

## **The complaint**

Miss D 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 D applied for an Aqua credit card in August 2022. In her application, Miss D said she was employed with an income of £15,000 a year that Aqua calculated left her with £1,193 a month after deductions. Aqua applied estimates for Miss D's rent of £198 and general living expenses of £417 a month to the application. A credit search found no evidence of adverse credit, defaults or recent missed payments. The credit search found Miss D already owed around £10,400 in other unsecured debt (around 69% of her gross annual income) and was making monthly payments of £442. Aqua applied its lending criteria and says Miss D had an estimated disposable income of £135 a month after covering her existing commitments. Aqua approved Miss D's application and issued a credit card with a £900 limit.

In April 2023, Aqua increased the credit limit to £1,500.

Last year, representatives acting on Miss D'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 D's application and increasing the credit limit and didn't agree it lent irresponsibly.

An investigator at this service upheld Miss D's complaint. They thought that Aqua's lending assessment showed Miss D only had £135 remaining each month after covering her existing commitments which wasn't sufficient to sustainably afford repayments to a new credit card – especially if she borrowed up to the full credit limit. The investigator asked Aqua to refund all interest, fees and charges applied from the date Miss D's credit card was approved.

Aqua responded to confirm it didn't agree. Aqua accepted that the credit increase in April 2023 shouldn't have been approved and offered to refund all interest, fees and charges applied to balances over £900 from April 2023 onwards. But Aqua said Miss D was left with sufficient disposable income to be able to avoid persistent debt and make monthly payments to repay the balance in a reasonable amount of time. As Aqua asked to appeal, Miss D'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 D 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.

I've set out the information Aqua used when considering Miss D's application above. I can see Aqua asked Miss D about her income and applied some estimates for her regular outgoings when completing its affordability assessment. But I think the fact Miss D's existing debts were already substantial when compared to her annual income, representing a debt to income ratio of 69% should've caused Aqua to consider going further in its lending checks. Miss D's take home pay was around £1,193 a month and she was already making monthly repayments of £442 to her existing debts which was a significant amount. I'm satisfied that the information Aqua obtained showed Miss D was already using a substantial part of her monthly income to cover existing debts.

Whilst I accept Aqua is able to use estimates for Miss D's regular outgoings and living expenses, I find the rent figure of £198 a month it used in the application to be unusually low to the point it could be considered unrealistic.

Aqua's lending assessment found Miss D had a disposable income of around £135 a month after covering her existing commitments. In my view, that was a very low disposable income, especially when considering Miss D's existing debts, and should've indicated to Aqua that Miss D was already at capacity in terms of her existing outgoings. Whilst I note Aqua's comments in response to the investigator, I haven't been persuaded that £135 a month was sufficient to sustainably repay the outstanding balance should Miss D have borrowed to the full credit limit *and* have funds available to cover any unexpected or emergency costs that may've arisen. Overall, I'm satisfied the information Aqua obtained during the application should've led to it taking the view that a new credit card wasn't affordable. As a result, my view is that Aqua lent irresponsibly when it approved Miss D's credit card application in August 2022.

Aqua has already confirmed it accepts the credit limit increase to £1,500 in April 2023 shouldn't have been approved so has agreed to refund all interest, fees and charges on balances over £900 from that date. As Aqua has already accepted it lent irresponsibly, I don't need to make a finding on the credit limit increase beyond saying I agree with the conclusion it reached.

As I'm satisfied Aqua lent irresponsibly when it approved Miss D's application I'm going to tell it to refund all interest, fees and charges applied 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 below results in fair compensation for Miss D 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 D'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 D along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding this account from Miss D's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Miss D for the remaining amount. Once Miss D has cleared the balance, any adverse information in relation to the account should be removed from their credit file.

If NewDay has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with it to ensure the redress set out above is carried out promptly.

\*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Miss D 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 D to accept or reject my decision before 31 July 2025.

Marco Manente  
**Ombudsman**