

## The complaint

Mr O complains that NewDay Ltd, trading as Aqua and Marbles (NewDay) irresponsibly provided him with two credit cards and limit increases on those cards, which increased his debt.

## What happened

In August 2015, Mr O applied for an Aqua branded credit card with NewDay. At the time, he had an income of £48,000 and unsecured debts of £40,800. His application was approved with an initial credit limit of £900. The card had an APR of 39.9%.

Mr O was then offered credit limit increases. Each letter notifying Mr O of the increase gave him the option to refuse it. Mr O didn't do this and increases were made as set out below.

Date	Amount of additional credit	New limit
3 November 2015	£900	£1,800
30 March 2016	£600	£2,400
5 October 2016	£1,250	£3,650

Mr O's spending, including on gambling sites and cash withdrawals, continued and his balance increased to near to his new credit limit soon after each increase. Mr O went above his limit, incurring fees, and generally only made his minimum payments.

In March 2017, Mr O applied for a Marbles branded credit card with NewDay. His application was approved with an initial credit limit of £300. The card had an APR of 39.9%. Like the Aqua card, Mr O was offered a credit limit increase. Mr O didn't decline this and sooner after the limit was increased as set out below.

Date	Amount of additional credit	New limit
27 July 2017	£300	£1,200

Mr O's spending, including pawnbrokers, cash withdrawals and payday loan repayments, continued. In the same way as he'd operated his Aqua card, his balance increased to near to his new credit limit shortly after each increase and he mainly made only the minimum payments.

In June 2018, Mr O spoke to NewDay about his financial difficulties and said he couldn't meet the repayments. A payment plan was agreed but, as payments were missed, a default was recorded on Mr O's credit file. The debt was sold to a third party in December 2018.

Mr O complained to NewDay. He says at the time of his application his credit rating was poor, he had payday loans and overdrafts. He also said the credit limit was being increased even though there was evidence of gambling on the account as well as over the limit and

late payment fees. He doesn't think sufficient checks were made before NewDay accepted his credit card applications or proactively offered him the credit limit increases.

NewDay didn't uphold Mr O's complaint. It said it offers credit cards to people who have poor credit, which can help customers improve their credit rating. NewDay said that to accept his application, it considered the following information:

- He was employed earning £48,000 with £40,800 of unsecured debt at the time he applied for the Aqua card. And an income of £55,000 and unsecured debt of £50,700 when applying for the Marbles card; and
- The information from credit reference agencies (CRA's) which showed Mr O not having any arrears, public records or defaults on his credit file.

NewDay said Mr O hadn't informed it of his gambling problem at the time of applying for the credit cards. It said all credit increases had been correctly offered and Mr O didn't opt out of any of them.

Mr O brought his complaint to our service. Our investigator upheld Mr O's complaint. He said he didn't think NewDay had completed reasonable or proportionate checks when agreeing to give Mr O credit under both the Aqua and the Marbles brands. He said NewDay's checks showed that Mr O had nine other active accounts at the time of the Aqua application and, given that Mr O had debt of significantly more than half of his income, our investigator thought it would've been proportionate for NewDay to have carried out other checks to ensure that any payments would be affordable and sustainable.

Had it done so, our investigator noted from the bank statements supplied by Mr O that his account was operating persistently in an arranged overdraft. And, in the months leading up to the credit card limit increases, the money coming into the account is closely matched to the money going out of the account and, on some occasions, the money going out is greater. Further, some of the money coming into the account is funded by payday lenders, loans and betting returns. Our investigator also looked at the activity on Mr O's NewDay account. He said Mr O immediately took cash withdrawals, only made the minimum payments and, as early as October 2015, was late in making a payment which led to a late payment fee being incurred. He felt these things could indicate financial difficulty and an inability to make payments in a sustainable way.

So, our investigator felt NewDay wouldn't have offered Mr O either credit card or the subsequent credit limit increases had it taken these factors into account. Taking all of this into account, our investigator felt a fair outcome of the complaint would be to refund all interest and charges applied to the account and re work it, paying interest on any credit balance. He also asked NewDay to remove any adverse information from Mr O's credit file.

Mr O accepted the investigators view. But NewDay didn't. It said it relied on data submitted by Mr O and from CRA's. So, it didn't find it acceptable to apply the information from Mr O's bank statements retrospectively when this wasn't required during the application. In summary, it made the following points:

1. At the time of both the Aqua and Marbles applications, there were no external accounts in arrears, financial difficulties or payday loans, which is evidence Mr O could maintain his payments. He had no public records such as CCJ's or IVA's. Neither did he have any payment arrangements or debt management programmes.
2. Although Mr O had 9 active lines of credit with other lenders and a high unsecured balance, he also had a high income and was maintaining his payments.
3. As Mr O made a payment above the minimum in late September, the late payment in October 2015 more of a timing issue, rather than an inability to pay.

4. In terms of the over-limit fees, Newday's policy is to only exclude customers from limit increases where they've incurred an over limit fee in all three months leading up to the increase. So, the increases were within its policy. For example, when the second credit limit increase offer was made in March 2016, only one late payment fee had been charged in January 2016, and one over limit fee in February 2016.
5. The cash transactions (cash withdrawals and transactions deemed to be cash by the card scheme such as payments to gambling sites) were made in line with the terms and conditions of Mr O's credit agreement.
6. In March 2016, although Mr O'Brien had previously had 26 payday loans, he had only opened one of these within the preceding three months. Also, it received data to show he had a total debt with other creditors of £88,085 but this decreased to £77,607 by December 2016, after the third credit limit increase had taken place.
7. In terms of the third Aqua credit limit increase offered in October 2016, it said Mr O *'had not been sufficiently delinquent to prevent this offer from being made'*. He hadn't had any late payments fees and the last two over limit fees were charged in May and June 2016. Also, his total debt had decreased to £73,296.
8. Specifically, in relation to the Marbles application, NewDay say Mr O still had 9 active lines of credit with other lenders and a high unsecured balance. However, he also had a high income and was maintaining his payments. In March 2017, his Aqua account had not been over limit since December 2016 and it hadn't entered arrears since January 2016. Externally, there were 2 active payday loans, but no evidence of any arrears or financial difficulties. At the time the Marbles credit limit increase went ahead, Mr O's account had been recently over limit, but not outside of policy and hadn't entered arrears. His total debt had decreased to £93,165 (it had been over £102,000 the month prior), there were no active payday loans and no evidence of financial difficulty.

As the complaint couldn't be resolved informally, it has been passed to me to decide.

### **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.

Taking into account the rules, regulations, guidance and good industry practice, I think that there are three key questions for me to think about while looking at Mr O's complaint. These are:

1. Did Newday complete reasonable and proportionate checks to satisfy itself that the initial decision to lend and subsequent increases, would be repayable by Mr O in a sustainable way?
  - a. If so, did it make fair lending decisions?
  - b. If not, would those checks have shown that the lending was affordable?
2. Should Newday have realised it was increasing Mr O's indebtedness in a way that was unsustainable or otherwise harmful, so shouldn't have provided the lending?
3. Did Newday act unfairly or unreasonably in some other way?

Newday was required to carry out proportionate checks, having regard to the relevant factors. And, while I accept it's for Newday to decide its approach to credit risk when considering applications for credit, creditworthiness is also relevant to affordability and this isn't simply a matter of commercial judgement for NewDay.

I note Newday explains the products applied for by Mr O were and are designed for and aimed at customers who tend to have impaired credit records. I think it's important that NewDay's responsibilities as a lender should be considered in that context. And, it's due to

the nature of Newday's target customer base for this product, that the importance of reasonable and proportionate checks can't be overstated.

*Aqua card – application for credit, August 2015*

As mentioned above, before agreeing to make credit available to Mr O, NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable for him. There's no prescribed list of checks a lender should make but lenders should consider a range of things such as the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well the consumer's personal circumstances.

Mr O was initially given a credit limit of £900 on the Aqua account. Considered on its own, the credit limit was relatively high albeit broadly proportionate compared with his income. Even so, there are other factors which persuade me that further checks should've been made to ensure the credit was affordable and sustainable for him.

I've looked at what checks NewDay said it did prior to the credit card application being accepted. It used information from credit agencies and saw that Mr O had nine active accounts/cards. It had no data of any payday loans which were reported to them. But it did know that Mr O had more than £40,000 of unsecured debt when he applied for the Aqua card. This is a substantial level of unsecured debt for anyone and, for Mr O, as it almost equalled his *gross* annual salary at the time of the application.

I appreciate the data NewDay had showed that Mr O didn't have any active or defaulted payday loans or any which were in arrears. But this isn't any accurate reflection of his financial situation at the time. His bank account statements show he was making payday lending payments and other numerous loan repayments each month as well as being overdrawn by nearly £5,000 at the time of the application for the Aqua card. And I can't see the reporting of the payday loans to NewDay was accurate when it states there weren't any. It looks as though this data simply wasn't provided to it before March 2016. I say this because by the time this information was included in the report to NewDay, it revealed Mr O had 26 payday loans with one being applied for in the 3 months prior.

So, the information used to accept Mr O's application wasn't accurate as this would've reflected that Mr O had a number of active loans, including payday loans, when he applied for the Aqua and Marbles cards. This indicates the credit cards might not be affordable or sustainable for him in the longer term as he didn't have enough disposable income to meet his outgoings.

Although NewDay weren't aware of this – as this didn't show up on the information it received from the CRA – it did know he had such a significant amount of unsecured debt that it almost matched his *gross* salary. And such debt is likely to require substantial monthly payments to maintain it. In light of this, I think Newday had information to suggest it needed carry out further reasonable and proportionate checks to ensure the lending was affordable for Mr O i.e. it would be repayable by Mr O in a sustainable way.

If NewDay had asked Mr O for his outgoings, I'm persuaded he would've mentioned the payments he was making to service the unsecured credit and this would've been a reason to prompt them to do further checks. Had it done so, the extensive gambling would also likely have been spotted as well as a reliance on loans, payday lenders and other unsecured forms of high cost credit to manage the spending on his account.

In summary, I don't think the checks Newday carried out were proportionate and reasonable when Mr O applied for the Aqua card. Had it done so, it's likely NewDay wouldn't have

offered credit to Mr O when he applied for it as this wouldn't have shown he was able to repay it in a sustainable way.

Mr O's financial situation doesn't improve from this point. In fact, the money going into and out of his bank account each month increases to more than £13,000 by December 2016 and far in excess of his salary. And, according to Newday's statements, it's clear he incurs some further over limit fees, makes cash-based and betting transactions and is borrowing money elsewhere. Because I've concluded the approval of the application for the Aqua card wasn't proportionate, it follows that the checks for the subsequent increases when Mr O's situation hadn't improved weren't either. Even so, I've gone on to consider some of the specific issues in relation to the credit limit increases on the Aqua card for completeness.

#### *Aqua card - credit limit increases*

Having only had the Aqua card a very short period and given the high amount of unsecured debt Mr O already had, I think Newday had information to suggest it needed carry out further checks to ensure the increased lending was affordable, before offering an increased credit limit.

Even so, CONC 5.2.4G(3) says that a creditworthiness check can include previous dealings with the customer. And, in the context of a running credit account like this one and Newday's model of increasing credit limits after starting them low, I think the way in which the account has been run would be a particularly important factor to consider before offering increases.

Mr O had considerable unsecured personal debt, which was clear from his credit file at the times of these offers to increase his credit limit. There is also considerable evidence of spending on gambling sites, and he quickly reached and remained at his credit limits very soon after the cards were issued and after his limits were extended. Even at the point of the first credit limit increase, Mr O had carried out a couple of 'cash spend' transactions on the account and incurred one 'default' fee in October 2015 after he missed making the minimum repayment by the due date. These things should've caused Newday to consider that it needed to carry out some further checks before granting Mr O an increase – since cash transactions on such an account are a particularly expensive way of borrowing money - and might have indicated cashflow issues – which begin to call into question the sustainability of repaying the maximum balance over a reasonable period of time.

I think the fact that Mr O incurred a late payment fee within the first two statements of having the Aqua card is also significant. This is because it raised the possibility that was having difficulty with his overall finances. Particularly bearing in mind that this account represented quite an expensive way to borrow money. And this raised the prospect that Mr O might struggle to sustainably repay any credit balance over a reasonable period.

I have also kept in mind the high rates of interest on these cards, and that extending his limits was unlikely to help Mr O to reduce the costs of his debt (for example by consolidating debt at a lower interest rate). NewDay has indicated that all its lending criteria was met for Mr O, and consideration was given to his overall indebtedness. It has said spending on gambling would not be automatic barrier to increased lending, and it notes Mr O made his minimum payments on time for most of his account lifetimes. But, as I've already said, Newday's approach to credit risk is separate to its obligations as far as the affordability of the borrowing for Mr O was concerned. So, I've thought about what a proportionate check would've involved. And given what I've said earlier about what the over limit fees potentially indicated, I think it would have involved some assessment of Mr O's income and expenditure.

Having decided this, I also need to decide whether it is more likely that a proportionate check would've told Newday that Mr O wasn't going to be able to sustainably repay the credit limit over a reasonable period of time. I've seen a number of Mr O's bank statements in the lead up to the limit increases. And just because something shows up in the information Mr O has provided, it doesn't mean it would've shown up in any further enquiries Newday might've carried out at the time. But I think it's fair, reasonable and proportionate to place considerable weight on it as an indication of what Mr O's financial circumstances were likely to have been.

Bank statements provided by Mr O show he was receiving employed income of a little over £3,000 a month. They also show significant gambling expenditure, with numerous gambling transactions being made. Mr O did also have some credits from his gambling but these were limited and his gambling expenditure far outweighed these. In each month, Mr O started and finished in his overdraft by more than £4,500. He incurs a number of unplanned overdraft fees and there is evidence of payday loans being taken out and maintained along with numerous forms of other unsecured credit and loans. From January 2016, many of the transactions were related to gambling or cash advances. This all builds a picture of someone struggling with their finances. And, given the amount of money being spent on gambling, I think it's likely there ought to have been real questions about whether it would've been responsible or appropriate to increase Mr O's credit card limit. Even if the gambling itself had not provided cause for concern, it seems that it is contributing to broader financial problems. For example, the evidence of payday loans and other finance as well as a reliance on a substantial overdraft suggest that Mr D was struggling to meet his existing commitments. And this would've called into question Mr D's ability to sustainably repay the increased credit limit in a reasonable period of time.

As a result of this, I don't think the checks Newday carried out were proportionate or reasonable when the unsolicited offers to increase the credit limit on his Aqua card were made. Evidence was available to demonstrate his increasing indebtedness and potentially significant issues with gambling spending. Further, I don't think that offering 'opt out' credit limit increases when he had reached his lower credit limits, and had often remained for some time at those limits, could have helped his financial situation.

#### *Marbles card – application for credit, July 2017, and one credit limit increase*

Mr O applied for the Marbles card while he had an Aqua card. This means the information Newday held about how that account had operated would reasonably have been relevant to its lending decision on the Marbles application. I can see from the affordability data supplied by Newday that Mr O was over his Aqua account limit in three out of the seven months prior to his application for the Marbles card and incurred the associated over limit fees. He had also incurred eighty-one cash advance fees in the same period and his unsecured lending was now at more than £50,000 with a new payday loan was being applied for almost monthly, with four being applied for in the three months up to time he applied for the Marbles card. This ought to have given a strong indication that Mr O was reliant on the credit and was having difficulty with his overall finances.

Mr O has also supplied copies of his bank statements in the lead up to the opening of the Marbles account. These show a similar picture to the one described earlier, in the lead up to application for and increases on the Aqua card. There is evidence of the extensive use of payday loans, other forms of lending and loans leading up to the card being taken out. The reliance on the overdraft had continued at more than £4,000. Each month, the money coming into his account including through various forms of credit and loans is more than £13,000 and the money going out his account closely matches this. This signals a reliance on short term high cost credit. And, once again, there is substantial gambling activity. I can

also see that there was continued gambling spend on the Aqua card around the same time in so far as the credit limit allowed.

I cannot say for sure what Newday would've done upon finding out about Mr O's broader financial situation, but the picture presented is once again of someone struggling with their finances. Given a considerable amount of money was being spent on gambling and the payment of finance, I think it's likely there ought to have been real questions about whether it would've been responsible or appropriate to provide Mr O with access to further credit, even though the initial credit limit was relatively small. Whilst I consider the level of gambling gave cause for concern, even if it wasn't it would've been clear that it was still contributing to broader financial problems. The frequent use of payday loans and other high cost credit shows Mr O was struggling to meet his existing commitments and was reliant on credit to repay existing credit. This would've called into question Mr O's ability to sustainably repay any credit limit in a reasonable period of time.

So, in summary, I don't think the checks Newday carried out were proportionate or reasonable when Mr O applied for the Marbles card. Had it carried out proportionate checks, I think it likely NewDay would have realised the lending was unsustainable and wouldn't have offered a Marbles card to Mr O. Because I've concluded the approval of the application wasn't proportionate and also as his situation hadn't improved by the time the credit limit increase on the Marbles card was offered to him, it follows that the checks for the subsequent Marbles credit limit increase weren't either.

I'm not ignoring the fact that Newday has said Mr O didn't ever notify it of his gambling. But this doesn't alter the fact that Newday was required to check its lending was affordable. I also note Mr O hadn't had any defaults or County Court Judgments prior to the application. This would suggest that Mr O didn't have any major issues in maintaining his payments up to the point of acceptance. But it also doesn't show the full picture here and I think it's that which was missing from the assessment. For the reasons set out above, I'm persuaded that it would've been proportionate and reasonable for NewDay to investigate the unsecured debt Mr O had in more detail, along with his outgoings prior to accepting his application. And, if these checks had been made, it'd show that Mr O was using unsecured borrowing to meet his outgoings, including the maintenance of other borrowing.

Mr O has asked NewDay to refund all interest charged plus 8% interest. Here, I think it's fair that Mr O repays what he borrowed from NewDay, but only that amount. I don't think it's fair that he's disadvantaged by having to pay back any more than this. So my decision is that NewDay should remove all interest and charges applied to the account and recalculate what (if anything) Mr O owes from the initial amount he borrowed. As I'm persuaded that, had NewDay completed further checks this is more likely to have changed their decision to accept Mr O for the credit card and increase his limit, I think it would also be fair that NewDay put Mr O in the same position he was in prior to their acceptance of the Aqua and Marbles credit cards. It should do this by removing any adverse information from Mr O's credit file relating to the NewDay credit card.

From what I've seen, NewDay sold the outstanding balance on Mr O's accounts to a third-party debt purchaser. So, it either needs to buy the account back from the third party and make the necessary adjustments or pay an amount to the third party in order for it to make the necessary adjustments.

### **Putting things right**

In order to put things right, NewDay should:

1. Rework Mr O's Aqua and Marbles accounts to ensure that all interest, fees, and charges applied to the accounts from the outset are removed. All late payment and over limit fees should also be removed.
2. If an outstanding balance remains on Mr O's accounts once all adjustments have been made, NewDay should – if it has bought the account back from the third party - contact Mr O to arrange a suitable repayment plan for this.
3. For any period the account was in credit, 8% simple interest† should be added to the amount of credit until it went out of credit or the date of settlement.
4. NewDay should remove any adverse information from Mr O's credit file in relation to the accounts which are the subject of this complaint.

†HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Mr O a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

For the reasons set out above, I uphold Mr O's complaint. NewDay Ltd must take the steps set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 4 August 2021.

Rebecca Ellis  
**Ombudsman**