

The complaint

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

What happened

Mrs P applied for a credit card with Aqua in April 2014. In her application, Mrs P said she was employed with an income of £10,456 a year that Aqua calculated left her with £784.20 a month after deductions. Aqua applied estimates for Mrs P's housing costs and general living expenses totalling £609 a month. A credit search was completed and no adverse information, defaults or recent arrears were noted. The credit search found Mrs P owed around £2,350 in other unsecured debts and was making monthly repayments of £156. The lending data provided by Aqua shows it calculated Mrs P had £5.14 remaining as an estimated disposable income after meeting her regular outgoings. Aqua approved a credit card with a £500 limit.

Aqua went on to increase the credit limit as follows:

| Event | Date | Limit |
|-------|--------|--------|
| CLI1 | Nov-14 | £1,400 |
| CLI2 | Apr-15 | £1,700 |
| CLI3 | Sep-15 | £2,700 |
| CLI4 | Mar-16 | £3,950 |
| CLI5 | Jul-16 | £4,950 |

Aqua says that before each credit limit increase it checked Mrs P's account history, credit file and assessed the likelihood of repayment. Mrs P used the credit card until June 2024 when the balance was repaid. Over the years, Mrs P has incurred various fees and charges for either being over the agreed credit limit or making late payments.

Last year, representatives acting on Mrs P'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 lent irresponsibly to Mrs P. An investigator at this service looked at Mrs P's complaint and upheld it. They thought the information Aqua obtained during the application process showed didn't have enough disposable income to sustainably afford repayments to a new credit card and asked it to refund all interest, fees and charges applied from the date of approval.

Aqua didn't agree and asked to appeal. Aqua said the relevant regulations didn't require it to use an estimate of disposable income when deciding whether to lend. Aqua said the regulations don't require it to establish a consumer's income or disposable income where it can be demonstrated that the credit offered was clearly affordable. Aqua provided an example where by the amount of credit is small and the customer shows no signs of financial difficulties or adverse information on their credit file. Aqua said the risk of predictable financial stress caused by the lending was low. In addition, Aqua said that as a "low and

grow” lender it increases the credit limit where borrowers demonstrate they can manage their existing limits and afford incremental increases. Aqua also highlighted some payments Mrs P made that were in excess of the contractual minimum. As Aqua asked to appeal, Mrs P’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 Mrs P 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 understand that regulations have changed and that the amount of information available is somewhat limited due to the passage of time. I’ve taken the relevant lending rules into account when considering Mrs P’s complaint and while the available information is limited, I’m satisfied there’s enough to reach a fair decision.

I’ve set out the information Mrs P provided in her application and the lending data Aqua has forwarded within its file submission. Mrs P’s credit file showed no adverse information or recent missed payments. But the application information showed Mrs P’s income was reasonably low with her receiving around £784 a month after deductions. The affordability data Aqua has supplied shows that it estimates she had £5 left after meeting her existing commitments each month. Clearly, that’s a very low disposable income which would’ve made it very difficult for Mrs P to cover any unexpected or emergency expenses that may’ve arisen. So I agree with the investigator’s conclusion that having a disposable income of £5 meant Mrs P wasn’t in a position to sustainably afford repayments to a new credit card, even with a low limit of £500.

In response to the investigator, Aqua has explained that the lending rules at the time didn’t mean it had to use the estimated disposable income figure as part of its assessment. But I haven’t been able to see any other information in the lending data provided by Aqua that shows it carried out other checks to verify whether Mrs P was able to sustainably afford a new credit card. For instances, no “likelihood affordable” scores were supplied in the lending data. So the only information I have available to consider whether the lending was affordable for Mrs P was her application information along with the affordability assessment Aqua has supplied. And that shows Mrs P only had £5 available once her existing commitments were met each month.

I've considered all the information Aqua has supplied and thought carefully about its response to the investigator's findings. In my view, the information provided shows Mrs P was already at or over capacity in terms of her regular outgoings and was unlikely to be able to sustainably afford a new credit card, even with a low limit of £500.

Aqua has explained it's a "low and grow" lender and increases credit limits incrementally after considering a borrowers account history and credit file. But looking at Mrs P's account history and credit file, I found she incurred late or overlimit fees reasonably regularly and, in some cases, in the months before her credit limit was increased. Further, Mrs P's unsecured debt levels increased over time from around £2,350 to over £9,000 around the time of the final credit limit increase. In the period after the final credit limit increase Mrs P's other debts increased to over £20,000 and late payments were noted on her credit file. In addition, a new mortgage was recorded on Mrs P's credit file in 2016 but I've not seen anything that shows Aqua sought to verify whether her circumstances had changed.

Having considered the available information, I haven't seen anything that shows the credit card became more affordable for Mrs P during the period Aqua increased the credit limit. In my view, the information available indicates Mrs P was borrowing at an increasing rate and wasn't in a position to sustainably afford repayments to a new credit card or the credit limit increases that were approved. As I haven't been persuaded Aqua lent responsibly I'm upholding Mrs P's complaint and directing it to refund all interest, fees and charges applied to the account from the date of approval.

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 in the circumstances of Mrs P's 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 Mrs P'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.
- If the rework results in a credit balance, this should be refunded to Mrs P 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 regarding this account from Mrs P's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mrs P for the remaining amount. Once Mrs P has cleared the balance, any adverse information in relation to the account should be removed from their credit file.
- If NewDay has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mrs P 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 Mrs P to accept or reject my decision before 12 June 2025.

Marco Manente
Ombudsman