

## **The complaint**

Mrs M complains that NewDay Ltd trading as Aqua irresponsibly lent to her, and they didn't consider information about her disability that she told them.

## **What happened**

- In January 2024 Mrs M was approved for an Aqua credit card, with a credit limit of £450.
- In May 2024 the credit limit was increased to £1,450. Mrs M says that the lending was irresponsible, and she informed Aqua about her disability, but they didn't make reasonable adjustments for her. Mrs M made a complaint to Aqua.
- Aqua did not uphold Mrs M's complaint. They said the account was provided responsibly, and the affordability assessments were appropriate and proportionate. Mrs M brought her complaint to our service.
- Aqua offered to uphold Mrs M's complaint from the credit limit increase in May 2024. Our investigator said that Aqua's offer was fair and in line with our awards for what happened. She said that Aqua's checks for the initial lending were proportionate, and the initial lending appeared affordable.
- Mrs M asked for an ombudsman to review her complaint. She made a number of points. In summary, Mrs M said that she disclosed her disability to Aqua before the credit limit increase, so they reasonably should have been aware of her vulnerability prior to the credit limit increase.
- Mrs M said that Aqua's failures to make reasonable adjustments due to her disability disclosure may amount to a breach of the Equality Act 2010.
- Mrs M said that the redress currently offered does not reflect the full extent of the harm caused, and she requested the balance to be written off, with the default removed and appropriate compensation.

## **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.

Mrs M has made a number of points to this service, and I've considered and read everything she's said and sent us. But, in line with this service's role as a quick and informal body I'll be focusing on the main parts of her complaint in deciding what's fair and reasonable here.

I must make Mrs M aware that I can only address the complaint points she brought to our service originally. Although I'm aware Mrs M has brought several more complaint points after

her complaint has been brought to our service (such as how Aqua have treated her), she will need to make a new complaint to Aqua about these further issues, to give them an opportunity to address this first. If Mrs M is unhappy with their response, then she may be able to bring these additional complaint points to our service and we can set up a new complaint for her.

I would like to thank Mrs M for providing us with information about her personal circumstances, and her disability. I won't discuss what she's told us in great detail in this decision to help protect her identity, but I want her to know I've read everything she's told us.

Mrs M believes that Aqua failed to make reasonable adjustments in light of her disability disclosure to them. So they may have breached the Equality Act 2010. I've taken the Equality Act 2010 into account when deciding this complaint – given that it's relevant law – but I've ultimately decided this complaint based on what's fair and reasonable. If Mrs M wants a decision that Aqua has breached the Equality Act 2010, then she'd need to go to Court.

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 card***

I've looked at what checks Aqua said they did when initially approving Mrs M's application. I'll address the credit limit increase under the next heading '*May 2024 credit limit increase - £450 to £1,450*'. Aqua said they looked at information provided by Credit Reference Agencies (CRA's) and information that Mrs M had provided before approving her application.

The information shows that Mrs M had declared a gross annual income of £40,000. The CRA reported that Mrs M had no County Court Judgements (CCJ's), but she had defaulted on an account 14 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 – it doesn't automatically mean that a lender won't offer borrowing. So I've looked at what else Aqua's information showed them, to see if they made a fair lending decision to accept Mrs M's application.

The CRA Aqua used reported that Mrs M had a debt to income ratio of 44.67%, which based on her declared gross annual income this would have equated to around £17,948.

The CRA had reported that Mrs M had not been in arrears on any of her active accounts in the previous six months and she had no payday loans, or any arrangements to pay on any of her active accounts. The £450 credit limit would equate to around 1.1% of her declared gross annual income.

Aqua completed an affordability assessment using a mixture of information from a CRA and modelling which is an industry standard way of assessing affordability. The affordability assessment showed that Mrs M should be able to sustainably afford repayments for a £450 credit limit. So I'm satisfied that the checks Aqua carried out here, prior to approving the initial £450 credit limit were proportionate and that Aqua made a fair lending decision to approve Mrs M's application for the Aqua account.

### ***May 2024 credit limit increase - £450 to £1,450***

I've considered what Mrs M has said about her disclosing her disability to Aqua before the credit limit increase, so she says they reasonably should have been aware of her vulnerability prior to the credit limit increase. I asked Mrs M for further information about this, so I could see whether Aqua should have increased the credit limit here.

I asked Mrs M if she could recall the date she informed Aqua regarding her disability, and what method of communication she used. I also asked her what reasonable adjustments she asked Aqua to make when she contacted them about her disability.

Mrs M told me that she didn't recall the date of the call, or the call handler's name, but she contacted Aqua around late October 2023, or early November 2023. Mrs M told me that during the call, she made it clear to the call handler that her disability affects her ability to manage her finances. Mrs M said that she asked Aqua to avoid increasing her credit limit without her explicit, informed consent, and she suggested that more accessible tailored communication might help. But no adjustments were offered by Aqua, which left her feeling deeply dismissive of the disclosure she had made, and left her feeling vulnerable, overwhelmed, and unsupported.

At the same time I asked Mrs M for further information, I put Mrs M's points to Aqua regarding what she said about Aqua failing to make reasonable adjustments in light of her disability disclosure, the write off request, and what reasonable adjustments Mrs M asked for.

Aqua told me that they couldn't see anything Mrs M informed them regarding her disability prior to 9 May 2024 (the date of the credit limit increase). They said they would not use the fact of Mrs M's disability as a reason not to lend to her unless they had been informed that the disability or other circumstances were preventing her from managing the account.

Aqua said that Mrs M contacted them on 18 June 2024, when she informed them that she had lost her job and told them about her disability, so they put a hold on the account. So both parties have a differing view of what happened here.

When it comes to complaints where it's one word against another, I have to consider the evidence available to me. I then have to decide on the balance of probabilities what's more likely to have happened in the circumstances.

Mrs M's recollection of the phone call she had with Aqua was in late 2023. But her account was not opened until 2024, so I find it unlikely that the call was made in late 2023 to Aqua. But as this was some time ago, that doesn't mean that Mrs M didn't have the call she describes with Aqua.

So I requested the full uninterrupted system notes from Aqua, as I'm persuaded that this would show any contact Mrs M had with Aqua, and what Aqua should have known (if anything) about Mrs M's disability prior to the credit limit increase.

### ***Call notes***

The first note of Mrs M contacting Aqua is on 18 April 2024 – which was prior to the credit limit increase. But the call was regarding Mrs M wanting a credit limit increase, and a complaint was raised by Mrs M on 19 April 2024 because she couldn't have the credit limit increase. As this complaint was part of a separate complaint Mrs M brought to our service, then I'm unable to go into detail regarding this matter. But I'm satisfied that on 18 April 2024,

Mrs M wanted her credit limit to be increased. There was no note regarding Mrs M's disability left on the call notes.

I'm not persuaded that Mrs M would have disclosed the impact her disability had on her finances on this call, as she told Aqua she wanted a credit limit increase, so I'm persuaded it would be unlikely for her to also tell them her disability affects her ability to manage her finances on the same call.

The credit limit was actually increased three weeks after this call. So I've reviewed the system notes to see if there was any note regarding Mrs M not wanting a credit limit increase anymore, or any note of her disability.

The notes also show that Mrs M applied for a credit limit increase on 7 May 2024. So I'm persuaded that only two days prior to the actual credit limit increase, she wanted her credit limit to be increased. This increase was requested via e-servicing, so Mrs M did not speak to a call handler as a part of this request.

Mrs M then accepted the credit limit increase two days later. I can also see that on 23 May 2024, she requested a credit limit increase to £2,000, which was declined. Another request was made on 28 May 2024 via e-servicing to increase the credit limit to £1,600, which Aqua also declined. So it does appear that in May 2024, Mrs M did want a higher credit limit, and there is no evidence that Aqua had been informed of Mrs M's disability prior to the credit limit increase.

The earliest evidence I can find of Mrs M informing Aqua of her change of circumstances is 18 June 2024, where she informed them of her job loss and her disability. The notes also show that Aqua signposted Mrs M to a charity who may be able to assist her.

### ***My thoughts***

So I can't fairly say that Aqua should have made any reasonable adjustments prior to the credit limit increase, as I've seen no evidence that Aqua were aware of Mrs M's disability or any reasonable adjustments that she needed prior to the credit limit increase. Mrs M had tried to get a credit limit increase only two days prior to the credit limit increase, so I can't fairly say that Aqua would be under the impression that they shouldn't have offered a credit limit increase shortly after this, and Mrs M accepted this on 9 May 2024.

As both parties agree that Aqua lent irresponsibly to Mrs M for this lending decision, there's no need for me to comment on this. So I have focused on whether the redress Aqua have now offered is fair.

Aqua have offered to settle the complaint for this lending decision in line broadly with what I would have asked them to do if I upheld this part of her complaint, so I'm satisfied that this is fair, and I'm not persuaded that further redress is due here, such as writing off the outstanding balance, or providing additional compensation, as this would not be proportionate 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

Aqua have offered to settle the complaint broadly in line with what I would have asked them to do if I had upheld the complaint from the credit limit increase. But in case Aqua have not taken these actions yet, I have set out in the following section what I would expect them to do.

## My final decision

I uphold this complaint in part. NewDay Ltd trading as Aqua should take the following actions if they haven't already done so;

- 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 £450 after 9 May 2024;
- 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 9 May 2024;
- Or, if after the rework the outstanding balance still exceeds £450, 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 9 May 2024 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 23 October 2025.

Gregory Sloanes  
**Ombudsman**