

The complaint

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

Miss S is represented by a solicitor's 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 S herself.

What happened

Miss S was approved for an Aqua credit card in July 2021 with a credit limit of £1,200. I have detailed the credit limit changes below:

March 2023	£1,200 to £2,050
July 2023	£1,700 to £2,550

Miss S says that Aqua irresponsibly lent to her. Miss S made a complaint to Aqua, who did not uphold her complaint. They said the affordability assessment was affordable and proportionate. Miss S brought her complaint to our service.

Our investigator partially upheld Miss S' complaint. She said Aqua shouldn't have increased the credit limit over £1,200, as Aqua's affordability assessment showed Miss S wouldn't have enough disposable income.

Aqua asked for an ombudsman to review the complaint. They said their approach at the initial lending decision was to apply conservatism and an affordability buffer to support the customer with fluctuations in income/expenses from month to month. They said Miss S managed her account well, and there were no concerns of financial difficulties, with Miss S also making higher repayments than her estimated disposable monthly income.

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 or increase the credit available to Miss S, 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.

I've looked at what checks Aqua said they did when initially approving Miss S' application. I'll address the other lending decisions later on. Miss S declared a gross annual income of £12,000.

The data also showed that Miss S had no County Court Judgements (CCJ's) or defaults. The checks showed that Miss S was not in arrears on any of her accounts at the time of the

checks, or the six months prior to the checks.

The initial credit limit was 10% of Miss S' declared gross annual income. The checks showed Miss S currently had around a 60.53% debt to gross annual income ratio. So this would have equated to around £7,263.60 of unsecured debt.

Aqua received information from the Credit Reference Agencies (CRA's) that Miss S was paying £266 a month towards her monthly credit commitments. This is a large amount of Miss S' net monthly income. So I'm persuaded that since this was the only outgoing Aqua had recorded for Miss S they should have made further checks to ensure that the £1,200 credit limit would be affordable and sustainable for Miss S, as there was no net income showing conservatism 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 Miss S to ask her what her actual outgoings were. 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 S has provided her bank statements leading up to this lending decision. While she is overdrawn for long periods of time, having an overdraft in itself would not be a reason to say lending would be unaffordable. Miss S is in credit when her income credits her account. There was an occasion where Miss S exceeded her overdraft limit, however, she transferred funds from another account the following day to go back within her overdraft limit.

Miss S has a number of non-essential spending debiting her bank account. So after considering the information shown in her bank statements, and with there being no adverse information from the CRA Aqua used, then I'm persuaded that repayments for a £1,200 credit limit should be affordable and sustainable for Miss S. So I'm persuaded that Aqua made a fair lending decision here.

March 2023 credit limit increase - £1,200 to £2,050

Since the Aqua account was opened, a CRA reported that Miss S had defaulted on an external account between her Aqua account being opened, and this credit limit increase. So it would appear that Miss S had not been able to meet her contractual monthly payments on an external account and the default is first showing in early 2022.

Miss S also incurred a late payment fee on her Aqua account. This could also be a sign of financial difficulty, or it could have been an oversight from Miss S. Her unsecured debt had more than doubled since the initial lending checks, which could mean Miss S was more reliant on credit. Her unsecured debt was more than her originally declared gross annual income.

Aqua also completed an affordability assessment as part of this lending decision. But the income recorded was a lot higher than what Miss S declared at the account opening stage. The affordability assessment shows that Miss S would have around £33 a month disposable income.

I'm not persuaded that £33 a month disposable income would be sufficient for Aqua to make a fair lending decision here. I say this because even a slight rise in Miss S' outgoings would result in her having a negative disposable income, not to mention her having no disposable income for emergencies. Although I note on occasion Miss S pays more than her minimum repayment, she often re-uses this credit. So I'm not persuaded that Aqua made a fair lending decision here.

Future credit limit increase

If Miss S' credit limit was not increased to £2,050, then it's probable that the further lending decision wouldn't have happened after this either. So I think there is an argument for saying that Miss S' complaint about the subsequent lending decision 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 March 2023, then 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 S 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. In addition to this, I also think it would be fairer to uphold the complaint from the date the credit limit was actually changed, as opposed to around the time when the credit limit increase was offered.

My final decision

I uphold this complaint in part. NewDay Ltd trading as Aqua should 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 £1,200 after 28 March 2023;

If the rework results in a credit balance, this should be refunded to Miss S 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 S' credit file recorded after 28 March 2023;

Or, if after the rework the outstanding balance still exceeds £1,200, Aqua should arrange an affordable repayment plan with Miss S for the remaining amount. Once Miss S has cleared the balance, any adverse information recorded after 28 March 2023 in relation to the account should be removed from Miss S' credit file.

**If Aqua considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss S how much they've taken off. They should also give Miss S 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 Miss S to accept or reject my decision before 19 August 2025.

Gregory Sloanes

Ombudsman