

Complaint

Miss M has complained that NewDay Ltd (trading as “Aqua”) irresponsibly provided a credit card as well and subsequent credit limit increases to her. She says that the credit card and limit increases were unaffordable and caused her continued financial difficulty as she struggled to make her payments, which affected her going forward.

Background

In January 2015, Aqua provided Miss M with a credit card, which had an initial credit limit of £300. Aqua then offered limit increases to £700 in April 2015, £900 in September 2015, £1,900.00 in February 2016 and finally £2,400.00 in August 2016.

In November 2024, Miss M complained saying that the credit card and the limit increases Aqua provided were unaffordable and caused her continued financial difficulty as she struggled to make her payments which affected her going forward. Aqua didn’t uphold Miss M’s complaint as it believed that she had complained too late. Miss M remained dissatisfied after Aqua’s response and referred her complaint to our service.

One of our investigators reviewed what Miss M and Aqua had told us. He thought that he hadn’t seen enough to be persuaded that Aqua failed to act fairly and reasonably either when initially providing Miss M with her credit card, or the credit limit increases it did. This meant that the investigator didn’t recommend that Miss M’s complaint be upheld.

Miss M disagreed with the investigator’s conclusions and asked for an ombudsman to look at her complaint.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Aqua has argued that Miss M’s complaint was made too late because she complained more than six years after the decisions to provide the credit card and the credit limit increases; as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the relationship between her and Aqua was unfair to her as described in s140A of the Consumer Credit Act 1974 (“CCA”). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I’ve decided not to uphold Miss M’s complaint. Given the reasons for this, I’m satisfied that whether Miss M’s complaint about the specific lending decisions was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Miss M's complaint should be considered more broadly than just those lending decisions. I consider this to be the case as Miss M has not only complained about the respective decisions to lend but has also alleged that the repayments unfairly caused her continued financial difficulty as she struggled to make her payments which affected her going forward.

I'm therefore satisfied that Miss M's complaint can therefore reasonably be interpreted as a complaint about the fairness of her relationship with Aqua. I acknowledge Aqua still doesn't agree we can look at Miss M's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Miss M's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss M's complaint can be reasonably interpreted as being about the fairness of her relationship with Aqua, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Aqua) and the debtor (Miss M), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Miss M's complaint, I therefore need to think about whether Aqua's decision to lend to Miss M and increase her credit limits, or its later actions resulted in the lending relationship between Miss M and Aqua being unfair to Miss M, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Miss M's relationship with Aqua is therefore likely to be unfair if it didn't carry out reasonable enquiries into Miss M's ability to repay in circumstances where doing so would have revealed the credit card or limit increases to be irresponsible or unaffordable. And if this was the case, Aqua didn't then remove the unfairness this created somehow.

I've considered Miss M's complaint in this context.

Were the decisions to provide the credit card and subsequent credit limit increases unfair?

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Miss M's complaint.

Bearing in mind Miss M's response to our investigator, I think that it would be helpful for me to set out that we consider what a firm did to check whether any repayments to credit were

affordable (asking it to evidence what it did) and then determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion. Indeed, the requirements have not and still do not mandate a list of checks that a lender should use. Any rules, guidance and good industry practice in place over the years has simply set out the types of things that a lender could do when considering whether to lend to a prospective borrower.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was fair to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments that a prospective borrower might have to make were affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

Aqua's decisions to provide Miss M with a credit card which had a credit limit of £300 in January 2015 and increase her credit limit to £700 in June 2015 and then £900 in September 2015

Aqua says it initially agreed to Miss M's application after it obtained information on her income and carried out a credit search. And the information obtained indicated that Miss M would be able to make the monthly repayments due for this credit card. Due to Miss M's account being relatively well managed and the information present on the credit checks it carried out, Miss M was then subsequently offered her credit limit increases.

On the other hand, Miss M says that the credit card and the subsequent limit increases were unaffordable and caused ongoing hardship. I've considered what the parties have said.

What's important to note is that Miss M was provided with a revolving credit facility rather than a loan. This means that to start with Aqua was required to understand whether Miss M could repay £300, £700 and £900 within a reasonable period of time. It's fair to say that the required monthly payments in order to clear the full amount that could be owed, as a result of credit limits of £300, £700 and £900, within a reasonable period of time are low.

I've seen records of the information Aqua obtained from Miss M about her income and what was on the credit search carried out. The credit search showed that Miss M didn't have any recent significant adverse information at either of these times. It's fair to say that Miss M had previously defaulted on credit but the last occasion this occurred was almost four years prior to the initial application.

In these circumstances, I don't think that Miss M's previous difficulties mean that she shouldn't have been lent to in the way that she suggests. Ultimately, it was up to Aqua to decide whether it wished to accept the credit risk of taking on Miss M as a customer provided it was reasonably entitled to believe that the credit was affordable.

Aqua reasonably mitigated the risk of harm to Miss M going forward by providing Miss M with low credit limits to begin with. This is especially the case as Miss M declared she had an annual income of £30,000.00 a year. Aqua argues that the information that Miss M declared on her income combined with the credit file information meant that it was reasonable to conclude that Miss M could afford this credit card.

Having reviewed the information obtained and bearing in mind the low monthly repayments required to clear balances of £300, £700 and £900 within a reasonable period of time, I'm in agreement with this conclusion.

As this is the case, I'm satisfied that it wasn't unfair for Aqua to offer Miss M a credit card with a limit of £300 in January 2015, or increase her credit limit to £700 and then £900 in June 2015 and September 2015 respectively. Therefore, there was no unfairness created at these stages.

Did Aqua carry out reasonable and proportionate checks before deciding to offer the final two credit limits increase to Miss M?

As I've explained in the background section of this decision, Aqua went on to increase Miss M's credit limit on two further occasions. It increased Miss M's credit limit to £1,900.00 in February 2016 and then £2,400.00 in August 2016.

Aqua's credit check indicates that it wasn't aware of Miss M having any new defaulted accounts or CCJs recorded against her at the time of these limit increases either. Nonetheless, given that Miss M could have ended up having to repay £1,900.00 and then £2,400.00 as a result of these increases, I do think that Aqua needed to do more to find out about Miss M's regular living expenses.

As I can't see that Aqua did this, I'm satisfied that it didn't carry out sufficient checks before offering the final two limit increases to Miss M. Given this is the case, I've gone on to decide what I think it is more likely than not to have seen had it obtained further information from Miss M. In order to do so, I've looked at the information Miss M has provided with a view to recreating what a proportionate check is likely to have shown in February 2016 and August 2016.

To be clear, I'm not going to carry out a forensic analysis of Miss M's bank statements and all of the information she's provided in order to determine whether the credit card payments that could be due, if Miss M used all of the extra credit provided, were affordable for her. I'm simply going to consider what Aqua is likely to have done if it had taken reasonable steps to obtain the information that I think was missing from its checks.

As I've explained, bearing in mind the circumstances here, I would have expected Aqua to have supplemented what it would have found out about Miss M's existing credit commitments, from the credit search it carried out, with information about Miss M's income and her regular living expenses.

Having considered everything, I'm satisfied that the information provided does appear to show that Aqua finding out more about Miss M's income and regular living expenses is unlikely to have seen it reach different lending decisions. I say this because it looks like when Miss M's discernible regular and committed living expenses are added to her credit

commitments and then deducted from her income, she did have sufficient funds left over in order to make sustainable repayments to credit limits of £1,900.00 and £2,400.00.

Therefore, while I appreciate that this will disappoint Miss M, I've not been persuaded that proportionate checks would have shown Aqua that it shouldn't have provided Miss M with her final two limit increases either, or that any unfairness was created at these respective stages either.

I've noted Miss M has said that, under S140 A-C of the CCA, as she has alleged that the lending relationship between her and Aqua was unfair to her, it is for Aqua to prove that this isn't the case. I've considered what she has said. However, it may help for me to explain that Miss M has alleged that her lending relationship with Aqua was unfair, because it irresponsibly lent to her.

In these circumstances, Miss M is only partially correct when she says that it would be for Aqua to prove that the relationship wasn't unfair, as this would only be the case should it be established that Aqua irresponsibly lent to her. For the reasons I've explained, I've not been persuaded that Aqua irresponsibly provided the credit card and limit increases to Miss M in this instance. So I don't think that Aqua needs to prove anything further.

Overall, and based on the available evidence I don't find that Miss M's relationship with Aqua was unfair. I've not been persuaded that Aqua created unfairness in its relationship with Miss M by irresponsibly lending to her whether when initially agreeing to provide her with a credit card, or in respect of the limit increases. I don't find Aqua treated Miss M unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Miss M's sentiments I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Miss M. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Miss M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 16 March 2026.

Jeshen Narayanan
Ombudsman