided with a revolving credit facility rather than a loan. This means that to start with Aqua was required to understand whether a credit limit of £250 could be repaid within a reasonable period of time, rather than all in one go. And a credit limit of £250 required low monthly payments in order to clear the full amount owed within a reasonable period of time.

Aqua's credit search appears to show that Mrs D didn't have any significant adverse information recorded against her at the time either. For example, I can't see any defaulted accounts or county court judgments recorded. That said, I can also see that Aqua appears to have recorded that Mrs D had an annual income of £175,000.00.

In my view, Aqua ought reasonably to have questioned the accuracy of this statement – particularly in light of the customer demographic it serves and the interest rate on the card applied for. So I'm not persuaded that the estimated monthly disposable income figure Aqua arrived at was accurate or that it was reasonable to rely on this.

Nonetheless, I note that Aqua only offered Mrs D a credit limit of £250. In these circumstances, I think it unlikely that Aqua placed much reliance upon the figures it obtained. After all an annual salary of £175,000.00 and a monthly disposable income of close to £3,000.00 would suggest that Mrs D could afford to repay far more than £250 within a reasonable period of time. And I think that Aqua would have offered a higher credit limit if it genuinely believed in the figures it has now provided.

In any event, bearing in mind what the credit checks showed and Mrs D doesn't appear to have had significant living expenses, I'm satisfied that Aqua didn't act unfairly when accepting Mrs D's application. This is particularly in light of the low monthly repayments that would be required to repay £250 within a reasonable period of time.

As this is the case, I'm satisfied that the checks carried out before Mrs D was initially provided with her credit card were reasonable and proportionate and Aqua didn't act unfairly when agreeing to open a credit card for Mrs D.

As I've explained in the background section of this decision, Aqua increased Mrs D's credit limit on four occasions until it eventually reached £4,000.00 in April 2019. The first of these limit increases was modest – it only increased Mrs D's credit limit to a total amount of £600.

So I wouldn't have expected Aqua to have done too much more for this increase than it did when determining whether to initially provide the account. Furthermore, I can't see that any more significant adverse information was recorded against Mrs D in the period since she was given the card either. As this is the case, I'm satisfied that the checks carried out before the first limit increase was offered in November 2017 were reasonable and proportionate.

However, by the time of the second limit increase in May 2018, Mrs D's credit limit was being increased to £1,500.00. So I would have expected Aqua to have found out more about Mrs D's income and expenditure (particularly about her regular living expenses) before providing this credit limit increase.

As Aqua has been unable to evidence having done this in this instance or for any of the later increases, I don't think that the checks it carried out before it increased Mrs D's credit limit in May 2018, or the subsequent ones, were reasonable and proportionate.

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit or increasing the amount available to a customer, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

However, Mrs D says she is unable to provide us with the information we've asked her for in order to be able to assess what Aqua finding out more about her regular monthly living costs is likely to have shown. So I've not been provided with sufficient evidence to reasonably conclude that the limit increases were as a matter of fact unaffordable for Mrs D.

I appreciate that Mrs D may believe it is unfair to expect her to provide information which she doesn't have. But I also have to take into account that Aqua isn't required to have all of the information either and as Mrs D's complaint was made in time, I have to decide the complaint on what I have before me.

Equally, it is only fair and reasonable for me to uphold a complaint in circumstances where I can see that any additional credit provided was unaffordable. And I'm afraid that I've not been provided with sufficient evidence that shows me she would not have been able to make the increased monthly payments required should she owe the full amount of the new credit limits.

Furthermore, having considered the results of the credit searches which Aqua had carried out, I can't see that Mrs D had any significant adverse information recorded against her either. There appears to have been a default which showed in July 2019 but Mrs D's external indebtedness was pretty low. So I can't clearly see that Mrs D's finances were worsening such that it was obvious she shouldn't have been lent to either.

For the sake of completeness, I'm also mindful that these credit limit increases were offered over a period of around two and a half years. Therefore, this isn't a case where I can say that the limit increases themselves ought reasonably to have shown Aqua that it was rapidly increasing Mrs D's indebtedness, or that the pattern of lending here ought reasonably to have led Aqua to conclude that the facility had become demonstrably unsustainable for Mrs D either.

So overall and having carefully considered everything and while I appreciate that this will disappoint Mrs D, I've not been persuaded that proportionate checks would have shown that

Aqua that it shouldn't have provided these credit limit increases to Mrs D. Furthermore, I don't think that Mrs D's pattern of borrowing meant that Aqua offered the credit limit increases in circumstances where it ought reasonably to have realised that they may have been unsustainable or otherwise harmful for her either.

In reaching my conclusions, I've also considered whether the lending relationship between Aqua and Mrs D might have been unfair to Mrs D under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I've not been persuaded that Aqua irresponsibly lent to Mrs D or otherwise treated her unfairly. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

So overall and having considered everything, while I can understand Mrs D's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mrs D. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mrs D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 4 February 2025.

Jeshen Narayanan
Ombudsman