

The complaint

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

What happened

Ms R was approved for an Aqua credit card in April 2022, with a £1,200 credit limit. The credit limit was increased a further three times, in July 2022 (£2,450), November 2022 (£3,800), and March 2023 (£5,150). Ms R says this was irresponsibly lent to her. Ms R made a complaint to Aqua, who did not uphold Ms R's complaint. Aqua said the affordability assessments were appropriate and proportionate. Ms R brought her complaint to our service.

Our investigator did not uphold Ms R's complaint. She said Aqua's checks were proportionate, and they made fair lending decisions. Ms R asked for an ombudsman to review the complaint. She made a number of points. In summary, she said her bank statements showed outgoings such as childcare, and payments to other credit commitments. She said she had no disposable income and she was taking further credit to pay for essential bills.

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 R, 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 R's application. I'll address the other lending decisions later on. Aqua relied on information from Ms R and a Credit Reference Agency (CRA).

Ms R declared a gross annual income of £39,000. The data also showed that Ms R had no County Court Judgements (CCJ's) or defaults. The checks showed that Ms R was not in arrears on any of her accounts at the time of the checks, or the six months prior to the checks.

The checks showed Ms R currently had around a 118.25% debt to gross annual income ratio. So this would have equated to around £46,118 of unsecured debt. Aqua received information from the CRA about how much Ms R was paying towards her monthly credit

commitments.

Aqua completed an affordability assessment using information from Ms R (her income), a CRA (for her monthly commitments), and modelling, which is an industry standard way of estimating outgoings.

The affordability assessment showed that Ms R would have a sufficient disposable income in order to make repayments to a £1,200 credit limit. So it wouldn't have been proportionate here for Aqua to have made further checks, such as asking Ms R to provide bank statements, especially as she had no adverse information on her credit file, and the affordability assessment showed repayments would be affordable.

So I'm persuaded that Aqua's checks were proportionate, and they made a fair lending decision to approve the account with a £1,200 credit limit.

July 2022 credit limit increase - £1,200 to £2,450

A CRA reported that Ms R's unsecured active debt was at £47,606, which was slightly higher than what it was at the account opening stage. Although no accounts were showing as being in arrears since the Aqua account had been opened, I do note the data says that Ms R had outstanding revolving balances (such as credit cards/store cards/overdrafts etc) of £20,271, however, the limits for her revolving accounts was shown on the data as being £19,304. It's not clear if this is an error or not as the data also says that Ms R was utilising 89% of her available credit.

Aqua would have also been able to see how Ms R operated her account since it had been opened. Ms R incurred no overlimit or late fees on her Aqua account since it had been opened.

Aqua also completed an affordability assessment. But despite only three months earlier Aqua calculating £2,633.30 as Ms R's net monthly income, here they used Current Account Turnover (CATO) to estimate her income. CATO is an industry standard way of estimating income without requiring evidence of income such as payslips/bank statements as this wouldn't always be proportionate to request these.

But the CATO figure was showing Ms R's income to be £6,503. So while I can't rule out a pay rise/promotion/new job etc for Ms R, I do think that the difference of £3,869.70, should have prompted further checks, especially as after the affordability assessment, Aqua's data showed that Ms R would be left with £3,629. So if their data was correct about her credit commitments and her living costs, then this could mean that Ms R had a negative disposable income if she was earning a similar income to what she declared only three months earlier.

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 R to ask her what her actual income and 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.

Ms R has provided her bank statements for the three months leading up to this lending decision. There are a lot of transfers across several accounts, so I requested these additional statements from Ms R also.

In total, there were five different bank/savings statements I viewed for the three months leading up to this lending decision. There are some occasions where Ms R had transferred money into a savings account, but she had transferred the money back out shortly after, therefore I have disregarded this.

There was also a loan that credited Ms R's account in May 2022 for £9,500, of which she transferred £9,000 into a saving account in her name. I have not considered that this could be used for repayment of the credit card as Ms R shouldn't be borrowing to repay debt. But the statement for this savings account shows her transferring over the loan payment in smaller amounts to her main bank account, presumably to help her pay her priority bills.

Ms R's statements for her bank account which her salary is credited to shows that her salary varied for the three months I looked at between less than £1,800 one month, less than £2,000 another month, and less than £2,200 another month. So this was significantly less than the CATO figure showed. And it would appear that any overtime Ms R was working was not guaranteed, hence the difference in salary credits.

Ms R is at times four figures overdrawn, and while an overdraft in its own right does not automatically mean further lending is unaffordable, there are clear signs that Ms R does not have enough income to meet her outgoings.

Ms R did have a savings account which had a £503.59 credit balance on 1 April 2022, but by 23 May 2022 this had all gone and there were no credits into this account in the three month period I looked at. Another savings account had a £1,000.36 credit balance on 1 April 2022, but this was all used (apart from the 36p) by 25 April 2022.

The mortgage payment debiting her sole account was higher than what was showing on the affordability assessment Aqua completed. The bank statement also showed that Ms R was paying £395 a month for childcare.

So if Aqua would have completed further checks based on the reasons I gave earlier, then I'm not persuaded that they would have more than doubled the credit limit to £2,450, as Ms R did not have a sufficient disposable income to sustainably afford repayments for the increased credit limit. So I can't fairly say that Aqua made a fair lending decision here.

Further lending decisions

If Ms R's credit limit was not increased to £2,450, then it's probable that the further lending decision wouldn't have happened after this either. So I think there is an argument for saying that Ms R's complaint about the subsequent lending decisions should be upheld without making a finding on reasonable and proportionate checks. After all, if matters had played out as the evidence suggests they should have done in July 2022, then I'm not persuaded that Aqua would've added to the credit.

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 R 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. Ms R accepted the provisional decision. Aqua asked for Ms R's statements that I relied on in the provisional decision, so our investigator forwarded them to Aqua, but Aqua did not provide any further comments by the original deadline, and they did not request an extension to the deadline.

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 £1,200 after 20 July 2022;

If the rework results in a credit balance, this should be refunded to Ms R 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 R's credit file recorded after 20 July 2022;

Or, if after the rework the outstanding balance still exceeds £1,200, Aqua should arrange an affordable repayment plan with Ms R for the remaining amount. Once Ms R has cleared the balance, any adverse information recorded after 20 July 2022 in relation to the account should be removed from Ms R'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 R how much they've taken off. They should also give Ms R 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 R to accept or reject my decision before 1 January 2026.

Gregory Sloanes
Ombudsman