

## The complaint

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

Miss L 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 L herself.

## What happened

Miss L was approved for an Aqua credit card in July 2017 with a £450 credit limit. I have detailed the credit limit changes below:

January 2018	£450 to £1,100
June 2018	£1,100 to £1,850
October 2018	£1,850 to £2,600
February 2019	£2,600 to £4,100
July 2019	£4,100 to £5,100
March 2021	£5,100 to £6,600

Miss L says that Aqua irresponsibly lent to her, and she made a complaint to them. Aqua did not uphold Miss L's complaint as they said they made fair lending decisions. Miss L brought her complaint to our service.

Our investigator partially upheld Miss L's complaint. He said Aqua shouldn't have increased Miss L's credit limit above £450 as she had incurred two overlimit fees and a late fee prior to the credit limit increase to £1,100.

Aqua asked for an ombudsman to review the complaint. They said the fees incurred appeared to be from account mismanagement by Miss L and that she had been managing her external accounts well.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

*"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 L, 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 Miss L's application. I'll address the credit limit increases later on. Aqua said they looked at information provided by CRA's and information that Miss L had provided before approving her application.*

*The information shows that Miss L had declared a gross annual income of £18,000. The CRA reported that Miss L had defaulted on at least one credit agreement previously, with the last default showing as being registered on her credit file 16 months prior to the account opening 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.*

*Miss L had no public records – such as a County Court Judgement (CCJ) showing on her credit file. And she had no accounts in arrears at the time the application was approved, and she hadn't had any active accounts in arrears in the six months prior to the checks.*

*Aqua also completed an affordability assessment using Miss L's declared income, and expenditure from a mixture of information from the CRA and modelling. The results showed that Miss L would be able to sustain repayments for a £450 credit limit. The £450 credit limit was 2.5% of her declared gross annual income.*

*So I'm satisfied that the checks Aqua carried out here, prior to approving the initial £450 credit limit were proportionate and that Aqua made a fair lending decision to approve Miss L's application for the Aqua account.*

*January 2018 credit limit increase - £450 to £1,100*

*I've looked at the information available to Aqua as part of this lending decision. Miss L's unsecured debt was higher than it was at the account opening stage, as it was showing as being £636 by one of the CRA's. But this was a low proportion of her originally declared gross annual income. Miss L was not in arrears on any of her external accounts since her Aqua account had been opened.*

*Aqua would have been able to see how Miss L managed her account prior to this lending decision. She incurred one overlimit fee prior to the checks for this lending decision. But after the checks, and before her credit limit was increased, she had incurred another overlimit fee, and a late fee in the same month.*

*So these could be signs of financial difficulty. But they also could have been oversights on Miss L's part. It does appear that the overpayments/late payment were oversights by Miss L. I say this because Miss L made a repayment in the same month she incurred the late payment fee. And in every month she was required to make a repayment, she made repayments which were a lot higher than her required minimum repayment. So I wouldn't expect Miss L to be able to make much higher repayments if she was struggling financially.*

*So I'm persuaded that Aqua's checks were proportionate here, and that they made a fair lending decision to increase Miss L's credit limit on her Aqua account.*

*June 2018 credit limit increase - £1,100 to £1,850*

*I've looked at the information available to Aqua as part of this lending decision. Miss L's active unsecured debt had nearly trebled to £1,867 since the last lending decision. While*

*Miss L was up to date on her repayments on her external accounts, the “0” status indicating she was up to date changed to a “D” in the month her credit limit was increased to £1,850.*

*Although Miss L often paid more than the minimum repayment required, she often then used the amount she repaid and used more credit. There were transactions which incurred cash advance fees, and there was an overlimit fee incurred by Miss L since the last lending decision. So I’m persuaded that these factors ought to have resulted in Aqua completing further checks to ensure the credit limit increase would be affordable and sustainable for Miss L.*

*There’s no set way of how Aqua should have made further proportionate checks. One of the things they could have done was to contact Miss L to get an understanding of her financial situation. Or they could have asked for her bank statements as part of a proportionate check to ensure the lending was sustainable and affordable for her.*

*Miss L has provided her bank statements covering from late April to the June 2018 lending decision. While I would normally ask Miss L for further statements, on this occasion I’m not persuaded further statements are necessary. I say this because the statements show that she is reliant on a high cost third party lender who provided running account credit facilities. Miss L borrowed from the third party lender on six occasions in a short period of time prior to the credit limit increase on 1 June 2018.*

*Miss L’s statements do not show that she has an arranged overdraft, but Miss L becomes overdrawn on more than one occasion prior to the 1 June 2018 credit limit increase. Miss L’s car insurance direct debit causes her to become overdrawn (albeit her bank honours this payment). Her council tax payment is returned unpaid prior to this credit limit increase even though she was overdrawn by only £2.24.*

*So if Aqua had completed further checks as part of a proportionate check based on the reasons I’ve already set out, I’m not persuaded that they would have increased Miss L’s credit limit. So I’m not persuaded that Aqua made a fair lending decision here.*

#### *Future lending decisions*

*If Miss L’s credit limit increase to £1,850 did not happen, then it’s probable that the further lending decisions wouldn’t have happened after this either. So I think there is an argument for saying that Miss L’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 June 2018, 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 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.”*

*I invited both parties to let me have any further submissions before I reached a final decision. Miss L accepted the provisional decision. Aqua did not respond to the provisional 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.

As neither party have provided me with any further information to consider, then my decision and reasoning remains the same as in my provisional decision

### **Putting things right**

In the provisional decision I said I intend to uphold this complaint in part. I said I intend to ask NewDay Ltd trading as Aqua to 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 to balances above £1,100 after 1 June 2018;

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. Aqua should also remove all adverse information regarding this account from Miss L's credit file recorded after 1 June 2018;

Or, if after the rework the outstanding balance still exceeds £1,100, Aqua should arrange an affordable repayment plan with Miss L for the remaining amount. Once Miss L has cleared the balance, any adverse information recorded after 1 June 2018 in relation to the account should be removed from her credit file.

I'm still satisfied this is a fair outcome for the reasons given previously.

*\*If Aqua considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss L how much they've taken off. They should also give Miss L a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

### **My final decision**

I uphold this complaint in part. NewDay Ltd trading as Aqua should settle the complaint in line with the instructions in the *"Putting things right"* section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 29 May 2025.

Gregory Sloanes  
**Ombudsman**