

The complaint

Miss T complains that NewDay Ltd trading as Aqua irresponsibly lent to her.

Miss T is represented by a solicitors firm in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Miss T herself

What happened

Miss T was approved for an Aqua credit card in July 2016 with a £250 credit limit. I have detailed the credit limit changes below:

August 2017	£250 to £600
February 2018	£600 to £1,400
August 2019	£1,400 to £2,400

Miss T says Aqua irresponsibly lent to her. Miss T made a complaint to Aqua, who partially upheld her complaint from the February 2018 lending decision. Miss T brought her complaint to our service.

Our investigator upheld Miss T's complaint. He said the affordability assessment that Aqua completed showed that Miss T had a limited amount of disposable income, so the application shouldn't have been approved.

Aqua asked for an ombudsman to review the complaint. They said that the repayments were sustainable for Miss T, and she made larger repayments than her minimum repayments. They said due to the conservatism applied to the affordability assessment, they anticipated Miss T could make repayments higher than the contractual minimum repayment. But they said due to the time that's passed they couldn't tell us any buffer which was added to the affordability figures.

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 Miss T, 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.

Initial credit limit - £250

I've looked at what checks Aqua said they completed prior to accepting Miss T'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 Miss T had provided before approving her application. The information shows that Miss T had declared a gross annual income of £12,410. The data showed Miss T 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.

But the data showed an affordability assessment for Miss T. There is no buffer shown in the calculation, and Aqua have been unable to tell our service what buffer (if any) was applied to the expenditure due to the time that's passed.

The affordability assessment shows that once Miss T's estimated expenditure had been deducted, she would have an estimated £61.17 a month disposable income. So they believed that Miss T could sustainably afford repayments for a £250 credit limit.

But I'm not persuaded that this takes into consideration that Miss T's estimated disposable income is relatively low compared to her estimated outgoings. So if Miss T's bills were to rise or she had a financial emergency, this could eliminate a large amount or all of her estimated disposable income. So I'm not persuaded that Aqua made a fair lending decision to approve the £250 credit limit.

Although I've considered what Aqua have said about Miss T paying more than her contractual payment at times, they would not be aware of this at the time they completed their account opening checks. So based on the data they had at the time of the checks, I'm not persuaded that they made a fair lending decision to approve the £250 credit limit.

Further credit limit increases

If Miss T was not approved for the Aqua account, then it's probable that none of the further lending decisions would have happened after this either. So I think there is an argument for saying that Miss T's complaint about the subsequent lending decisions 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 July 2016, 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 Miss T 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. 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;

If the rework results in a credit balance, this should be refunded to Miss T 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 her credit file;

Or, if after the rework there is still an outstanding balance, Aqua should arrange an affordable repayment plan with Miss T for the remaining amount. Once Miss T has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

**If Aqua consider that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss T how much they've taken off. They should also give Miss T 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 Miss T to accept or reject my decision before 12 May 2025.

Gregory Sloanes
Ombudsman