

Complaint

Miss L has complained about a credit card and subsequent limit increases which NewDay Ltd (trading as “Aqua”) provided to her. She says the credit card was unaffordable and shouldn’t have been provided.

Background

Aqua provided Miss L with a credit card which had an initial credit limit of £1,200.00 in November 2021. The limit was firstly increased to £2,450.00 in April 2022, then £3,150.00 in August 2022 and finally £4,550.00 in August 2023.

One of our investigators reviewed what Miss L and Aqua had told us. And he thought Aqua didn’t act unfairly when initially providing the credit card in November 2021. However, he also thought that Aqua ought to have realised that it shouldn’t have provided Miss L with any of the limit increases that it did and therefore recommended that the complaint be partially upheld.

Miss L didn’t disagree with the assessment. But Aqua disagreed and asked for an ombudsman to look at the complaint.

As the parties are in agreement over the decision to initially provide the credit card, this decision is only considering whether Aqua acted fairly and reasonably when increasing Miss L’s credit limit from April 2022 onwards.

My findings

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

We’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. I’ve considered all of this when deciding Miss L’s complaint.

Having carefully considered everything, I’m upholding Miss L’s complaint. I’d like to explain the reasons for my conclusion.

Aqua needed to make sure that it didn’t lend irresponsibly. In practice, what this means is Aqua needed to carry out proportionate checks to be able to understand whether Miss L could afford to repay before advancing any credit.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. 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 it – 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 or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we’d expect

a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

For the purpose of what is left for me to decide on this complaint, Miss L was provided with credit card limit increases to £2,450.00, £3,150.00 and £4,550.00. And as this was a revolving credit facility, Aqua was required to understand whether Miss L could repay amounts of £2,450.00, £3,150.00 and £4,550.00 within a reasonable period of time.

Aqua says it decided to increase Miss L's credit limit because of the usage on her account as well as what it saw on credit searches. On the other hand, Miss L says that this card was unaffordable for her and caused her debt.

I've carefully thought about what Miss L and Aqua have said.

I'm mindful of what Aqua ought to have seen up to the point that it increased Miss L's credit limit in April 2022. The information Aqua has provided shows that Miss L was right at her existing credit limit in the month that it was increased. Furthermore, Miss L had only for the first time made a monthly payment that was above the minimum due – up until this point she'd only made the minimum payment due. Aqua may not have considered this problematic as Miss L was never over her existing limit.

However, at best, it could be argued that Miss L was starting to get to grips with her existing limit. And this isn't a question of whether Miss L was managing her existing limit it is whether she could afford an increased amount. I don't think that Miss L Aqua account history in itself suggested that she could afford to repay more. And I still consider this pattern of usage was problematic when considering the decision to more than double a credit limit which Miss L hadn't fully proven herself able to repay.

I'm also mindful that this took place against a backdrop of Aqua having information which showed that Miss L's indebtedness was also increasing elsewhere. I say this because the information Aqua has provided shows that Miss L's overall indebtedness, at the time this limit increase was applied, grew from just over £5,000.00 in March 2022 to over £20,000.00 in April 2022.

For the avoidance of doubt, I want to be clear in saying that I don't think that Aqua should automatically have refused to increase Miss L's credit limit as a result of all of this. But given the huge spike in what Miss L already owed, I would have expected it to have taken this into account.

I'm therefore satisfied that Aqua needed to get a good understanding of Miss L's circumstances – particularly around her living expenses – before it could be able to reasonably conclude that Miss L could afford to repay the April 2022 credit limit increases as well as the subsequent ones, within a reasonable period of time. As I can't see that Aqua did this, either at the time it provided the April 2022 credit limit increase, or the subsequent ones, I don't think that the checks it carried out before it provided Miss L with any of the limit increases it did were reasonable and proportionate.

As reasonable and proportionate checks weren't carried out before the credit limit increases were provided, I can't say for sure what they would've shown. So I now need to decide whether it is more likely than not that proportionate checks, at the respective times, would have told Aqua that Miss L would have been unable to sustainably repay these limit increases.

I think it's worth me explaining that Aqua was required to establish whether Miss L could make the required repayments without experiencing significant adverse consequences – not

just whether the loan payments were technically affordable on a strict pounds and pence calculation.

Having considered the information provided, I'm satisfied that Miss L was struggling to manage her existing commitments. Aqua's credit checks showed that Miss L's indebtedness was spiking. The statements provided appear to show that this was because Miss L's expenditure exceeded her income and she was relying on credit to manage and make ends meet.

I think that proportionate checks would have all of this and would also have shown Aqua that Miss L was already in a cycle of unsustainable credit use, which meant she was unlikely to be able to repay any further credit without borrowing further, or suffering significant adverse consequences.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Miss L would not have been able to make the repayments required as a result of these credit limit increases without borrowing further and/or suffering undue difficulty.

As Aqua provided the credit limit increases to Miss L in these circumstances, I'm satisfied that acted irresponsibly in providing this additional credit and I'm upholding Miss L's complaint about Aqua's decision to provide all of these credit limit increases.

Miss L ended up paying interest, fees and charges as a result of Aqua providing her with limit increases it shouldn't have provided her with. So I'm satisfied that Miss L lost out because of what Aqua did wrong and that it should put things right.

In reaching my conclusions I've also considered whether the lending relationship between Aqua and Miss L might have been unfair to Miss L under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct below results in fair compensation for Miss L given the overall circumstances of her complaint. I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Fair compensation – what Aqua needs to do to put things right for Miss L

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Miss L's complaint for Aqua to put things right by:

- reworking Miss L's account to ensure that from April 2022 onwards interest is only charged on the first £1,200.00 outstanding - to reflect the fact that none of the credit limit increases should have been provided. All late payment and over limit fees should also be removed;
- if an outstanding balance remains on Miss L's account once all adjustments have been made Aqua should contact Miss L to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Miss L's credit file, it should backdate this to when it shouldn't have provided the additional credit in question in the first place;
- if the effect of all adjustments results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Miss L along with 8% simple interest† on the overpayments from the date they were made until the date of settlement. If no outstanding balance remains on Miss L account

after all adjustments have been made, then Aqua should remove any adverse information it (not any third party) has recorded from Miss L's credit file.

† HM Revenue & Customs requires Aqua to take off tax from this interest. Aqua must give Miss L a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Miss L's complaint NewDay Ltd (trading as "Aqua") should put things right in the way 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 13 January 2025.

Jeshen Narayanan
Ombudsman