

## **The complaint**

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

## **What happened**

Miss H was approved for an Aqua credit card in June 2022, with a £1,200 credit limit. The credit limit was increased to £2,200 in October 2022, and to £3,050 in February 2023. Miss H says Aqua irresponsibly lent to her. Miss H made a complaint to Aqua who did not uphold her complaint. Aqua said that they carried out fair affordability checks. Miss H brought her complaint to our service.

Our investigator did not uphold Miss H's complaint. He said Aqua's checks were proportionate, and they made fair lending decisions. Miss H asked for an ombudsman to review her complaint. She said she worked on a commission-based structure, and her salary isn't fixed. She said her gross annual salary was £20,000, but as her commission varied, she declared £30,000 - £40,000 gross annual income.

## **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.

Before agreeing to approve or increase the credit available to Miss H, 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 Miss H's application. I'll address the credit limit increases later on. Aqua said they looked at information provided by CRA's and information that Miss H had provided before approving her application.

The information shows that Miss H had declared a gross annual income of £50,000, and not £30,000. She had an unsecured active debt to declared gross annual income ratio of 11.65%, which would have equated to her having around £5,825 of active unsecured debt. Miss H also had no public records – such as a County Court Judgement (CCJ) showing on her credit file. But a default had been registered 55 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 – they don't automatically mean that a lender won't offer borrowing. So I've looked at what Aqua's other checks showed to see if they made a fair lending decision here.

Miss H had no accounts in arrears at the time the application was approved, or for the six months leading up to this. The £1,200 credit limit was around 2.4% of her declared gross annual income. Aqua would have no reason to believe that Miss H's basic salary was £20,000, or her income with commission may be around £30,000 - £40,000, when she declared she earned £50,000 a year.

So I'm satisfied that the checks Aqua carried out here, prior to approving the initial £1,200 credit limit were proportionate and that Aqua made a fair lending decision to approve Miss H's application for the Aqua account.

*October 2022 credit limit increase - £1,200 to £2,200*

A CRA reported that Miss H's active unsecured debt was £25,457 at the time of the checks, which was over quadruple the level it was at the account opening checks.

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 Miss H operated her account since it had been opened.

Miss H incurred no overlimit or late fees on the account. And she sometimes paid more than the minimum repayment on her account. But based on the significant increase in debt being reported by one of the CRA's that Aqua used, then I'm persuaded that Aqua should've completed further checks to ensure the lending would be sustainable and affordable for her.

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 Miss H to ensure that she could afford the repayments on the Aqua account. 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.

I asked Miss H 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 Miss H did not provide me with the bank statements by the deadline given, even though she was sent a reminder.

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 Miss H hasn't provided me with the information she was asked for, 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.

*February 2023 credit limit increase - £2,200 to £3,050*

A CRA reported that Miss H's active unsecured debt was £17,111 at the time of the checks, which was a lot lower than what it was at the last lending checks. But a CRA reported that Miss H had been in arrears on at least one external account for three consecutive months, including the month of the checks.

Aqua would have also been able to see how Miss H operated her account since the last lending checks. Miss H again didn't incur a late or overlimit fee, and again she sometimes paid more than the minimum repayment. But based on the three consecutive months of external arrears, I'm persuaded that Aqua should have completed further checks to ensure Miss H could sustainably afford repayments for a higher credit limit.

As I said in the previous section, there's no set way of how Aqua should have made further proportionate checks. I asked Miss H 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 Miss H did not provide me with the bank statements by the deadline given, even though she was sent a reminder.

So on the face of it, it does look like Aqua should've looked more closely into this. But I can't say whether further checks would've revealed further information which means they wouldn't have lent. So as Miss H hasn't provided me with the information she was asked for, 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.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I can't conclude that Aqua lent irresponsibly to Miss H or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 22 April 2026.

Gregory Sloanes  
**Ombudsman**