

The complaint

Mr V complains that NewDay Ltd lent irresponsibly when it increased the credit limit of his credit cards.

What happened

The background to this complaint and my initial conclusions were set out in my provisional decision. In my provisional decision I explained why I intended to uphold Mr V's complaint. I said:

In August 2012 NewDay approved an Aqua credit card for Mr V with a credit limit of £500. In January 2013 the credit limit was increased to £750.

NewDay increased the Aqua credit limit several times between December 2013, when it was increased to £1,500 and March 2016, when it reached £4,900. Each time, NewDay says the credit limit increase was approved in line with its lending criteria.

In December 2015 Mr V applied for Marbles credit card with NewDay. In his application, Mr V told NewDay he was a home owner, employed and earned around £40,000 and had around £9,800 of unsecured debt. NewDay carried out a credit search and Mr K had around £49,000 of defaulted credit as well as adverse credit entries recorded. The information NewDay obtained showed the defaults and adverse credit were over 21 months old.

NewDay approved an initial credit limit of £450 and increased that to £1,050 in August 2016. In January 2017 NewDay increased the Marbles credit limit to £1,650.

In December 2019 Mr V complained to NewDay that it had lent irresponsibly and failed to carry out checks to ensure his credit card debt was affordable. NewDay's final response covered the Aqua and Marbles credit cards. NewDay didn't agree it had lent irresponsibly and didn't uphold Mr V's complaint.

Mr V referred his complaint to this service and it was passed to an investigator. They looked at the Aqua credit card and upheld Mr V's complaint. The investigator said we couldn't consider the initial decision to approve the Aqua credit card or the first credit limit increase because of the time limits set out in our rules. The investigator thought NewDay had lent irresponsibly when it increased the credit limit on Mr V's Aqua credit card from December 2013 onwards and asked it to refund all interest and charges applied. NewDay didn't accept and asked to appeal.

In its response to the investigator, NewDay said it had considered Mr V's credit file and applied its lending criteria each time it had increased the credit limit. NewDay asked to appeal, so Mr V's complaint has been passed to me to make a decision.

What I've provisionally 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.

As the investigator said, because of the time limits noted in our rules we can only look at NewDay's lending decisions from December 2013 onwards. I've reached a different view to the investigator concerning how to resolve Mr V's complaint. The investigator's findings only looked at NewDay's Aqua credit card. But as NewDay's final response and the complaint file also includes information about Mr V's Marbles credit card, I'm going to include that in this provisional decision.

Before a business agrees to lend, it should take reasonable steps to ensure it does so in a responsible way. There's no set list of checks a lender has to complete. In practice, this means businesses should ensure proportionate checks are carried out to make sure the customer can afford to repay the borrowing in a sustainable way. These checks should take into account various factors, like the amount being lent, the costs to the borrower each month, credit history and the consumer's income and outgoings. As the relationship between lender and borrower progresses, the business may need to consider carrying out more comprehensive checks to ensure the borrower can afford repayments in a sustainable way.

I agree with the investigator that NewDay failed to carry out proportionate checks and that it lent irresponsibly. I think the information available to NewDay was sufficient to show Mr V's borrowing wasn't sustainable and should've led it to carry out further checks before increasing his credit limit. In addition, I think the information available when Mr V applied for his Marbles credit card and when NewDay subsequently increased its credit limit should've caused it to carry out more comprehensive checks that would've shown another credit card wasn't reasonable in his circumstances.

Looking at the first credit limit increase in December 2013, I can see NewDay doubled Mr V's credit limit from £750 to £1,500. I note that in the eight months before the credit limit increase was put in place Mr V had gone over his credit limit six times and been charged. I can also see that late fees were applied. Whilst I note NewDay says it allows some over limit and late payment fees, I think these issues should've caused it to ask more questions. Mr V has recently told us he has had difficulties with debt that were particularly bad from 2011. I can see Mr V's credit file data shows he later had over £100,000 of unsecured debts. If NewDay had carried out proportionate checks, like asking for a full copy of Mr V's credit file, requesting bank statements or evidence of his income, I think it would've found Mr V was caught in a cycle of borrowing and declined to proceed.

It follows that if I think NewDay lent irresponsibly when it increased Mr V's credit limit in December 2013, subsequent increases were also approved without proportionate checks. But I've also looked at the information available to NewDay to see whether there were other signs that should've caused it to carry out further checks.

In November 2014 NewDay increased the Aqua limit to £2,250. I can see that in September 2014 a "financial difficulty" marker was recorded on the credit file data provided. Another financial difficulty marker was recorded in January 2014 (the month after NewDay increased the credit limit to £1,500. Whilst I can see there was no reported marker in October 2014, I think having two markers of this nature recorded within ten months should've caused NewDay to consider asking more questions and look more closely at whether Mr V was able to sustainably manage the increased debt level. And, for broadly the same reasons I've given above, had it done that NewDay would likely have found Mr V wasn't able to sustainably maintain repayments.

In April 2015 NewDay increased Mr V's credit limit to £3,000. In the five months since the credit limit had previously been increased Mr V incurred four over limit fees and took cash advances of £490. Given there was a short track record for the account when the credit limit

was £2,250 and the majority of those months saw Mr V's debt exceeding the credit limit, I think there were signs NewDay could've picked up on that showed he was having difficulties. Again, had NewDay carried out more comprehensive checks I think it would've found Mr V was unable to sustainably manage his Aqua credit card.

After five months at £3,000, the Aqua credit limit was again increased by £750 to £3,750. I can see that two months before the increase Mr V exceeded the credit limit. And in four of the preceding five months Mr V took cash advances totalling the entire £750 credit limit increase. Whilst NewDay correctly says cash advances form part of the credit cards it offers, they can often indicate a consumer is struggling. I think there was sufficient information to show Mr V was likely struggling. And the information available to NewDay, along with the pace at which it had increased Mr V's credit limit, should've caused it to carry out more comprehensive checks.

Mr V applied for a new credit card in December 2015 and provided information about his circumstances. NewDay found five defaults totalling over £49,000 and public records (which includes CCJs) of over £31,000. NewDay says those records were over 21 months old when Mr V applied for his Marbles credit card and that it allows for some adverse credit. But I think the fact NewDay had increased the Aqua card by £750 only three months before and Mr V had already increased his balance to use up most of that, I think there were signs he was experiencing some financial difficulties. And I think that should've caused NewDay to look more closely at Mr V's circumstances and carry out some additional checks.

Had NewDay carried out further checks, I think it would've found Mr V's unsecured debt level was considerably higher than declared in the application and that he wasn't able to affordably maintain a new credit card. In addition to increasing Mr V's credit limit on his Aqua account, I think NewDay lent irresponsibly by approving the Marbles credit card.

The final £1,150 Aqua credit limit increase took it to £4,900 in March 2016, three months after the Marbles application was approved. Marbles credit limit increases took place in August 2016 and January 2017, taking it up to £1,650. The Marbles account's credit limit went from £450 to £1,650 in 13 months. Looking at the credit file information NewDay had available, I'm satisfied there were various signs Mr V was in a difficult financial position. I note the number of payday loans increased, arrears became apparent and a total outstanding credit card balance of over £100,000 were all recorded amongst other information during this time. I think NewDay should've completed a more comprehensive assessment of Mr V's ability to maintain his payments. Had it done so, I don't think NewDay would've proceeded.

I invited both parties to respond with any additional comment or information they wanted me to consider before I made my final decision. Mr V responded to confirm he accepted the outcome. NewDay responded and said it didn't.

In brief, NewDay said It had followed its lending criteria when approving the credit cards and limit increases. It says its lending criteria was in line with the rules and regulations. NewDay says it took affordability data and information from Mr V's credit file into account each time before agreeing to lend. NewDay didn't agree it had lent irresponsibly and didn't agree to settle in line with my provisional decision.

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.

I'd like to thank NewDay for the detailed response provided. I've considered all the information provided and points made. My findings will focus on the points I feel are most relevant to the outcome in this case. And I think it's reasonable to note that much of the information NewDay has provided was set out in its original submission.

I understand the credit cards and limit increases were approved in line with NewDay's lending criteria. But, as I've set out above, I think there were signs that Mr V was struggling financially for a significant period that should've caused NewDay to consider whether relying on its standard checks was a reasonable approach.

NewDay's response says it won't approve a credit limit increase if a card hold has been incurred for three consecutive months and that Mr V hadn't experienced arrears of that nature. I appreciate that may be the case, but I can see Mr V went over his credit limit six times in the eight months prior to the increase in December 2013. In addition, Mr V made a late payment in the preceding months. I appreciate the case handler's claim this was most likely an oversight, but I don't agree the information supports that view. I remain of the opinion that there was sufficient information available to NewDay that should've caused it to carry out more comprehensive checks. And I still think that, had NewDay carried out better checks, it wouldn't have increased Mr V's borrowing, in line with the findings in my provisional decision.

NewDay's response says it can only make lending decisions based on the information it had to hand at the time. For the reasons set out in my provisional decision, I don't agree the information NewDay had was sufficient to ensure it lent responsibly. I remain of the view that NewDay should've carried out more proportionate and comprehensive lending checks before agreeing to lend. Had it done so, I don't think NewDay would've proceeded.

Putting things right

To resolve Mr V's complaint, I direct NewDay to settle as follows:

- Refund all interest and charges applied to the Aqua card from December 2013 onwards against balances over £750
- Refund all interest and charges applied to the Marbles card from inception
- If at any period the interest refunds result in Mr V's closed accounts being in credit, pay 8% simple annual interest on the date that credit balance arose to the date of settlement
- NewDay should amend Mr V's credit file to remove all adverse information reported about both cards from December 2013 to date
- If the debts have been sold to a third party, NewDay may need to consider buying them back to ensure it's able to settle Mr V's complaint in line with this guidance

My final decision

My decision is that I uphold Mr V's complaint and direct NewDay Ltd to settle in line with the above guidance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or

reject my decision before 29 September 2021.

Marco Manente
Ombudsman