

The complaint

Ms B complains that NewDay Ltd trading as Aqua irresponsibly lent to her.

Ms B 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 Ms B herself

What happened

Ms B was approved for an Aqua credit card in April 2020 with a £1,200 credit limit. Ms B says Aqua irresponsibly lent to her. Ms B made a complaint to Aqua, who did not uphold her complaint, as they said they made a fair lending decision. Ms B brought her complaint to our service.

Our investigator upheld Ms B's complaint. He said the affordability assessment that Aqua completed showed that Ms B 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 after a reasonable repayment would be made to the account, this would leave Ms B £86.57 for unforeseen expenditure. They said the account was never fully utilised and it was settled and closed in 2022.

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 the credit available to Ms B, 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.

Aqua said they looked at information provided by Credit Reference Agencies (CRA's) and information that Ms B had provided before approving her application. The information shows that Ms B had declared a gross annual income of £20,000.

The data showed Ms B 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 Ms B. This shows that once Ms B's estimated expenditure had been deducted, she would have an estimated £173.82 a month disposable income. Aqua have told us after a reasonable payment, this would leave £86.57 a month for any unforeseen circumstances.

But I'm not persuaded that this takes into consideration that Ms B's estimated disposable income is relatively low compared to her estimated outgoings. So if Ms B'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 £1,200 credit limit.

Although I've considered what Aqua have said about Ms B not fully utilising the account, and it now being settled and closed, 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 £1,200 credit limit.

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 Ms 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.

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:

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 Ms 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 her credit file;

Or, if after the rework there is still an outstanding balance, Aqua should arrange an affordable repayment plan with Ms B for the remaining amount. Once Ms B 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 Ms B how much they've taken off. They should also give Ms B 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 Ms B to accept or reject my decision before 16 June 2025.

Gregory Sloanes
Ombudsman