

The complaint

Miss B 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 B applied for an Aqua credit card in August 2014. The application data provided by Aqua says Miss B's income was noted as £145,000 a year in the application which it calculated left her with £4,456 a month after deductions. Aqua applied estimates for Miss B's monthly housing cost of £621 and general living expenses of £551 to the application. A credit search was completed that showed Miss B owed around £10,250 in other unsecured debt and was making monthly repayments of £188. No adverse credit, defaults, payday loans or recent missed payments were noted on Miss B's credit file. Aqua approved Miss B's application and issued a credit card with a limit of £250.

Miss B used her credit card to take a cash advance of £100 in the first month, incurring a fee of £3. Miss B also used her credit card for some retail spending. In September 2014 Miss B took another cash advance and was charged £3 by Aqua. In October 2014 Miss B incurred a late fee of £12 when her monthly payment wasn't made on time. In November 2014 Aqua increased Miss B's credit limit to £750.

Miss B maintained monthly repayments until October 2015. In November 2015 Miss B started to make monthly repayments of £1 to her Aqua credit card. The credit card was ultimately closed by Aqua and the outstanding balance was sold to a third party in November 2018.

Last year, representatives acting on Miss B's behalf complained that Aqua lent irresponsibly and it issued a final response. Aqua said Miss B had waited too long to complain and didn't comment on whether it lent responsibly.

When Miss B's complaint was initially referred to this service Aqua raised an objection to the consideration of the merits and said she'd waited too long to refer her case to us. But the investigator went on to issue a view that confirmed why they thought Miss B's case had been referred to us within the relevant time limits and Aqua provided consent to look at the merits of her complaint.

The investigator thought the initial decision to approve Miss B's application was reasonable based on the information Aqua obtained. But the investigator thought the way Miss B's credit card had been managed in the three month period between the application being approved and the credit limit increase showed she wasn't in a position to sustainably afford further borrowing. As a result, the investigator upheld Miss B's complaint from the point Aqua increased the credit limit in November 2014 and asked it to refund all interest, fees and charges applied to balances over £250 from that date.

Aqua asked to appeal and said it had taken a conservative approach when increasing the credit limit. Aqua also said the fact Miss B had used almost her entire credit limit during the first month, taken cash advances and incurred a late fee were not sufficient to demonstrate

the credit limit increase was unaffordable. Further, Aqua said that Miss B had an estimated disposable income of £3,055 a month at the point of increasing her credit limit which showed it was affordable. Aqua also made some further points about the time limits noted in the rules. As Aqua asked to appeal, Miss B'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 B 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 B's application above. I can see the application data provided shows Miss B's income as £145,000. Aqua hasn't supplied evidence that shows Miss B's income was verified in any way. And it's not clear to me whether the income figure used was accurate or mistyped in the application. With that being said, I think it's fair to note that Aqua also used estimates for Miss B's housing costs and general living expenses and that her credit file was clear of any missed payments or adverse information. Further, the initial credit limit of £250 was low. So even if Miss B's income wasn't correct in the application, I'm satisfied, on balance the level and nature of checks completed were reasonable and proportionate to the £250 credit limit Aqua went on to approve. In my view, Aqua's decision to proceed based on the information it obtained was reasonable and I haven't been persuaded it lent irresponsibly to Miss B when it approved a credit card with a £250 limit.

I note Aqua comments about Miss B's account history in the three months after her credit card was approved. And I wouldn't necessarily have expected Aqua to decline to lend further based on an isolated issue or sign Miss B may've been overcommitted. But here, there were several factors at play. Miss B quickly borrowed up to the full credit limit. Miss B also took a cash advance of £100 in the first month and £40 in the second, paying cash advance fees on both occasions. Finally, Miss B made a late payment in October 2014, the month that Aqua carried out its lending assessment before increasing the credit limit. Taken together, I'm satisfied that the information available to Aqua was clear in showing Miss B was already overcommitted and using her credit card in an unsustainable way. Overall, I'm satisfied the information available to Aqua should've shown Miss B wasn't in a position to afford further credit and taken the decision to decline to lend further.

I note that Aqua made some additional comments about the time limits noted in the rules we operate under. But Aqua provided its consent to the Financial Ombudsman Service considering the merits of Miss B's complaint in full on 20 March 2025 and confirmed we can look at all the lending decisions it made. As a result, that's the approach taken by the investigator and in this decision.

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 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.

My final decision

My decision is that I uphold Miss B's complaint and direct NewDay Ltd trading as Aqua to settle as follows:

- Rework the account removing all interest, fees, charges and insurance (not already refunded) that have been applied to balances above £250.
- If the rework results in a credit balance, this should be refunded to Miss B 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 recorded after 1 December 2014 regarding this account from Miss B's credit file.
- Or, if after the rework the outstanding balance still exceeds £250, NewDay should arrange an affordable repayment plan with Miss B for the remaining amount. Once Miss B has cleared the outstanding balance, any adverse information recorded after 1 December 2014 in relation to the account should be removed from her credit file.

As the debt has been sold to a third party, NewDay should either repurchase the debt or liaise with the debt owner to ensure the above steps are undertaken promptly.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Miss B 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 B to accept or reject my decision before 4 August 2025.

Marco Manente
Ombudsman