

The complaint

Miss B 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 B applied for an Aqua credit card in December 2021. Aqua's confirmed Miss B gave her income as £16,000 a year. A credit check was completed that found Miss B had County Court Judgement information that was 54 months old. Defaults that were 33 months old were also found. The lending data supplied by Aqua says Miss B was making monthly repayments of £612 to her existing creditors. No evidence of affordability checks completed by Aqua when considering Miss B's application have been supplied to this service.

Aqua approved Miss B's application and issued a credit card with a limit of £900. Miss B used her card and Aqua went on to increase the credit limit to £1,900 in June 2023, £2,900 in September 2023 and £3,900 in January 2024.

Last year, representatives acting on Miss B's behalf complained that Aqua lent irresponsibly and it issued a final response. Aqua said it had carried out the relevant lending checks before approving Miss B's application and increasing the credit limit and didn't agree it lent irresponsibly.

An investigator at this service upheld Miss B's complaint. They noted the lack of affordability checks in the lending data Aqua provided and said, in the circumstances, they were unable to see proportionate or reasonable lending checks had been completed. The investigator looked at Miss B's bank statements for the three months before her application was made and felt she didn't have sufficient disposable income available to support a new credit card. The investigator wasn't persuaded Aqua lent responsibly when it approved Miss B's application or increased the credit limit and asked it to refund all interest, fees and charges applied from the date the credit card was approved.

Aqua asked to appeal and said the disposable income of £151 a month that the investigator calculated was sufficient to afford repayments to a credit limit of £900. They added Miss B had made payments in excess of the contractual minimum after she started using the credit card in November 2022. As Aqua asked to appeal, Miss B'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 B 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.

The lending data provided by Aqua doesn't include the affordability checks it says were completed when considering Miss B's application. As a result, I'm unable to conclude reasonable or proportionate checks were completed when Miss B applied for an Aqua credit card. So I've gone on to look at Miss B's bank statements to get a clearer picture of her circumstances in the months before the application was made.

As a starting point, Miss B's statements show she wasn't earning £16,000 a year. They show Miss B was receiving benefit income at a level that wasn't in line with the £16,000 figure noted in the application and varied month to month. Miss B's outgoings appear to have varied somewhat as well. But I can see that Miss B was using the majority of her available funds for gambling purposes. Whilst the individual payments were often low, the number of them meant the total represented a large proportion of Miss B's income each month. There's also evidence of credit being used to fund the gambling payments Miss B made. The bank statements show Miss B had as little as £150 a month available as a disposable income each month. Miss B's statements also show she wasn't spending in a sustainable way and that she would be unlikely to be in a position to afford a new credit card with a £900 limit. In my view, better lending checks would've most likely led Aqua to decline Miss B's application on the basis she wasn't in a position to sustainably afford new credit.

I've looked at the information Aqua used when increasing the credit limit of Miss B's account. And I've also looked at Miss B's bank statements for the periods in question. Again, they show Miss B's income was substantially lower than the CATO figures Aqua used in its lending assessments. And Miss B's bank statements show she was continuing to gamble. I note Miss B's outstanding debts increased substantially to over £10,000 by the time Aqua approved the final credit limit increase in January 2024 which indicates she was borrowing at an increasing rate. I haven't seen anything that shows the credit card became more affordable for Miss B over time or that persuades me Aqua lent responsibly when increasing the credit limit in stages to £3,900 by January 2024.

Based on the information I've seen, I'm upholding Miss B's complaint and directing Aqua to refund all interest, fees and charges applied to her credit card 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 above results in fair compensation for Miss B 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 B'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 Miss B 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 Miss B's credit file.
- Or, if after the rework there is still an outstanding balance, Aqua should arrange an affordable repayment plan with Miss B for the remaining amount. Once Miss B has cleared the balance, any adverse information in relation to the account should be removed from their credit file.

*HM Revenue & Customs requires Aqua to deduct tax from any award of interest. It must give Miss B 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 B to accept or reject my decision before 28 May 2025.

Marco Manente
Ombudsman