

The complaint

Miss W complains that NewDay Ltd trading as Aqua irresponsibly lent to her.

What happened

Miss W was approved for an Aqua credit card in June 2019, with a £900 credit limit. The credit limit was increased in September 2019 (to £2,150), September 2020 (£3,400), May 2021 (£4,000), August 2021 (£5,500), and September 2022 (£7,000). Miss W says that the credit limit increases on the account were irresponsible. Miss W made a complaint to Aqua, who did not uphold her complaint. They said that their affordability assessments were proportionate and appropriate for the credit limit being approved. Miss W brought her complaint to our service.

Our investigator partially upheld Miss W's complaint. He said that Aqua should have completed further checks on the May 2021 credit limit increase, and further checks would have shown the lending (and subsequent credit limit increases) were not affordable and sustainable for Miss W.

Miss W asked for an ombudsman to review her complaint. She said Aqua could see her making minimum only repayments, and some of her payments had been late, so they should have verified her income and expenditure in more detail, especially as they thought her income had fallen between lending decisions. She did agree with our investigator to say that the last three lending decisions were irresponsible. Aqua also agreed with our investigator's view of the complaint.

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 Miss W has made it clear in her email to our service that the initial credit limit was ok, and just to look into the credit limit increases, then I will not make a finding on the initial checks. But I may need to refer back to these checks when considering whether future lending decision checks were proportionate or not by Aqua.

Before agreeing to increase the credit available to Miss W, 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.

September 2019 credit limit increase - £900 to £2,150

At the time of these checks, a Credit Reference Agency (CRA) reported that Miss W's active unsecured debt was £2,755. When Miss W applied for the Aqua account, she declared a

gross annual income of £20,500, and she was showing as having a debt to income ratio of 6.66%, which would have equated to around £1,365.30. So Miss W's debt had increased since the Aqua account was approved, but not by a substantial amount (compared to her declared gross annual income).

The CRA did not report any of Miss W's external accounts in arrears since she opened the Aqua card, and there were no defaulted accounts or County Court Judgements (CCJ's) being reported by the CRA. Aqua would have been able to see how Miss W managed her Aqua account since it had been opened.

Miss W did incur a late payment fee in the month prior to this credit limit increase. So this could be a sign of financial difficulty. But as this was an isolated occasion between her account being opened and the credit limit increase, and her paying £50 more than what her minimum requested repayment was, then this would suggest this was an oversight. I say this as if Miss W was genuinely struggling financially here, I wouldn't expect her to be able to make a higher repayment much higher than her minimum requested repayment. And she did pay this in the same calendar month that it was requested.

Aqua also completed an affordability assessment using information from a CRA regarding Miss W's Current Account Turnover (CATO), information from a CRA (for Miss W's monthly commitments), and modelling, to assess Miss W's affordability. The results of the affordability assessment showed that repayments for a £2,150 credit limit should be sustainable and affordable for Miss W.

So based on all of the information NewDay gathered, I'm persuaded that their checks were proportionate here, and they made a fair lending decision. So it would not have been proportionate for Aqua to have made further checks such as requesting payslips or bank statements from Miss W.

September 2020 credit limit increase - £2,150 to £3,400

The CRA reported that Miss W's active unsecured debt was £2,747 at the time of the checks, so despite the previous credit limit increasing, Miss W was not using more overall credit at the time of these checks.

Again Miss W was not in arrears on any external account, since the last lending decision. She incurred one late payment fee in the month these lending checks were made, but it would appear this was an oversight. I say this as Miss W did make a repayment in the same calendar month, and this was for higher than her minimum repayment, so again, I wouldn't expect Miss W to be able to make a higher repayment than her minimum repayment, if she was financially struggling at the time.

Aqua again carried out an affordability assessment. Although Miss W has said Aqua believed her income had fallen between lending decisions, I must make it clear to her that it was CATO they used to assess her income, so the turnover of the account falling would not automatically equate to her having a drop of income (and Miss W has not told us that she did have a drop of income around this time). The difference between the CATO between the last lending decision and this lending decision was £127, so I'm not persuaded that this difference should've prompted further checks on this fact alone, given the substantial disposable income showing, which would be sufficient to make sustainable and affordable repayments for a £3,400 credit limit.

I've considered what Miss W has said about making the minimum repayment. But the repayments she made to the account are not reflective of only the minimum repayment being made. There were two occasions that I could identify where Miss W made the

minimum repayment out of the 12 months since the last credit limit increase.

Miss W made three figure repayments in every other month, despite her minimum requested repayment being a maximum of £79.27 (but often lower than this). Miss W even made repayments totalling £300 in one calendar month, and repayments totalling £150 in the month prior to the checks for this lending decision.

So again, it would not have been proportionate for Aqua to have completed further checks, such as requesting Miss W's bank statements, even though this lending decision took place during the pandemic, as Miss W had been consistently making higher than minimum repayments, she had no external adverse credit, and her overall borrowings largely remained unchanged.

Further credit limit increases

As both parties agree that Aqua have irresponsibly lent to Miss W from May 2021, then I'm not minded to interfere with this, and therefore I have not made a finding on whether Aqua made fair lending decisions from May 2021 – September 2022.

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 Miss W 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.

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 £3,400 after 18 May 2021;

If the rework results in a credit balance, this should be refunded to Miss W 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 W's credit file recorded after 18 May 2021;

Or, if after the rework the outstanding balance still exceeds £3,400, Aqua should arrange an affordable repayment plan with Miss W for the remaining amount. Once Miss W has cleared the balance, any adverse information recorded after 18 May 2021 in relation to the account should be removed from Miss W's credit file.

**If Aqua considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss W how much they've taken off. They should also give Miss W 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 Miss W to accept or reject my decision before 6 March 2026.

Gregory Sloanes
Ombudsman