

The complaint

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

Miss K is represented by a Claims Management Company 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 K herself.

What happened

Miss K was approved for an Aqua credit card in November 2018 with a £450 credit limit. The credit limit was increased to £1,350 in May 2019. Miss K says that Aqua irresponsibly lent to her, and she made a complaint to them. Aqua did not uphold Miss K's complaint as they said they made fair lending decisions. Miss K brought her complaint to our service.

Our investigator upheld Miss K's complaint. She said Miss K declared a gross annual income of £350, but her credit commitments were recorded as being £398 a month, so Miss K didn't have the affordability to maintain new credit agreements.

Aqua asked for an ombudsman to review the complaint. They said the income declared appeared to be a keying error. They said that Miss K was clearing the balance each month, and her first three payments totalled £327.82 – almost her declared gross annual income, which would suggest a keying error.

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 Miss K, 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 Miss K'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 Miss K had provided before approving her application.

The information shows that Miss K had declared a gross annual income of £350. But the CRA reported that Miss K had credit commitments which totalled £398 a month, which would have been over her declared gross annual income.

So there was inconsistency in the data which should have prompted further checks. The data also showed that Miss K had no defaults or County Court Judgements (CCJ's). She also had no arrears on any of her approximate £10,008 of unsecured debt. So if Miss K was genuinely receiving £350 a year of income, which would equate to less than £30 a month income, then it's not clear how she was able to service her debt and to not fall into arrears.

So I'm persuaded that Aqua should have completed further checks here to check if Miss K's income really was £350 a year. 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 K to ask her what her gross annual income was to ensure she could sustainably afford repayments for a £450 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.

As Miss K has previously told us the account she had at the time was closed, I asked her if she could tell us what her occupation and gross annual income was leading up to her applying for the account. But Miss K did not respond by the deadline I provided, even though I extended the deadline for her.

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 Miss K 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.

May 2019 credit limit increase - £450 to £1,350

I've looked at the information available to Aqua as part of this lending decision. Miss K's active unsecured debt was lower than it was at the account opening checks, as a CRA reported it was now showing as £8,860.

Miss K was not showing as having any adverse information on her credit file since the account opening checks. Aqua would have also been able to see how Miss K managed her Aqua account since it had been opened.

Aqua would have seen that Miss K incurred no late or overlimit fees on the account since it had been opened. She also repaid the full statement balance of her account when it was due up to this point.

Aqua were able to use Current Account Turnover (CATO) to assess Miss K's income. So Miss K was assessed as having £1,317 a month income. Aqua also completed an affordability assessment using information from a CRA, and modelling to estimate Miss K's outgoings. The affordability assessment showed that Miss K would have enough disposable income to be able to afford repayments sustainably for a £1,350 credit limit.

So I'm persuaded that the checks Aqua completed for this lending decision were proportionate, and they made a fair lending decision to increase her credit limit to £1,350.

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 Miss K 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."

I invited both parties to let me have any further submissions before I reached a final decision. Aqua did not respond to the provisional decision. Miss K responded to the provisional decision to confirm her employment status as full time employed.

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.

Miss K's response to the provisional decision wasn't clear in the sense that it read as if she was currently full time employed. So I asked her for clarity if she could confirm if she was full time employed in November 2018, and if she was, if she could recall her salary from that time. But Miss K did not respond by the deadline set.

If Miss K was saying she was full time employed at the time she applied for the Aqua account, then the gross annual income she entered as £350 a year would likely have been an error given that this would equate to less than £30 a month, which wouldn't be aligned with a full time employment salary. But Miss K hasn't told us how much she actually was earning when she applied for the account.

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 Miss K 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.

In summary, Miss K's response hasn't changed my view, and my final decision and reasoning remains the same as in my provisional decision. If Miss K is disappointed, I hope she understands my reasons.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 16 July 2025.

Gregory Sloanes
Ombudsman