

The complaint

Mrs M complains that NewDay Ltd trading as Aqua irresponsibly lent to her.

Mrs M 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 Mrs M herself.

What happened

Mrs M was approved for an Aqua credit card in December 2017 with a credit limit of £450. I have detailed the credit limit changes below:

October 2018	£450 to £1,100
July 2019	£1,100 to £2,100
February 2021	£2,100 to £2,150

Mrs M says that Aqua irresponsibly lent to her. Mrs M made a complaint to Aqua, who did not uphold her complaint. They said the affordability assessments were appropriate and proportionate. Mrs M brought her complaint to our service.

Our investigator partially upheld Mrs M's complaint. She said that Aqua shouldn't have increased the credit limit to £2,150. Aqua asked for an ombudsman to review the complaint. They said that the increase of £50 was implemented to help support Mrs M during the pandemic, and they stand by this decision as it was beneficial to Mrs M during a period of global instability.

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 Mrs M, 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 credit card

I've looked at what checks Aqua said they did when initially approving Mrs M's application. I'll address the other lending decisions later on. Aqua relied on information from Mrs M and a Credit Reference Agency (CRA).

Mrs M declared a gross annual income of £28,900. The data also showed that Mrs M had previously defaulted on at least one other account, with the last default being registered 17

months prior to the checks.

It may help to explain here that, while information like a default on someone's credit file may often mean they're not granted further credit – they don't automatically mean that a lender won't offer borrowing. So I've looked at what other checks Aqua made to see if they made a fair lending decision.

The CRA reported there were no County Court Judgements (CCJ's) on Mrs M's credit file. The checks showed that Mrs M was not in arrears on any of her active accounts at the time of the checks, or the six months prior to the checks.

The checks showed Mrs M currently had a 4.34% debt to gross annual income ratio. So this would have equated to around £1,254 of unsecured debt. Aqua completed an affordability assessment including information from Mrs M, a CRA, and modelling to assess whether the initial credit limit would be affordable and sustainable for Mrs M. The outcome of the affordability assessment showed that Mrs M should comfortably be able to afford sustainable repayments for a £450 credit limit.

So I'm persuaded that Aqua's checks were proportionate here, and they made a fair lending decision to approve a £450 initial credit limit.

October 2018 credit limit increase - £450 to £1,100

A CRA reported that Mrs M's active unsecured debt was £5,924 at the time of the checks, which was almost quadruple the level it was at the account opening checks.

The CRA Aqua used did not report any arrears on any external accounts since the account had been opened. Aqua would have also been able to see how Mrs M operated her account since it had been opened.

Mrs M incurred three overlimit fees on the account and several cash advance fees for relatively small transactions. This could be a sign of financial difficulty. So based on this, I'm persuaded that Aqua should have completed further checks to ensure the £1,100 credit limit would be affordable and sustainable for her.

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 Mrs M to ensure that she could afford the repayments on the Aqua account. 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.

I asked Mrs M if she could provide us with her bank statements leading up to this lending decision to see if the lending would be affordable and sustainable for her. But Mrs M confirmed that she wasn't able to provide me with her bank statements leading up to this lending decision.

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 Mrs M hasn't provided me with the information she was asked 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.

July 2019 credit limit increase - £1,100 to £2,100

A CRA reported that Mrs M's active unsecured debt was £6,011 at the time of the checks, which was not too dissimilar than her active unsecured balances at the last lending decision.

Two CRA's reported that Mrs M had been in arrears on at least one external accounts since the last lending decision, although this could be an oversight as Mrs M cleared the arrears in the following month. Aqua would have also been able to see how Mrs M operated her account since it had been opened.

Mrs M incurred a late fee in the same month that they completed their checks for this lending decision and again she incurred several cash advance fees for relatively small transactions. So this could be a sign of financial difficulty. So based on this, I'm persuaded that Aqua should have completed further checks to ensure the £2,100 credit limit would be affordable and sustainable for her.

As I said in the previous section, there's no set way of how Aqua should have made further proportionate checks. I asked Mrs M if she could provide us with her bank statements leading up to this lending decision to see if the lending would be affordable and sustainable for her. But Mrs M confirmed that she wasn't able to provide me with her bank statements leading up to this lending decision.

So on the face of it, it does look like Aqua should've looked more closely into this. But I can't say whether further checks would've revealed further information which means they wouldn't have lent. So as Mrs M hasn't provided me with the information she was asked 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.

February 2021 credit limit increase - £2,100 to £2,150

My understanding is that Aqua provided a £50 credit limit increase as a way to assist Mrs M during the pandemic. It does not appear that this credit limit was a temporary credit limit increase as the credit limit was still showing as £2,150 in the December 2021 data, and it only appears to have stopped due to Mrs M's debt being "*charged off*". This was showing in the January 2022 data. I also note that Mrs M was charged a late payment fee, and an overlimit fee in June 2021.

I also note that Mrs M's outstanding balance on the Aqua account fell beneath the previous credit limit of £2,100 in November 2021, so if Aqua did not reduce the credit limit to the £2,100 to avoid Mrs M being over the previous £2,100 credit limit, there were at least two statement opportunities for them to reduce the credit limit to the amount it was if this was supposed to be a short temporary measure.

But Mrs M would still need to be able to afford to sustainably make repayments for the increase to the credit limit, so I'm not persuaded that this should be assessed differently to any other lending decision Aqua made.

At the time of the lending checks, a CRA reported Mrs M's unsecured debt to be £7,448, which was not significantly higher than at the last lending decision. None of the CRA's reported any arrears from Mrs M since the last lending decision.

But Mrs M incurred five late fees and two overlimit fees since the last lending decision (along with incurring a number of cash advance fees again). When Mrs M had the credit limit increase applied to her account, she had already exceeded her credit limit

So while Aqua may have had good intentions here to support Mrs M, I'm not persuaded that it was fair for Aqua to increase the credit limit when Mrs M was already exceeding her credit

limit and had poor account management leading up to this credit limit increase, so I can't conclude they made a fair lending decision here.

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 Mrs M 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, if Aqua do not own the debt anymore for the account, then they should also 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.

As I've stated in the previous section, I've set out the reasoning why the last credit limit increase should not be remediated differently to any other irresponsible lending decision our service would typically uphold, Aqua are aware of our approach here, and therefore I've asked them to provide redress in line with our standard approach to these types of complaints.

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;

Rework the account removing all interest, fees, charges, and insurances (not already refunded) that have been applied to balances above £2,100 after 16 February 2021;

If the rework results in a credit balance, this should be refunded to Mrs M 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 Mrs M's credit file recorded after 16 February 2021;

Or, if after the rework the outstanding balance still exceeds £2,100, Aqua should arrange an affordable repayment plan with Mrs M for the remaining amount. Once Mrs M has cleared the balance, any adverse information recorded after 16 February 2021 in relation to the account should be removed from Mrs M's credit file.

**If Aqua considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mrs M how much they've taken off. They should also give Mrs M 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 Mrs M to accept or reject my decision before 7 November 2025.

Gregory Sloanes

Ombudsman