

The complaint

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

Ms E 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 E herself.

What happened

Ms E was approved for an Aqua credit card in March 2022 with a £900 credit limit. The credit limit was increased to £1,900 in August 2022. Ms E says that Aqua irresponsibly lent to her, and she made a complaint to them. Aqua did not uphold Ms E's complaint as they said they made fair lending decisions. Ms E brought her complaint to our service.

Our investigator partially upheld Ms E's complaint. She said Aqua should not have provided the credit limit increase to £1,900 due to Ms E exceeding her credit limit on multiple occasions.

Aqua asked for an ombudsman to review the complaint. They said the overlimit fees were not an indication she was struggling to manage her repayments, but this was poor account management. They said Ms E always managed to pay more than her minimum requested payments prior to the credit limit increase.

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 Ms E, 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 Ms E's application. I'll address the credit limit increase later on. Aqua said they looked at information provided by Credit Reference Agencies (CRA's) and information that Ms E had provided before approving her application.

The information shows that Ms E had declared a gross annual income of £25,000. But the CRA reported that Ms E had previously defaulted on at least one account, with the last default being registered 24 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 other checks Aqua made to see if they made a fair lending decision.

Aqua's checks showed Ms E had unsecured active debt showing as around £4,960 as Aqua said she had a debt to annual income ratio of 19.84%. Ms E had no public records – such as a County Court Judgement (CCJ) showing on her credit file. And she had no active accounts in arrears at the time the application was approved, and she hadn't had any active accounts in arrears for the six months prior to the checks.

But the CRA Aqua used did report that Ms E was spending £994.04 a month on her credit commitments. This was over half of what Aqua calculated to be Ms E's net monthly income. Although Aqua completed an affordability assessment to ensure Ms E could afford repayments on the £900 credit limit, I note there is no figure recorded for housing costs. So based on the amount of Ms E's monthly credit commitments and there being no housing costs factored into the affordability assessment, I'm persuaded that Aqua should have completed further checks here.

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 Ms E to ensure she could sustainably afford repayments for a £900 credit limit after all of her outgoings had been paid. 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.

Our investigator asked Ms E to provide her bank statements leading up to this lending decision. And while Ms E provided a number of statements to our service with her complaint submission, none of these statements covered the timeframe just before this lending decision. So I'm unable to say what further checks would have shown here.

So on the face of it, it does look like Aqua should've looked more closely into this. But as my role is impartial, that means I have to be fair to both sides and although I'm satisfied that Aqua should've done more checks here – I can't say whether further checks would've revealed further information which means they wouldn't have lent. So as Ms E hasn't provided our service with the information our investigator asked her for, that means that it wouldn't be fair for me to say that Aqua shouldn't have lent here, because I don't know what further checks would reveal.

August 2022 credit limit increase - £900 to £1,900

I've looked at the information available to Aqua as part of this lending decision. Ms E's active unsecured debt was a lot higher than it was at the account opening checks, as a CRA reported it was now showing as £29,404. Ms E was also showing as having an active payday loan, albeit the checks are not clear when this was opened, so Ms E may have had this for some time.

The information from a CRA appears to show some inconsistent information regarding a default on an account. I say this because one CRA shows the worst status of Ms E's accounts for the last six months to be "0".

But in the month of the checks for this lending decision, this status is shown as an "8", which would typically indicate a borrower has defaulted on an agreement. But the same CRA, in the same month, reports that the last time Ms E defaulted on an agreement was 28 months prior to the checks. So I do think this should have prompted further checks to see if Ms E had defaulted on an account since the Aqua account had been opened.

In addition to this, while Ms E had incurred no late fees on her Aqua account since it had been opened, she had incurred two overlimit fees, which could be a sign of financial difficulty. But the occasions where Ms E exceeded her credit limit could also be oversights, as she generally paid more than the minimum requested payment.

So based on the increase to her unsecured debt, the inconsistent data about her worst account status in the last six months, and Ms E exceeding her credit limit, I'm persuaded that Aqua should have completed further checks before increasing her credit limit.

Ms E has provided her credit file to our service. I've reviewed this and it does not appear that Ms E had defaulted on any accounts between her Aqua account being opened and this lending decision.

I asked Ms E for her bank statements leading up to this lending decision, but she did not provide these by the deadline given, even though I extended this for her.

So on the face of it, it does look like Aqua should've looked more closely into this. But as I've previously explained, my role is impartial, and although I'm satisfied that Aqua should've done more checks here – I can't say whether further checks would've revealed further information which means they wouldn't have lent. So as Ms E hasn't provided our service with the information I asked her for, that means that it wouldn't be fair for me to say that Aqua shouldn't have lent here, because I don't know what further checks would reveal.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I can't conclude that Aqua lent irresponsibly to Ms E or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here. So it follows I don't intend to ask Aqua to do anything further."

I invited both parties to let me have any further submissions before I reached a final decision. Neither party responded 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.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 25 June 2025.

Gregory Sloanes
Ombudsman