

The complaint

Miss J complains that NewDay Ltd trading as Aquacard irresponsibly lent to her.

Miss J is represented by a solicitor's firm in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Miss J herself.

What happened

Miss J was approved for an Aqua credit card (which I will refer to as A in this decision), in December 2013 with a credit limit of £500. The credit limit was increased on A to £1,200 in April 2014. Miss J was approved for another Aqua credit card (which I will refer to as B in this decision), in January 2016 with a credit limit of £900. I have detailed the credit limit changes below:

June 2016	£900 to £1,550
October 2016	£1,550 to £2,750
January 2018	£2,750 to £4,000
July 2018	£4,000 to £5,200
October 2019	£5,200 to £4,800
December 2019	£4,800 to £4,700

Miss J says that Aqua irresponsibly lent to her. Miss J made a complaint to Aqua, who partially upheld her complaint. Aqua said for A they shouldn't have increased her credit limit to £1,200. They said for B, they shouldn't have raised her credit limit to £5,200. Miss J brought her complaint to our service.

Our investigator partially upheld Miss J's complaint. She agreed with Aqua's lending decision for A. But she said Aqua shouldn't have increased Miss J's credit limit on B to £1,550 in June 2016 as her debts had risen to £21,976. She said Miss J's Aqua account showed Miss J had been incurring cash fees eight times in the months leading up to the credit limit increase, so when Aqua saw this information they shouldn't have increased her credit limit as it would be irresponsible to do so.

Aqua asked for an ombudsman to review the complaint. They asked for bank statements to cover this period to show that Miss J couldn't afford the credit increase that they provided due to the cash withdrawals.

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 J, 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 A - initial credit limit (£500)

I've looked at what checks NewDay said they did when initially approving Miss J's application for A. I'll address the credit limit increases (including B) later on. Aqua said they looked at information provided by credit reference agencies (CRA's) and information that Miss J had provided before approving her application.

I'm persuaded that the account opening checks were proportionate. I say this as the information showed that while Miss J had total unsecured borrowings at the time of £300, she also had declared a gross salary of £18,500. But that's not all Aqua's data showed. The data also showed that Miss J had defaults valued at £200 but they were 72 months prior to her application.

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. Here, Aqua considered the information that Miss J had on her credit history and still made a decision to lend which, in the circumstances, I think was reasonable.

I say this because this information is not all that Aqua had access to. The credit checks showed that Miss J had no County Court Judgements (CCJ's) registered, and there were no accounts in arrears. The £500 credit limit was less than 3% of her declared gross annual income, and if she utilised the full amount of the credit limit combined with the £300 of unsecured debt she had at the time of her application, this would have been just over 4% of her declared gross salary.

So I'm satisfied that the checks Aqua carried out here, prior to approving the initial £500 credit limit were proportionate and that Aqua made a fair lending decision to approve Miss J's application for A.

April 2014 credit limit increase for A - £500 to £1,200

As Aqua have said that they shouldn't have increased the credit limit on A to £1,200, then it would not be proportionate for me to look into this lending decision when Aqua have accepted they shouldn't have increased the limit.

Acceptance for B - initial credit limit (£900)

I've looked at what checks Aqua said they did when initially approving Miss J's application for B. I'll address the credit limit increases later on. Aqua said they looked at information provided by the CRA's and information that Miss J had provided before approving her application.

The information showed that Miss J had total unsecured borrowings at the time of £19,900. The checks showed Miss J had declared a gross salary of £37,700. While her unsecured debts had risen since A was approved, her declared salary appeared to keep pace with this.

Aqua's data from the CRA's showed that there were now no defaults showing on her credit file, there were no CCJ's or any accounts in arrears.

So I'm satisfied that the checks Aqua carried out here, prior to approving the initial £900 credit limit were proportionate and that Aqua made a fair lending decision to approve Miss J's application for B.

June 2016 credit limit increase for B - £900 to £1,550

I've looked at what checks Aqua said they did when increasing the credit limit on B from £900 to £1,550. There were no accounts showing as being in arrears from the information Aqua obtained from the CRA's, or any payday loans showing.

Miss J had made seven transactions which incurred a cash advance fee shortly after B was approved, which could indicate she was suffering from financial difficulties. In the three months prior to the credit limit increase she had made one transaction which incurred a cash advance fee. Miss J constantly used the majority of her initial credit limit for B. The checks showed that the unsecured debt had risen again to £21,546.

Aqua's checks showed that the number of accounts Miss J held had increased to 12 accounts, despite her only showing nine accounts five months earlier when B was approved. So it does appear that Miss J could be hungry for credit by utilising the majority of her Aqua credit limit constantly since opening, the increase of her unsecured debt, and the opening of several new accounts in only a five month period. Aqua were increasing the credit limit by over 50%.

So based on these factors, I'm persuaded that Aqua should have completed further checks to ensure the credit limit increase would be sustainable and affordable for Miss J. For example, they could have contacted Miss J to get an understanding of her finances as part of a proportionate check, or they could have requested bank statements to see how Miss J was managing her finances as part of a proportionate check based on the concerning information above.

I asked Miss J if she could provide her bank statements from February-May 2016, which were the three months leading up to the June 2016 credit limit increase, as part of a proportionate check that Aqua could have taken.

The bank statements do show that Miss J was in financial difficulty. I say this because she was constantly overdrawn during these three months, and she was rarely in credit on her account. She was often overdrawn by four figures up to £2,997.89, with her frequently being overdrawn by over £2,000. There were only three occasions where the account was in credit in these three months. But on all three of these occasions, she had entered her overdraft on the same day. So Miss J didn't end one day during the three month period where she was in credit.

Due to the large overdraft usage, Miss J was effectively using borrowings (her overdraft) to meet her outgoings, as her salary would barely take her into credit, and she ended the day overdrawn each time. So based on this, I'm not persuaded that if Aqua had completed further proportionate checks, that they would have increased the credit limit on B. So I'm persuaded that Aqua made an unfair lending decision by increasing the credit limit to £1,550.

Further credit limit increases on B

If Miss J's credit limit increase to £1,550 did not happen, then it's probable that none of the credit limit increases would have happened after this either. I think there is an argument for saying that Miss J'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 June 2016, I'm not persuaded that Aqua would've added to the credit.

Miss J's bank statements that she forwarded to us show a similar story for her transactions leading up to the October 2016 credit limit increase, although she was only in credit once as opposed to three times in the three month period leading up to the increase. She had become more overdrawn than the previous highest overdrawn amount, and on the one day she was in credit, she ended up overdrawn again at the end of the day. She managed ending a day in credit leading up to the January 2018 credit limit increase, but again, she was often overdrawn by four figures for the majority of the three months leading up to this. So it follows I'll be asking Aqua to put things right for Miss J.

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 J 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.

My final decision

I uphold this complaint in part. NewDay Ltd trading as Aquacard should take the following actions:

Card A (if they haven't already taken the actions they said they would in the final response letter):

NewDay 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 £500 from 21 April 2014;

If the rework results in a credit balance, this should be refunded to Miss J along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding this account from Miss J's credit file recorded from 21 April 2014;

Or, if after the rework the outstanding balance still exceeds £500, NewDay should arrange an affordable repayment plan with Miss J for the remaining amount. Once Miss J has cleared the balance, any adverse information recorded from 21 April 2014 in relation to the account should be removed from her credit file

Card B:

NewDay 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 £900 from 17 June 2016;

If the rework results in a credit balance, this should be refunded to Miss J along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding this account from Miss J's credit file recorded from 17 June 2016;

Or, if after the rework the outstanding balance still exceeds £900, NewDay should arrange an affordable repayment plan with Miss J for the remaining amount. Once Miss J has cleared the balance, any adverse information recorded after 17 June 2016 in relation to the account should be removed from her credit file

**If NewDay considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss J how much they've taken off. They should also give Miss J 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 J to accept or reject my decision before 19 September 2024.

Gregory Sloanes
Ombudsman