

The complaint

Miss E complains that NewDay Ltd trading as Aqua lent irresponsibly when it approved her credit card application and later increased the credit limit.

What happened

Miss E applied for a credit card with Aqua in September 2017. In her application, Miss E said she was employed with an income of £22,000 that Aqua calculated left her with around £1,415 after deductions each month. Aqua applied a rent figure of £317 and an estimate of Miss E's general living expenses of £426. A credit search found Miss E was making monthly repayments of around £374 against a balance of £8,800 to unsecured creditors. No recent adverse credit or missed payments were found. Aqua says that when it applied its lending criteria it found Miss E had an estimated disposable income of £292 a month which was sufficient to afford a new credit card with a limit of £450.

Aqua went on to increase the credit limit to £1,350 in November 2018, £2,850 in February 2022, £3,850 in October 2022, £5,200 in February 2023 and £6,800 in September 2023.

Last year, Miss E complained that Aqua lent irresponsibly and it sent her a final response. Aqua provided details of the lending checks it carried out and said Miss E's credit card had been correctly approved. Aqua didn't agree it lent irresponsibly when opening Miss E's credit card and increasing the limit in stages to £5,200 in February 2023. Aqua agreed it shouldn't have increased Miss E's credit limit to £6,800 in September 2023 but said that as the balance had never exceeded the previous credit limit of £5,200 and no charges had been applied so no refund was due. Aqua confirmed the credit card had been closed for new spending in light of Miss E's complaint.

Miss E referred her complaint to this service and it was passed to an investigator. They looked at the information Aqua had used before approving the original application in September 2017 and increasing the credit limit. The investigator thought Aqua had carried out reasonable and proportionate lending checks and didn't agree it lent irresponsibly. Miss E asked to appeal and explained that she has ADHD. As a result, Miss E said she regularly transferred funds into and out of her current account which made it appear that she was earning more than her true income. Miss E said the level and nature of borrowing from Aqua had led to financial difficulties and asked to appeal. As a result, Miss E'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 Miss E 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.

I'll start by looking at the application Miss E made in September 2017. Miss E confirmed her income was £22,000 and Aqua calculated her take home pay was £1,415 a month. Miss E also confirmed she was renting. Aqua used nationally recognised statistics to estimate Miss E's rent and general living expenses. Aqua estimated Miss E's outgoings came to £743 a month. In addition, Aqua looked at Miss E's credit file. A default that was around 33 months old was found along with a historic judgment. Aqua found Miss E owed around £8,800 to other unsecured creditors and was making monthly repayments of around £374. When it applied its lending criteria, Aqua says Miss E had an estimated disposable income of £292 and approved a credit limit of £450. I can see Miss E did have some issues on her credit file but the recent information didn't show any problems or signs of financial difficulty. Miss E's repayments and regular outgoings were being maintained and appeared affordable. In my view, the estimated disposable income of £292 was reasonable in terms of Miss E's ability to sustainably afford repayments to a credit limit of £450.

Overall, I'm satisfied the level and nature of the checks Aqua completed were reasonable and proportionate to the credit card application Miss E made and limit of £450. And I'm satisfied the information available to Aqua showed the credit card was affordable for Miss E and repayments were likely sustainable. I haven't been persuaded Aqua lent irresponsibly.

As I've noted above, the credit limit was increased in stages between November 2018 and September 2023, reaching £6,800. On each occasion, Aqua used the credit reference agencies to assess Miss E's income via a service known as CATO (current account turn over). As the name indicates, CATO monitors the funds being paid into and out of a borrower's bank account via a credit reference agency. Aqua also continued to use nationally recognised statistics to estimate Miss E's outgoings and carried out credit searches. Our investigator's view of Miss E's complaint sets out the specific figures obtained from Aqua's lending data, so I won't repeat them in full here. But on each occasion, Aqua found Miss E had between £868 and £2,158 a month as an estimated disposable income. On the face of it, that strongly indicated Miss E would be able to sustainably afford repayments to the increased credit limits.

I've looked at the data Aqua used, including the information it found on Miss E's credit file. I think it's reasonable to note that Miss E's unsecured debts appear to substantially decreased from around £8,800 when she first applied and £9,531 when the credit limit was increased to £1,350 in November 2018, to £2,252 in February 2022 when it was set at £2,850. The outstanding balance grew steadily from that point, reaching around £3,959 in February 2023 when the credit limit was increased to £5,200. Miss E's credit file doesn't show a track record of missed payments or other signs she was experiencing financial difficulties.

In my view, Aqua did carry out reasonable and proportionate lending checks when increasing Miss E's credit limit in stages up to £5,200 in February 2023 and there weren't any obvious signs she was struggling. In response to the investigator, Miss E's explained

that the CATO income data Aqua obtained failed to reflect the reality of her earnings. Miss E has explained that due to ADHD she regularly transfers funds into and out of her account to ensure there's sufficient balances available to cover bills that become due. As a result, Miss E's explained the CATO check made it appear her as if her income is higher than it is. Whilst I understand Miss E's point and don't doubt what she's told us, I haven't seen anything in the information available to Aqua that would've led it to the conclusion that the CATO information it obtained wasn't accurate. And I think it's fair to note the rules Aqua operates under allow it to use tools like CATO as an option to help verify a borrower's income.

I also note Miss E's Aqua credit card was well handled. I didn't see any occasions where Miss E was charged for going over the credit limit or missing a payment. Generally, the balance was well below the credit limit at any time with payments above the minimum often being made.

I'm sorry to disappoint Miss E but I haven't been persuaded that Aqua failed to carry out reasonable and proportionate checks when increasing her credit limit in stages to £5,200 in February 2023. And I'm satisfied the decision to increase Miss E's credit limit was reasonable based on the information Aqua had available. I'm very sorry to disappoint Miss E but I haven't been persuaded Aqua lent irresponsibly when increasing her credit limit in stages to £5,200.

Aqua's final response confirmed it was upholding Miss E's complaint about the credit limit increase to £6,800 in September 2023 but explained the outstanding balance had never exceeded the previous credit limit of £5,200. As a result, no refund of interest or charges was due to Miss E, despite Aqua upholding that part of her complaint. I've looked at the lending data and can confirm Miss E's balance has never exceeded the £5,200 credit limit that was approved in February 2023.

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, for the reasons I've already given, I don't think Aqua lent irresponsibly to Miss E or otherwise treated her unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

I'm very sorry to disappoint Miss E but for the reasons I've noted above I haven't been persuaded to uphold her complaint.

My final decision

My decision is that I don't uphold Miss E's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 13 March 2025.

Marco Manente
Ombudsman