

## **Complaint**

Miss W has complained that Aqua 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 provided Miss W with a credit card, which had an initial credit limit of £1,200.00, in August 2021. The credit limit was subsequently increased to £2,450.00 in February 2022, £3,200.00 in June 2022, £3,800.00 in April 2023 and finally £5,300.00 in July 2023.

One of our investigators reviewed what Miss W 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.

Miss W 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 Miss W's complaint.

Having carefully considered everything, I've not been persuaded to uphold Miss W'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 explaining 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 Miss W's application after it obtained information on her income and carried out a credit search. And the information it initially obtained indicated that Miss W would be able to make the monthly repayments due for this credit card. Due to Miss W's account being relatively well managed and the information on the credit checks it carried out, Miss W was then subsequently offered her credit limit increases.

On the other hand Miss W says that the card and increased credit limits were 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 Miss W was provided with a revolving credit facility rather than a loan. This means that Aqua was required to understand whether credit limits of £1,200.00, £2,450.00, £3,200.00, £3,800.00 and finally £5,300.00 could be repaid within a reasonable period of time, rather than all in one go.

For the initial application, I can see that Aqua's credit search appears to show that Miss W had significant adverse information recorded against her – in the form of defaulted accounts and a county court judgment. I appreciate that Aqua considered this information to be historic it says the latest of this information was recorded around two and a half years prior. And it was within its lending policy to lend in such circumstances. However, I can see that some of these balances were still outstanding.

So much like our investigator, I would have expected Aqua to have found out more about Miss W's regular living expenses (it had recorded that Miss W was in receipt of an annual income of £25,000.00 and had cross checked this information against information from credit reference agencies on the amount of funds going into her account each month) before providing the card and the credit limit increases to Miss W.

As I can't see that Aqua did this, I don't think that the checks it carried out before it provided the credit card or increased Miss W's credit limit were reasonable and proportionate. As I think that Aqua ought to have done more, I've gone on to decide what I think Aqua is more likely than not to have seen had it carried out further checks before providing the credit card and the limit increases.

As previously explained, given the circumstances here, I would have expected Aqua to have had a reasonable understanding about Miss W's regular living expenses as well as her income and existing credit commitments before initially providing the card and then offering the limit increases.

I've considered the information Miss W has provided on her circumstances at the respective times and I don't think that Aqua attempting to find out further information about Miss W's actual living costs, rather than relying on assumptions like it did, would have made a difference here.

I say this because I've not seen anything that shows me that Miss W's committed regular living expenses, other non-discretionary expenditure and her existing credit commitments meant that she did not have the funds to make sustainable repayments to the balances that could have been owed, as a result of having this credit card or these limit increases, at the time that the credit was offered. Indeed, the bank statements Miss W has provided actually show credit balances sufficient to make sustainable payments at the end of the relevant months.

I say this in the knowledge that any difficulty Miss W might have gone on to have making her payments wasn't due to her regular living expenses and other non-discretionary expenditure being significantly different to any assumptions Aqua relied on. It was because of Miss W's gambling.

Nonetheless, what is important to note is that Aqua wasn't aware of the extent and nature of Miss W's gambling. Particularly as Miss W has also told us that she was sending money to friends and family to gamble on their accounts in order to get around blocks that were placed on her gambling in her own name.

Given the circumstances here as well as what I think that Aqua needed to find out, I don't think that reasonable and proportionate checks would have extended into obtaining bank statements – especially as bank statements weren't the only way that Aqua could find out about Miss W's regular living expenses in the first place. In my view, delving into the detail of the bank statements Miss W has now provided us with, isn't commensurate with a proportionate check for credit limits of the amounts granted, bearing in mind what the rest of the information that Aqua gathered showed.

Equally, given what Miss W has said about the steps she was taking to get around gambling blocks that had been applied, it is difficult for me to accept that she would have volunteered this information, in circumstances where at the time at least, she would have wanted the extra credit that she is now complaining about. I think it's highly unlikely that Miss W would have volunteered information on her gambling if she'd been asked to outline her committed non-discretionary expenditure.

I'm therefore satisfied that Aqua taking further steps to find out more about Miss W's living expenses won't have led it to determine that the possible repayments on credit card or the limit increases.

Furthermore, I also have to consider all of this against the backdrop of Aqua's credit checks and the activity on Miss W's Aqua card, didn't show that Miss W's credit commitments were increasing exponentially. It's worth noting that Miss W made a payment of over £2,500.00 in April 2022 which pretty much cleared her balance in full. And, on the whole, Miss W was making reasonable payments (often well above the minimum due) and was making inroads into what she owed until relatively close to the time of her complaint.

The information provided also shows that Miss W's credit balances elsewhere did not spike until after the final limit increase had already been offered. This is likely to be as a result of the fact that the lender she took out a conditional sale agreement with, in June 2023, did not start reporting on this agreement, until this point. As this was not on the credit checks at the time, I can't say that Aqua ought reasonably to have known about this.

For the sake of completeness, I would also add that having reviewed the full credit report Miss W has provided us with, the majority of other credit she was taking out in her name was on buy now pay later terms. And the lenders offering these products were not fully reporting to credit reference agencies at this stage.

Finally, I've also not seen any evidence of any new defaulted accounts or county court judgements recorded between August 2021 and July 2023 either. So, in these circumstances, I don't think that Aqua ought reasonably to have realised that it may have been increasing Miss W's credit limits in circumstances that were unsustainable or otherwise harmful for her.

So overall and having carefully considered everything and while I appreciate that this will disappoint Miss W, I've not been persuaded that proportionate checks would have shown that Aqua that it shouldn't have provided Miss W with this credit card or the credit limit increases.

Furthermore, I don't think that Miss W'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 Miss W might have been unfair to Miss W 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 Miss W 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 Miss W's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Miss W. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

I note that Miss W has made reference to not being able to repay the outstanding balance on the card. I've also mentioned that in the leadup to her complaint, Miss W has been making less inroads into her outstanding balance and that her borrowing elsewhere appears to have spiked.

I understand that Aqua has closed Miss W's card to new spending to account for this. Nonetheless, I would also remind Aqua of its continuing obligation to exercise forbearance and due consideration, given what Miss W has said about her ability to repay her balance.

I would also encourage Miss W to get in contact with and co-operate with any steps that may be needed to review what she might, if anything, be able to repay going forward. Miss W may be able to complain to us – subject to any jurisdiction concerns – should she be unhappy with Aqua's actions in relation to exercising forbearance.

### **My final decision**

For the reasons I've explained, I'm not upholding Miss W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 24 February 2025.

Jeshen Narayanan  
**Ombudsman**