

The complaint

Mrs E complains that NewDay Ltd trading as Aqua have irresponsibly lent to her.

What happened

Mrs E was approved for an Aqua credit card in October 2020 with a £300 credit limit. The credit limit was increased to £1,050 in July 2022. Mrs E says that Aqua irresponsibly lent to her. She also says that she's having financial difficulty due to personal circumstances. Mrs E made a complaint to Aqua, who did not uphold her complaint, so she brought her complaint to our service.

Our investigator did not uphold Mrs E's complaint. She said that although the data showed an Individual Voluntary Agreement (IVA)/bankruptcy being registered in the three years prior to the initial lending decision, ultimately Aqua made fair lending decisions. She said that Aqua had put in place either a payment holiday or repayment plans for Mrs E in December 2022, August 2023, and April 2024.

Mrs E asked for an ombudsman to review her complaint. She said she had not previously been made bankrupt/had an IVA, and she asked for details about this. She said although she made higher repayments than the minimum she was then re-using the credit.

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.

I'd like to thank Mrs E for sharing her personal family circumstances with us. To protect her identity I'll not document what she's told us exactly in this decision, but I want to make her aware I've read everything that she's told us.

As the information Mrs E has asked for regarding the IVA/bankruptcy details does not impact the outcome of this complaint, I've asked our investigator to provide a response to her request separate to this decision which would be more appropriate in this instance, which she should receive in due course.

Before agreeing to approve or increase the credit available to Mrs E, 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 card

I've looked at what checks Aqua said they did when initially approving Mrs E's application. I'll address the credit limit increase later on. Aqua said they looked at information provided by

Credit Reference Agencies (CRA's) and information that Mrs E had provided before approving her application.

The information showed that Mrs E had declared a gross annual income of £12,500. The information showed she had a debt to annual income ratio of 2.77%, which would have equated to around £346.25. Aqua also obtained information from the CRA, who reported that Mrs E was paying £11.32 a month for her credit commitments.

But the information from a CRA did show a bankruptcy/IVA being registered in the three years prior to these checks. The checks did show that Mrs E currently wasn't bankrupt at the time of the checks. But the checks also showed that Mrs E had defaulted on credit agreements previously, with the last default being registered 21 months prior to the initial lending checks.

It may help to explain here that, while information like a default on someone's credit file may often mean they're not granted further credit – they don't automatically mean that a lender won't offer borrowing. So I've looked at what Aqua's other checks showed to see if they made a fair lending decision here.

The information from the CRA showed there were no County Court Judgements (CCJ's) registered on Mrs E's credit file. She was showing as having no active payday loans. And none of her active accounts were in arrears. The CRA reported to Aqua that Mrs E had no active accounts in arrears in the six months prior to the checks being completed, so it wouldn't have been apparent to Aqua that Mrs E had any current financial difficulty prior to the account being opened as she was also showing as being on no active repayment plans.

The credit limit would equate to less than 2.4% of Mrs E's declared gross annual income. So even if this was combined with the existing active unsecured debt on her credit file, it wouldn't appear that the new £300 Aqua credit limit would leave her overindebted.

So I'm persuaded that the checks Aqua completed here were proportionate, and no further checks would have been proportionate, such as requesting her bank statements. I'm persuaded that Aqua made a fair lending decision to approve the initial credit limit of £300.

July 2022 credit limit increase - £300 to £1,050

I've looked at what checks Aqua said they completed prior to them increasing Mrs E's credit limit as part of this lending decision. One of the CRA's reported that Mrs E's active unsecured debt was £2,288. While this was higher than the account opening checks, I'm mindful that this was around 18.3% of her originally declared annual gross income.

Aqua would have been able to see how Mrs E managed her account since it had been opened. Mrs E did incur three overlimit fees since her account was opened. So this could be a sign of financial difficulty, or it could have been an oversight from Mrs E.

It does appear to be an oversight here. I say this as Mrs E made repayments to bring her account back under the credit limit, and she hadn't incurred an overlimit charge in the nine months prior to this credit limit increase.

Mrs E had not missed a payment since her account had been opened, and the CRA's reported she had no arrears on any of her active accounts at the time of the checks for the credit limit increase. She had not been in arrears on any of her active accounts for the previous six months prior to the credit limit increase. While sometimes Mrs E did re-use some of the credit she repaid on her account, in some months she did not spend on the card at all.

So I'm persuaded that Aqua's checks were proportionate, and that they made a fair lending decision to approve the credit limit increase here.

I've considered what Mrs E has said about her financial difficulty. I can empathise with what she's told us, especially given what she's also said about her personal circumstances. I can see that Aqua gave Mrs E a payment holiday after she made them aware of her financial difficulties. As this was a number of months after the last credit limit increase was approved for Mrs E, I'm not persuaded that any future financial difficulty would be foreseeable to Aqua based on the information their checks showed.

The information from Aqua shows they also agreed a four month payment holiday in 2023, and a repayment plan was set up in 2024. If Mrs E currently can't afford the repayments on her account, I would urge her to contact the owners of the debt to see how they can help her based on her current financial circumstances.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I can't conclude that Aqua lent irresponsibly to Mrs E or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 17 April 2025.

Gregory Sloanes
Ombudsman