

The complaint

Miss L 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 L applied for a credit card with Aqua in August 2021. In her application, Miss L said she was employed with an income of £22,365 that Aqua calculated left her with £1,635 a month after deductions. Aqua looked at Miss L's credit file and found she owed around £600. A default that was 69 months old was found but no other adverse credit or recent missed payments were recorded on Miss L's credit file. Aqua applied an estimate of Miss L's rent and general living expenses totalling £843 a month. After applying its lending criteria, Aqua says Miss L had an estimated disposable income of £969 and approved a credit card with a limit of £1,200.

Aqua increased the credit limit to £2,200 in December 2021, £3,200 in April 2022 and £4,200 in August 2022.

Last year, representatives acting on Miss L's behalf complained that Aqua lent irresponsibly and it issued a final response. Aqua said it had carried out the relevant lending checks and didn't agree it had lent irresponsibly to Miss L.

An investigator at this service looked at Miss L's complaint. They thought the decision to approve Miss L's application and increase the credit limit up to £3,200 in April 2022 was reasonable based on the information Aqua had available. But the investigator noted Miss L's earned income and estimated disposable income had both reduced substantially by the time of the credit limit increase to £4,200 in August 2022. The investigator thought that should've been sufficient to show Aqua a higher credit limit wasn't sustainable for Miss L and upheld her complaint from that point.

Miss L's representatives confirmed they accepted the investigator's recommendation. Aqua asked to appeal and said Miss L had made a payment that was 15 times the minimum payment due the month before her credit limit was increased to £4,200 indicating increased borrowing was affordable. As Aqua asked to appeal, Miss L'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 L 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.

When Miss L applied she confirmed she was employed with an income of £22,365 that Aqua says left her with £1,635 a month after deductions. I can see Aqua used nationally recognised statistics to reach its estimate of Miss L's outgoings for rent and general living expenses. Aqua also checked Miss L's credit file and found she owed around £600 to other lenders. I can see a default that was 69 months old was found but I think it's fair to note that was historic in nature and no new recent adverse credit or missed payments were found on Miss L's credit file. When Aqua applied its lending criteria it says Miss L had an estimated disposable income of £969 which was sufficient to cover repayments to a new credit card with a limit of £1,200 in addition to her existing outgoings. I'm satisfied a disposable income at that level would've been sufficient to sustainably afford repayments to a credit card with a limit of £1,200.

In my view, the level and nature of checks Aqua completed was reasonable and proportionate to the credit limit of £1,200 it went on to approve. And I'm satisfied the decision to approve the credit card was reasonable based on the information Aqua found. I haven't been persuaded that Aqua lent irresponsibly when it approved Miss L's application in August 2021.

Before increasing the credit limit to £2,200 in December 2021 Aqua looked at Miss L's account use. The highest balance Miss L had up to that point was £222 against a credit limit of £1,200. Miss L's payments had been made on time and no late or overlimit charges were incurred. I can see Aqua checked Miss L's credit file again and found she had outstanding debts of £1,286 with monthly repayments totalling £41. Aqua also applied estimates for Miss L's rent and general living expenses totalling £560. Aqua used a tool provided by the credit reference agencies to get a picture of Miss L's current account turnover and says she had an income of £1,242. Overall Aqua calculated an estimated disposable income of £625 a month after meeting Miss L's existing commitments.

In my view, Aqua completed reasonable and proportionate lending checks before increasing Miss L's credit limit to £2,200 in December 2021. I'm satisfied no information was found that would've indicated Miss L was overcommitted or struggling financially. And I'm satisfied the estimated disposable income figure Aqua reached was sufficient to sustainably afford payments to an increased credit limit. In my view, the decision to approve the credit limit increase to £2,200 was reasonable and I haven't been persuaded Aqua lent irresponsibly.

The third credit limit increase was approved following similar checks by Aqua. I note Miss L's income was found to have reduced to £1,084 and that the estimated disposable income figure had also gone down to £448. But I think it's reasonable to say Miss L's Aqua card had been well managed and her credit file didn't show any new adverse information or signs she was struggling. Overall, I'm satisfied Aqua carried out reasonable and proportionate lending checks before increasing the credit limit. And I'm satisfied the information Aqua found showed Miss L was able to sustainably afford repayments to a credit limit of £3,200. I'm

sorry to disappoint Miss L but I haven't been persuaded Aqua lent irresponsibly when it increased her credit limit to £3,200.

I think the investigator made a reasonable point when they said there was a trend of Miss L's income reducing over time. When Aqua checked Miss L's income in August 2022 it found it had decreased to £955, down from £1,635 when she first applied. Miss L's estimated disposable income had also reduced substantially from £969 when she first applied to £228. In my view the increased level of borrowing was at odds with what appears to have been a change in Miss L's circumstances. Whilst it could be argued that should've led Aqua to carry out better checks, I think the reduction in affordability overall should've caused Aqua to take the decision additional borrowing was unlikely to be sustainable for Miss L and decline to lend further.

In response to the investigator, Aqua pointed out Miss L had made a large repayment in August 2022 that was equivalent to 15 times her minimum. But that fails to reflect the fact that whilst Miss L's payment was higher, her spending on the credit card was also much higher than normal. In the month before the credit limit increase, Miss L's balance went from £1,279 to £2,673. So whilst Miss L's payment was higher, her credit card use was also much higher and the outstanding balance more than doubled.

For the reasons noted above, I'm upholding Miss L's complaint on the basis Aqua lent irresponsibly when it increased the credit limit to £4,200 in August 2022. As a result, I'm going to tell Aqua to refund all interest, fees and charges applied to balances over £3,200 from August 2022 to date.

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, I'm satisfied the redress I have directed below results in fair compensation for Miss L 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.

My final decision

My decision is that I uphold Miss L's complaint and direct NewDay Ltd trading as Aqua to settle as follows:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £3,200 after 17 August 2022.
- If the rework results in a credit balance, this should be refunded to Miss L along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information recorded after 17 August 2022 regarding this account from Miss L's credit file.
- Or, if after the rework the outstanding balance still exceeds £3,200, NewDay should arrange an affordable repayment plan with Miss L for the remaining amount. Once Miss L has cleared the outstanding balance, any adverse information recorded after 17 August 2022 in relation to the account should be removed from their credit file.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Miss L a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 8 April 2025.

Marco Manente
Ombudsman