

## The complaint

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

Ms 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 Ms S herself.

## What happened

Ms S was approved for an Aqua credit card in March 2014 with a credit limit of £500. I have detailed the credit limit changes below:

|                |                  |
|----------------|------------------|
| October 2015   | £500 to £1,000   |
| April 2016     | £1,000 to £1,750 |
| September 2016 | £1,750 to £2,650 |
| March 2017     | £2,650 to £3,450 |
| August 2019    | £3,450 to £5,450 |

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

Our investigator upheld Ms S' complaint. He said that Ms S had a high debt to income ratio, she had missed a mortgage payment in the six months prior to the lending, and her monthly credit commitments were a high proportion of her income, therefore the lending was unaffordable for Ms S. As Aqua did not respond to our investigator's view of the complaint, the complaint was passed to me to make a decision on it.

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 Ms 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.*

### *Acceptance for the Aqua credit card*

*I've looked at what checks Aqua said they did when initially approving Ms S' application. I'll address the other lending decisions later on. As a long time has passed since some of the lending decisions, information on some lending decisions is limited. Aqua relied on information from Ms S and a Credit Reference Agency (CRA).*

*Ms S declared a gross annual income of £12,000. The data also showed that Ms S had no County Court Judgements (CCJ's) or defaults. The checks showed that Ms S was not in arrears on any of her accounts at the time of the checks, or the six months prior to the checks. Although it has previously been said that Ms S had been in arrears on her mortgage within the previous six months, this was not showing on the checks Aqua completed.*

*The checks showed Ms S currently had around a 91% debt to gross annual income ratio. So this would have equated to around £10,920 of unsecured debt. Aqua received information from the CRA that Ms S was paying £400 a month towards her credit commitments.*

*This was a large amount of Ms S' net monthly income. So because this was the only outgoing Aqua had recorded for Ms S, they should have made further checks to ensure that the £500 credit limit would be affordable and sustainable for Ms S.*

*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 Ms 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.*

*Our investigator asked Ms S 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 Ms S confirmed that her bank wasn't able to provide her with 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 Ms S hasn't provided us with the information she was asked for (albeit through no fault of her own), 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.*

*October 2015 credit limit increase - £500 to £1,000*

*A CRA reported that Ms S' credit card borrowing was £2,303 at the time of the checks. Due to the time that's passed I have no information from Aqua about her total unsecured borrowings from this time, so I can't say whether her overall debt had risen or fallen since the last lending decision.*

*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 Ms S operated her account since it had been opened.*

*Ms S incurred four overlimit fees on the account and two late fees on her Aqua account. 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 doubling of the credit limit would be affordable and sustainable for her.*

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*April 2016 credit limit increase - £1,000 to £1,750*

*One of the CRA's had reported to Aqua that Ms S' credit card debt was £4,199 at the time of the checks, which was higher than before. A CRA had reported that Ms S had been in arrears on an external account, which could be a sign of financial difficulty. But it could have been an oversight as I note she had no accounts in arrears in the following month, so it appears that Ms S was able to bring the account in arrears up to date in a short period of time.*

*Ms S incurred no late or overlimit fees since the last lending decision. So I'm persuaded that Aqua's checks were proportionate here, and they made a fair lending decision to increase the credit limit to £1,750.*

*September 2016 credit limit increase - £1,750 to £2,650*

*There is more information about Ms S' financial situation available at the time of this lending check. Not only is Ms S' credit card debt being reported (£4,796), which was not too dissimilar to the credit card debt at the last lending decision, but the total unsecured debt as being reported by a different CRA was showing as £6,567, which was a lot lower than the total unsecured debt at the initial lending stage.*

*None of the CRA's reported any arrears from Ms S since the last lending decision. Ms S did not incur any late or overlimit fees since the last lending decision. A CRA reported Ms S had no active payday loans at the time of these checks, no repayment plans in place and no defaulted accounts or CCJ's. So I'm persuaded that the checks Aqua completed here were proportionate, and that they made a fair lending decision here.*

*March 2017 credit limit increase - £2,650 to £3,450*

*It appears that Ms S' Aqua account was transferred to a different account as part of this credit limit change, so information is limited here. But on the original account I can see a CRA reported Ms S' total unsecured debt to be £7,810, which was higher than at the last lending decision, but lower than at the account opening checks.*

*Ms S was not in arrears on any of her accounts since the last lending decision, and again she incurred no late or overlimit fees on her Aqua account since the last lending decision. So I'm persuaded that Aqua's checks were proportionate, and they made a fair lending decision here.*

*August 2019 credit limit increase - £3,450 to £5,450*

*A CRA reported that Ms S' unsecured debt at the time of these checks was at £19,138, which was significantly higher than at the last lending decision. Ms S had been in arrears on an external account, which could be another sign of financial difficulty, although I note she brought this account up to date by the time the CRA reported her activity the following month.*

*Ms S incurred seven late fees and five overlimit fees since the last lending decision. So although Aqua completed an affordability assessment using Current Account Turnover*

(CATO), and modelling to assess Ms S's disposable income, I note that the assessed income was £4,784, which was more than quadruple what her original net monthly income would have been.

While I can't rule out a pay rise/promotion/new job during the years that had passed since she opened her Aqua account, I'm persuaded that due to her debt more than doubling, the poor account management of her Aqua account since the last lending decision, and the credit limit increase being for an extra £2,000 here, that Aqua should have made further checks to ensure the lending would be affordable and sustainable for Ms S.

So I asked Ms S if she could forward me her bank statements leading up to this lending decision. As the account is joint, I'm mindful that it wouldn't be proportionate to include the other joint account holder's income, as they wouldn't be responsible for making any repayments on Ms S' Aqua credit card. But it would only be fair to not include any outgoings that the other account holder pays for, as this wouldn't be paid from Ms S' income.

Ms S had income for the three months I looked at as being £1,364, £1,368, and £1,636. As one of the credits was a lot higher than the other payments, which were similar, then I'm mindful that the higher credit could contain overtime/bonus payments.

Ms S has told us that her share of the shared bills was around £650 a month. In addition to this she said she paid around £80 a week for electricity, fuel, and food. So this would be around £1,000 a month of outgoings. But if I factor in Ms S' debt repayments, which Aqua's data shows as being £197 a month for loans at the time of the checks, and £728 a month for credit card repayments then Ms S would already have a negative disposable income.

The credit card repayments that the CRA told Aqua that Ms S made were higher than I expect for the amount of credit card debt that one CRA told Aqua Ms S had. And I can see on occasion that Ms S paid Aqua more than her minimum repayment. But she did often reuse some of the credit shortly after this. Ms S would not have enough disposable income on a sustainable basis to meet her current arrangements based on what outgoings she said she paid.

I've no reason to doubt what Ms S has told us about what she paid. After all, she had a number of late and overlimit fees incurred since the last lending decision, which supports what she's told us about her outgoings, and her unsecured debt nearly trebled since the last lending decision. So I'm not persuaded that Ms S could afford sustainable repayments on a credit limit which was £2,000 higher. So I'm not persuaded that Aqua 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 Ms 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."

I invited both parties to let me have any further submissions before I reached a final decision. Neither party responded to the provisional 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.

As neither party have provided me with any further information to consider, then my decision

and reasoning remains the same as in my provisional decision.

### **Putting things right**

In the provisional decision I said I intend to uphold this complaint in part. I said I intend to ask NewDay Ltd trading as Aqua to 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 £3,450 after 23 August 2019;

If the rework results in a credit balance, this should be refunded to Ms 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 Ms S' credit file recorded after 23 August 2019;

Or, if after the rework the outstanding balance still exceeds £3,450, Aqua should arrange an affordable repayment plan with Ms S for the remaining amount. Once Ms S has cleared the balance, any adverse information recorded after 23 August 2019 in relation to the account should be removed from Ms S' credit file.

I'm still satisfied this is a fair outcome for the reasons given previously.

*\*If Aqua considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Ms S how much they've taken off. They should also give Ms S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

### **My final decision**

I uphold this complaint in part. NewDay Ltd trading as Aqua should settle the complaint in line with the instructions in the *"Putting things right"* section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 1 October 2025.

Gregory Sloanes  
**Ombudsman**