

The complaint

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

What happened

Miss L applied for a credit card with Aqua in May 2021. Aqua approved the application and gave Miss L a credit card with an initial limit of £300. The credit limit was increased to £1,400 in June 2023, to £2,400 in October 2023 and to £3,400 in March 2024.

Miss L says that Aqua lent to her irresponsibly.

Aqua didn't uphold Miss L's complaint. It said it had carried out proportionate checks before lending to her.

Miss L remained unhappy and brought her complaint to this service.

Our investigator upheld the complaint. He said that whilst he thought Aqua had carried out proportionate checks and obtained a reasonable amount of information before opening the account and increasing the credit limit in June 2023, he didn't think Aqua had carried out proportionate checks before the second and third credit limit increases. The investigator said that had Aqua carried out reasonable and proportionate checks before the second and third credit limit increases, it would have discovered that Miss L didn't have enough disposable income to sustainably repay the new credit limit.

Aqua didn't agree. It said it remained of the view that it had carried out reasonable and proportionate checks before increasing the credit limit in October 2023.

Because Aqua didn't agree I've been asked to review 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.

Our approach to complaints about unaffordable and irresponsible lending is set out on our website. I've had this approach in mind when considering Miss L's complaint.

The rules require Aqua to carry out reasonable and proportionate checks to ensure that Miss L could afford to repay the credit in a sustainable way. These affordability checks need to be focussed on the borrowers circumstances. The nature of what's considered reasonable and proportionate will vary depending on factors such as the amount of credit, the total sum repayable, the amount of repayments and the customers individual circumstances.

There's no set list of checks that a lender must complete. But lenders are required to consider the factors I've set out above when deciding what's reasonable and proportionate.

Account opening and Credit Limit Increase 1

I've looked into whether Aqua carried out reasonable and proportionate checks before giving Miss L the card and increasing the credit limit in June 2023.

I can see that at the account opening stage, Aqua checked Miss L's income and outgoings and carried out a credit check. The credit check showed no adverse information or other information which ought to have given Aqua cause for concern.

Aqua carried out a credit check prior to the first credit limit increase. It also took into account how Miss L had managed her account since it was opened.

Based on what I've seen, I'm satisfied that the checks were reasonable and proportionate. I'm satisfied that the decision to open the account and increase the credit limit in June 2023 was fair, taking into account the information gathered from the checks.

Credit limit increases 2 and 3

Prior to increasing the credit limit in October 2023 and March 2024, Aqua carried out a credit check. It also took into account the information it already held about Miss L's income and expenditure and took into account how Miss L had managed the account since it was opened.

I've looked into whether Aqua carried out reasonable and proportionate checks before increasing the credit limit to £2,400 in October 2023. This credit limit increase came only 4 months after the previous credit limit increase and was a significant increase of £1000 additional credit. The credit limit of £2,400 was relatively high in relation to Miss L's annual income.

Taking this into account, I would have expected Aqua to have carried out checks to make sure that Miss L was able to sustainably repay the additional credit, having regard to her income and outgoings, including her other credit commitments.

Based on what I've seen, I don't think Aqua carried out reasonable and proportionate checks before the second credit limit increase. I say this because I can't see that Aqua obtained any information about Miss L's living costs. So I don't think Aqua had enough information to carry out a proper affordability assessment.

I've gone on to consider what reasonable and proportionate checks would have shown, had these been carried out prior to the second credit limit increase. I can't be certain of exactly what checks Aqua would've carried out, but as I've said above, I think it would've been reasonable and proportionate for Aqua to have obtained further information about Miss L's outgoings. I've therefore looked at Miss L's bank statements for the three months leading up to the credit limit increase to see what information would likely have been discovered.

The bank statements show that Miss L's expenditure exceeded her income. This expenditure can be described as essential expenditure, because it was for things such as housing costs, utility bills, travel costs, food and other existing credit commitments.

The bank statements also show that Miss L was utilising her overdraft facility every month, which exceeded £600 on a regular basis.

The statements also show that Miss L was making payments to debt management companies, which is a clear indicator that she was experiencing financial difficulties and that she was unlikely to be able to sustainably repay any further credit.

The bank statements show that, had Aqua had carried out reasonable and proportionate

checks, it would've discovered that Miss L wasn't able to sustainably repay the credit limit increase. In the circumstances I don't think the decision to increase the credit limit in October 2023 was a fair one.

It follows that I don't think the decision to increase the credit limit in March 2024 was fair either.

I've also considered whether Aqua treated Miss L unfairly in some other way, given the nature of Miss L's complaint, including whether the relationship might have been unfair under Section 140 of the Consumer Credit Act 1974. However, I'm satisfied that the redress I'm directing results in fair compensation in the circumstances of this complaint. I'm satisfied based on what I've seen that no additional award is appropriate in this case.

Putting things right

I've explained above why I don't think Aqua should have increased the credit limit beyond £1,400.

I don't think it's fair for Aqua to charge interest, fees or charges on balances exceeding £1,400. That said, because Miss L has had the benefit of the money she's spent on the card, I think she should repay this.

I direct Aqua to do the following:

Buy back the debt (if it has been sold) or liaise with the third party to make sure the redress is carried out.

Rework the account removing all interest, fees and charges (not already refunded) that have been applied to balances over £1,400

If the rework results in a credit balance, this should be refunded to Miss L together with 8% simple interest per year calculated from the date of each overpayment to the date of settlement. Aqua should also remove any adverse information recorded after the date of the second credit limit increase from Miss L's credit file

If after the rework there is a balance outstanding, Aqua must agree an affordable repayment plan with Miss L. Once Miss L has cleared the balance, any adverse information recorded after the date of the second credit limit increase should be removed from Miss L's credit file.

*HMRC requires Aqua to deduct tax from any award of interest. Aqua must give Miss L a certificate showing how much tax has been deducted if she asks for one.

My final decision

My final decision is that I uphold the complaint. NewDay Ltd trading as Aqua must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 17 December 2024.

Emma Davy
Ombudsman