

## **The complaint**

Ms R complains that NewDay Ltd trading as Aqua irresponsibly lent to her.

## **What happened**

Ms R was approved for an Aqua credit card in May 2016 with a £250 credit limit. This was increased to £400 in November 2017, and the credit limit was increased to £1,100 in May 2018. Ms R says Aqua irresponsibly lent to her. Ms R made a complaint to Aqua, who did not uphold her complaint. Ms R brought her complaint to our service.

Our investigator partially upheld Ms R's complaint. She said the checks Aqua completed prior to the account being opened were proportionate, and they made a fair lending decision to approve the account and a £250 credit limit, however, the further lending decisions were unfair. 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 Ms R, 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 credit card*

I've looked at what checks Aqua said they completed prior to accepting Ms R'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 Ms R had provided before approving her application.

The information shows that Ms R had declared a gross annual income of £28,000, which Aqua calculated to be £1,721.30 net per month. The data showed Ms R 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. The checks also showed Ms R had no active unsecured debt.

So I'm persuaded that the checks Aqua carried out were proportionate to the amount of credit they approved for Ms R, and they made a fair lending decision to approve her application and to provide her with a £250 credit limit.

### *November 2017 credit limit increase - £250 to £400*

I've looked at what checks Aqua said they completed prior to them increasing Ms R's credit limit as part of this lending decision. The data prior to this lending decision is in stark contrast to the data from the CRA at the account opening checks.

I say this as a different CRA that Aqua used for this lending decision shows that Ms R had defaulted on three accounts previously. But that's not all the data showed. I say this because there are clear signs of financial difficulty prior to this lending decision.

Ms R is shown as having taken out a payday loan in between the account being opened and this lending decision. Ms R's unsecured active debt had risen to almost all of her declared gross annual income prior to this credit limit increase, as it was around £19,000.

Aqua would have also been able to see how Ms R managed her account since it was opened. But again, there appears to be obvious financial difficulty Ms R had based on how she managed the account. I say this as there were at least five occasions where she made a late payment. When Ms R did make a repayment, it was often just her minimum repayment. And there were at least four occasions since her account was opened that she exceeded her credit limit.

So based on the frequent missed repayments, her exceeding her credit limit on several occasions, the level of her debt rising to almost her annual income she declared, the number of accounts being opened in a short period of time, and the pay day loan she took out, I'm not persuaded that I can put these factors down to just poor account management or an oversight. It's clear that Ms R was having financial difficulties by this point. So I'm not persuaded that Aqua were fair to increase her credit limit to £400 here, and I'm persuaded they did not make a fair lending decision here.

*May 2018 credit limit increase - £400 to £1,100*

If Ms R's credit limit increase to £400 did not happen, then it's probable that the further lending decision wouldn't have happened after this either. So I think there is an argument for saying that Ms R's complaint about the subsequent lending decision 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 November 2017, 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 Ms R 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.

### **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 £250 after 13 November 2017;

If the rework results in a credit balance, this should be refunded to Ms R 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 Ms R's credit file recorded after 13 November 2017;

Or, if after the rework the outstanding balance still exceeds £250, Aqua should arrange an affordable repayment plan with Ms R for the remaining amount. Once Ms R has cleared the balance, any adverse information recorded after 13 November 2017 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 Ms R how much they've taken off. They should also give Ms R 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 Ms R to accept or reject my decision before 6 March 2025.

Gregory Sloanes  
**Ombudsman**