

The complaint

Miss J complains that NewDay Ltd trading as Aqua lent irresponsibly when it approved her credit card application.

What happened

The background to this complaint and my initial conclusions were set out in a provisional decision. I said:

Miss J applied for an Aqua credit card in October 2021. In her application, Miss J gave an income of £14,568 a year that Aqua calculated left her with £1,167 a month after deductions. Aqua used an estimate of £480 a month for Miss J's general living expenses. No estimate for Miss J's housing costs was included in Aqua's lending assessment. Aqua also completed a credit search and found Miss J already owed £6,802 in other unsecured debts and had missed two payments in the previous six months. The credit file information showed Miss J was making monthly repayments of £472 to her existing debts, around 40% of her monthly take home income. No defaults or other adverse credit was found. Aqua says Miss J had an estimated disposable income of £215 a month after applying its lending criteria. Aqua approved Miss J's application and issued a credit card with a £600 limit.

Miss J used her credit card but the account balance quickly exceeded the credit limit with various fees and charges being applied. Miss J later appears to have entered into a repayment plan with Aqua.

Last year, representatives acting on Miss J'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 J's application and didn't agree it lent irresponsibly.

An investigator at this service thought Aqua had completed reasonable and proportionate lending checks before approving Miss J's application and didn't uphold her complaint. Miss J's representatives asked to appeal so her complaint has been passed to me to make a decision.

What I've provisionally 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, the rules say Aqua had to complete reasonable and proportionate checks to ensure Miss J 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 J's application above. I note Aqua reached the view that Miss J had around £215 remaining each month after covering her existing outgoings. But the application information Aqua has supplied shows it made no allowance for Miss J's housing costs in the affordability assessment it completed. In my view, without considering a fundamental outgoing like housing, Aqua failed to complete reasonable lending checks when considering Miss J's application.

According to Aqua, Miss J only had £215 a month as a disposable income. Even if I were to apply a very modest housing cost figure of £200 a month to Miss J's disposable income, it would only leave her with around £15 a month. Clearly, that's not sustainable and would've meant Miss J had almost no funds available to cover any emergency expenses or repay her existing debts, which were already high when compared against her income.

In my view, if Aqua had included housing costs in its affordability assessment it would've reached the position Miss J had little to no disposable income and declined her application on the basis a new credit card wasn't affordable. As a result, I intend to uphold Miss J's complaint and direct Aqua to refund all interest, fees and charges applied to her credit card.

I think it's fair to note that Miss J's account history shows she quickly experienced difficulties maintaining the credit card repayments and fell behind.

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 J 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.

I invited both parties to respond with any additional comments or information they wanted me to consider before I made my final decision. No responses were received.

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 no new information has been provided by either party I see no reason to change the conclusions I reached in my provisional decision. I still think Miss J's complaint should be upheld, for the same reasons.

My final decision

My decision is that I uphold Miss J'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 J 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 J's credit file.
- Or, if after the rework there is still an outstanding balance, Aqua should arrange an affordable repayment plan with Miss J for the remaining amount. Once Miss J has cleared the balance, any adverse information in relation to the account should be removed from their credit file.

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

*HM Revenue & Customs requires Aqua to deduct tax from any award of interest. It must give Miss J 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 J to accept or reject my decision before 26 August 2025.

Marco Manente
Ombudsman