

The complaint

Mr B complains about two separate credit card accounts he took out with NewDay Ltd. He says that both accounts were unaffordable, and NewDay irresponsibly lent to him.

What happened

Mr B has both an Aqua credit card and a Marbles credit card with NewDay. He complains about NewDay's lending decision on both of these accounts.

Aqua

Mr B applied for the Aqua credit card in April 2017. At the time of application, Mr B told NewDay that he was a contractor working part-time earning around £15,000 a year. He was given an initial credit limit of £250. NewDay then increased his credit limit on the following occasions:

- September 2017 from £250 to £800.
- September 2018 from £800 to £1550.
- January 2019 from £1550 to £2550.
- August 2019 from £2550 to £3000.
- April 2020 from £3000 to £3900.

Mr B says when he first took out this credit card, he was undergoing a personal and financial crisis as a result of a gambling addiction. He says that if NewDay had checked his bank statements at the time, it would have been able to see this.

Mr B has said that he was in extreme financial difficulties at the time – and his credit report reflected this. He says he had defaults on his credit report, as well as a number of payday loans. Mr B has said that the increases in his credit limit over time only added to his financial problems and when NewDay allowed some of the increases, he wasn't working and so couldn't afford to repay the balances.

NewDay looked into things for Mr B. It said that when it agreed to lend to him initially, it had checked information from the credit reference agencies, and while there was a defaulted account, this had happened over two years prior, and so it didn't think that based on the other information it had seen about Mr B's credit history, that a limit of £250 was unaffordable to him. It went on to say that it checked how he had managed his account before agreeing to increase his limit. And he accepted the increase each time. But it said that it shouldn't have increased his limit when it did in January 2019 and so it refunded him £69.38, which it said was the interest he was due back.

Our investigator also looked into things for Mr B, and they upheld Mr B's complaint. The investigator didn't think that NewDay's decision to increase Mr B's limit from £800 to £1550 in September 2018 was fair. They said that Mr B hadn't been able to show that he had been managing his account effectively up until this date, and he had been over the limit and made late payments on a number of occasions. They also found that Mr B had applied for another account with NewDay in this time, Mr B's total debt had increased, and he had some payday

loans. Because of this, they said NewDay should refund Mr B all interest charged above £800, from September 2018 to account closure, as well as refunding all over limit fees, late fees and cash advance charges. And it should pay Mr B 8% on any over payments he would have made – if there were any.

Marbles

Mr B applied for this credit card account in April 2018 (one year after opening his Aqua credit card). At the time, he said he was employed and earning £12,00 a year, with an additional household income of £1,200. NewDay agreed to give Mr B a limit of £450. NewDay then increased his credit limit on the following occasions:

- January 2019 from £450 to £1100.
- May 2019 from £1100 to £1850.
- January 2020 from £1850 to £2500.
- March 2020 from £2500 to £3500.

Mr B says he had just started receiving benefits at the time he took out this card, and so NewDay should never have allowed him to have it. He said at this point, he was recovering from a gambling addiction and unable to manage his money effectively. He says he had a poor credit history and wasn't managing his Aqua account well at the time.

NewDay looked into things for Mr B. It said that when it agreed to lend to him initially, it had checked information from the credit reference agencies, and while there was a defaulted account, this had happened more than two years prior to the application, and so it didn't think that based on the other information it had seen about Mr B's credit history, that a limit of £450 was unaffordable to him. It went on to say that it checked how he had managed his account before agreeing to increase his limit. And he accepted the increase each time. But it said that it shouldn't have increased his limit when it did in January 2019 and so it refunded him £185.32 in what it said was the interest charges.

Our investigator upheld Mr B's complaint. They said that at point of application, Mr B was already using payday loans, his external debt was increasing, and his income had decreased from the year before. Given NewDay already had an awareness that his account conduct with Aqua was poor, it's reasonable to suggest that they should've made further enquiries before approving his application. They said that had NewDay done extra checks, they would have seen that from March 2018, Mr B was no longer working and so his income had dropped. Based on everything, they thought that NewDay's decision to lend to Mr B wasn't responsible. And so, they asked NewDay to remove all the interest and charges applied from April 2018, so that a new starting balance consisting of only the amount lent is left. The investigator also said NewDay should deduct any payments Mr B had already made. If this resulted in Mr B having paid too much, then any overpayments should be refunded, adding 8% simple interest.

NewDay didn't agree to the findings of our investigator and insisted that the checks it had carried out had been appropriate and inline with what it needed to do. Our investigator continued to explain their rationale to NewDay, but NewDay requested a decision on the matter. And so the complaint 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.

Having done so, it is my decision to uphold Mr B's complaint, and I'll explain my reasons for doing this below.

We've set out our approach to unaffordable/irresponsible lending complaints on our website and I've considered this while deciding Mr B's complaint. Having carefully considered everything provided, I think that there are three overarching questions that I need to consider in order to decide what's fair and reasonable in all the circumstances of Mr B's complaint. These questions are:

- Did NewDay carry out reasonable and proportionate checks to satisfy itself that Mr B would be able to repay what he borrowed in a sustainable way at the time of each lending decision (in other words - when initially providing the card, then each time it increased the credit limit)?
 - If not, what would reasonable and proportionate checks more likely than not have shown?
- Bearing in mind the circumstances, at the time of each additional advance in credit, was there a point where NewDay ought reasonably to have realised it was increasing Mr B's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?
- Did NewDay act unfairly or unreasonably towards Mr B in some other way?

I have considered these questions when coming to my decision on Mr B's complaint.

The rules and regulations throughout NewDay's lending relationship with Mr B required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

These checks needed to be 'borrower focussed' and so NewDay needed to consider not only the likelihood of it getting its money back, but also whether repaying the credit would cause undue difficulties for Mr B.

The checks needed to be "proportionate" to the specific circumstances of the lending. Generally, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit involved.

For the initial lending decision on the credit cards, NewDay says that Mr B passed its affordability checks which were based on external credit bureau data and in line with Financial Conduct Authority ("FCA") guidelines. It hasn't really provided the detail in relation to what these searches showed but it says Mr B had one account which had defaulted a number of years prior, and there was no other adverse information on his credit file, which meant that he fell within its lending criteria.

For the limit increases, NewDay says it reviewed how Mr B was using his card, along with how he was managing his credit commitments and made risk-based assessments to ensure it was lending appropriately. In its view, these reviews suggested Mr B could afford the additional credit offered, until it increased it on both accounts January 2019. It hasn't provided me with any information to explain why it thought these limits were inappropriate, or what checks it carried out to determine this.

Aqua

Mr B was given a credit facility where there was an expectation that he'd repay what he borrowed plus the interest due within a reasonable period of time. The relevant rules, regulations and guidance in the period NewDay lent to Mr B don't set out what a reasonable period of time is. So, I think it's important to note that a reasonable period of time will always be dependent on the circumstances of the individual case.

That said, Mr B's declared income at the time together with there not being anything too concerning on his credit file leads me to think that it was reasonable and proportionate for NewDay to conclude Mr B would be able to repay £250 within a reasonable period of time.

So I don't think that NewDay did anything wrong when it decided to provide Mr B with a credit card that had an initial limit of £250.

NewDay then increased Mr B's limit to £800 in September 2017. It said that it had looked at how he had managed his account in order to determine what an appropriate limit would be for him. In my view, this is a significant increase as it is more than three times the initial limit it gave him – and given that this was increased only five months after he took out the card, there wasn't really much account management data for it to go off to satisfy itself that Mr B could manage a higher limit.

Even if I go by NewDay's own admissions as to how it assesses affordability (prior management of the account), then it is still questionable whether this limit should have been granted – given that Mr B had made a late payment only two months before it increased his limit. NewDay only had three months' worth of payment history to go by – so I'm not sure how the management of his account up until that point indicated that Mr B could afford to repay, in a sustainable way, a limit of three times more than it had initially granted. However, Mr B still appeared to be earning at this point and I haven't seen anything else to suggest that this increase was unaffordable to him.

In September 2018, NewDay increased Mr B's limit again to £1550. It again stated that it checked how Mr B had managed his account prior to this, and it also looked at information provided by the credit reference agencies. Based on this, it thought Mr B could afford the new limit. Prior to the increase, Mr B was over his agreed credit limit for a number of months – and he had made late payments. NewDay said it thought about this, but as these things hadn't happened in the three months prior to increasing the limit, its lending criteria allowed it to increase the limit.

NewDay's internal data also shows an increase in overall lending, and that Mr B had started using payday lenders too. While I appreciate NewDay's comments in that using payday loans wasn't in itself an indication he couldn't afford additional credit – it is something it would need to think about when considering Mr B's overall financial position.

Given the extra increase in borrowing, I think NewDay needed to carry out additional checks to ensure he could afford to repay what it intended to lend to him in a sustainable way. NewDay hadn't asked Mr B any questions about his income at all before agreeing to lend more to him. So, it isn't clear to me how it could be satisfied that he could afford this extra borrowing without even knowing what his income was. At this point in time, Mr B wasn't working, and so his income had significantly dropped. He also had his other credit card with NewDay by this point too, so it should have been aware of a drop in income (but I will go onto this later).

In January 2019, NewDay increased Mr B's limit again, this time to £2,550. The checks it says it carried out were similar to the previous credit limit increases. But NewDay has

already said that this increase shouldn't have happened, and so I haven't gone into this in too much detail, as I think all parties agree on this point. There were additional increases that happened after this point too but given that NewDay have already agreed that the increase in January 2019 wasn't appropriate, it follows that the increases after this time were also inappropriate.

In any event, it is the increase that happened in September 2018 that concerns me. NewDay had only really looked into how Mr B had managed his account up until this point and got some information from the credit reference agencies about his other lending. And given the level of increase in lending, I'd have expected it to do more to check that Mr B could afford the new limit.

Based on what I've seen, I can't agree that Mr B has been managing his credit card account well. There are months where Mr B was over the limit, and months where he was late paying. He'd started using payday lenders, and his overall debt was increasing. I appreciate NewDay think that there wasn't anything wrong in increasing his limit on this occasion, and that it increased his limit within its lending criteria. But this doesn't mean it was fair to do so.

As I've said, Mr B wasn't working when he NewDay increased his limit to £1150, so his income had decreased. I can't see how he could have been expected to repay the level of borrowing he had been given in a sustainable way. And I think this would have been apparent to NewDay had it carried out the appropriate checks.

Marbles

In April 2018, Mr B applied for another credit card with NewDay. NewDay allowed him a limit of £450. However, I don't think it was appropriate for NewDay to have lent on this occasion.

While Mr B did declare that he was earning £12,000 a year, I have seen information to show that he was likely receiving less than this. Proportionate checks to determine his income at the time would likely have revealed this.

I appreciate that on the face of things, a £450 limit might seem manageable. But the income Mr B had declared on his application had decreased (from when he applied to the Aqua card). The management of his Aqua account at the time was poor – there were late payments and over the limit charges. In addition to this, NewDay were aware that Mr B had started using payday lenders which can be an indication of financial difficulties, and his overall debt had increased.

Taking into account all of the above, I would have expected Aqua to carry out additional checks to ensure Mr B could afford the debt. Had it done this, it would have become clear that he was struggling financially, and unable to manage the debt he already had.

NewDay said that Mr B paid around £265 off his Aqua card in March 2018, just before he applied for the Marbles card, and so this should show that he could afford the additional lending. But I don't agree with this comment. I have seen from Mr B's bank statements and his testimony, that he paid the extra off his Aqua card with a backdated payment he received for benefits. This is a one-off payment, and money that he was due from his benefits. And so I don't think this indicates that Mr B could have afforded the Marbles card. If NewDay had carried out further checks, it would likely have recognised this.

I have noted NewDay's comments that it is up to a financial business to decide what its appetite for risk is. And because Mr B's application met its lending criteria, it opened an account for him. While I agree that it is up to a business to decide who it lends to, and how much, it needs to ensure that any lending it provides it affordable to a consumer. So just

because NewDay's lending criteria allowed Mr B the account, and NewDay were prepared to accept that 'risk', it doesn't mean that the lending was affordable, or that it carried out sufficient checks prior to lending to him.

Putting things right

Based on everything I've seen, I think NewDay needs to put things right for Mr B. I can see that NewDay has already refunded some of the interest it said it applied to the credit cards. However, for clarity, NewDay needs to put things right by doing the below:

Aqua

- rework the account to ensure that from September 2018 interest is only charged on the first £800 outstanding to reflect the fact that no further credit limit increases should have been provided. All late payment and over limit fees (that were applied after September 2018) should also be removed; and
- if an outstanding balance remains on Mr B's account once all adjustments have been made NewDay should contact Mr B to arrange a suitable repayment plan for this.
- No interest should be charged on any outstanding balance over £800, until it is repaid.
- 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 Mr B along with 8% simple interest† on the overpayments from the date they were made until the date of settlement.
- Remove any adverse information from Mr B's credit file that happened after September 2018.

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

Marbles

- rework the account to ensure that no interest is charged on the capital balance of the account to reflect the fact that the account shouldn't have been given to Mr B. All late payment and over limit fees should also be removed; and
- if an outstanding balance remains on Mr B's account once all adjustments have been made NewDay should contact Mr B to arrange a suitable repayment plan for this.
- No interest should be charged on any outstanding balance, until it is repaid.
- 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 Mr B along with 8% simple interest† on the overpayments from the date they were made until the date of settlement.
- Remove any adverse information from Mr B's credit file in relation to this account.

†HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Mr B 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 B's complaint. NewDay Ltd should put things right for by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 January 2022.

Sophie Wilkinson
Ombudsman