

## The complaint

Mr C complains about lending made to him through four separate credit card accounts by NewDay Ltd.

## What happened

Mr C said that NewDay had lent him money through four separate credit card accounts, starting in 2015. He said that none of this lending was affordable for him. He sent us details of the large number of payday loans he had taken out before and during this time. He also sent us his bank statements. Those show that Mr C had long-term money management problems, and was spending a considerable amount of his income on gambling.

Mr C wanted us to look into what NewDay had done.

NewDay said it had looked at all four credit card accounts it had opened for Mr C, since 2015. It addressed each of those in turn.

### *Aqua card, opened in January 2015.*

NewDay said that when Mr C applied, he told it he was employed with an annual income of £31,000. The credit reference agency ("CRA") said he had no accounts in arrears, no debt management plans and no county court judgments ("CCJs"). NewDay said it wasn't receiving information on payday lending at this point. Whilst there were defaults, these had been 38 months prior to application. The account was approved with a limit of £250.

NewDay said it made two credit limit increases; to £400 in August 2015 then to £1,000 in December 2015. NewDay said that at the time of the increases, there were no financial difficulty or affordability indicators, nor had it been notified by Mr C that he needed assistance. Mr C had been making his payments to the card each month, with no late fees and only one over limit fee being charged. The cash spend was significantly lower than the retail purchases being made using the card.

NewDay said it didn't receive notification about Mr C's financial difficulties until May 2018, which was 3 years after the last increase on this card. A reduced payment arrangement had been agreed on the card then, and there had been no interest or fees applied since September 2018. NewDay said it had no concerns about the lending on this card.

### *Marbles card 1, opened in May 2016.*

NewDay said Mr C told it he was employed with an annual income of £34,000. The CRA said he had no accounts in arrears, no debt management plans and no CCJs. Whilst there was one remaining default, this was 53 months ago. NewDay said Mr C had a balance of £688 in payday loans, with no arrears or defaults on the past 12 months. The account was approved with a limit of £450.

NewDay said it made one credit limit increase on this card, to £1,350 in September 2016. It said that there were no financial difficulty or affordability indicators, and it hadn't been

notified by Mr C that he needed assistance. Mr C had maintained his payments before the increase, and whilst he had 28 payday loans being reported, only two were active. There had been no cash spend on this account prior to the increase.

NewDay said it didn't know about Mr C's financial difficulties until 2 years after the increase. It agreed a reduced payment arrangement then, and no interest or fees had been applied to this card since November 2018.

Again, NewDay said it had no concerns regarding lending in respect of this account.

*Store brand card, opened in January 2018.*

NewDay said that Mr C told it he was employed with an annual income of £39,000. The CRA reported that he had no accounts in arrears, no debt management plans, no CCJs or defaults. It said that there was no payday loan data when this account opened. The account was approved with a limit of £500.

NewDay said that it made one credit limit increase on this card, to £1,400 in July 2018. But it said it shouldn't have done that, because Mr C had recently notified it, on a different card, about his financial difficulties. And his credit file data showed he was in arrears with another creditor. So NewDay said it shouldn't have increased the credit limit on this account.

NewDay said this account was paid in full in October 2019, hadn't been used since and was closed for further activity following the complaint. So NewDay said it would refund interest charged at the point the new credit limit was utilised, which was September 2018, which would be a total refund of £282.86

*Marbles card 2, opened in March 2018*

NewDay said it only allows individuals to open one card from each of its brands, and Mr C already had a Marbles card when he made this application. So he shouldn't have been allowed to open this one. NewDay said this account was sold in January 2019. It said it would remove any balance outstanding with the debt agent if applicable, get the account deleted in its entirety with the credit bureau and refund the payments made which was a total of £35 along with 8% interest which was £4.37.

NewDay said it had worked out that it owed Mr C £322.23 in total.

Our investigator thought this complaint should be partly upheld. He also looked at each card in turn.

*Aqua Card*

Although Mr C's credit limit quadrupled within the space of a year, our investigator didn't think the limit was unreasonable given his declared salary and credit record at the time. His payments were on time and our investigator also thought the increases were reasonable.

*Marbles Card 1*

Our investigator thought that NewDay was reasonable in initially granting the card as Mr C had managed his Aqua account well and had no new defaults or adverse credit. No adverse information was reported to the CRAs, and Mr C also declared a salary of £34,000.

But our investigator thought that the credit limit increase in September 2016 was excessive. Mr C's limit almost tripled after four months even though he was already close to utilising his

existing limit, and he seemed to only be making the minimum payments. Our investigator didn't think this unsolicited increase was appropriate, given the other credit commitments Mr C had at the time.

### *Store Brand Card*

Our investigator agreed with NewDay that it shouldn't have increased the credit limit here as it was aware of Mr C's financial difficulties at the time. NewDay had agreed to refund the interest charged at the point the credit limit was utilised. Our investigator thought this was earlier than NewDay had said, in July 2018, so he wanted it to recalculate the refund from this date.

### *Marbles Card 2*

Our investigator said that as NewDay had accepted it should never have opened this account, he thought it was fair for NewDay to remove any balance outstanding with the debt agent, get the account deleted in its entirety with the CRAs and refund the payments made plus 8% interest.

In summary, our investigator wanted NewDay to -

- Refund all interest and any charges incurred on Marbles card 1 after the credit limit was increased in September 2016
- Refund all interest and any charges incurred on the store brand card at the point the new credit limit was utilised, which was July 2018
- Remove any balance outstanding on Marbles card 2 with the debt agent if applicable, get the account deleted in its entirety with the CRAs and refund the payments made (a total of £35 along with 8% interest which was £4.37)
- Pay £200 in compensation in recognition of the unnecessary distress and inconvenience Mr C had experienced.

Both sides wrote in reply. Mr C didn't think that our investigator had gone far enough, and in particular he said that the credit limit increases on his first card, the Aqua card, were unreasonable, because they happened too close together.

NewDay replied to disagree with what our investigator said about Mr C's first Marbles card. It said that it had obtained information from multiple CRAs at the point of the increase, and used this with information it held from Mr C's underwriting and account management to that point. It felt it had made a reasonable and proportionate assessment.

NewDay stressed that three out of the four payments received up to the offer were over and above the contractual amount due. The card had been used for retail spend only. There had been no financial difficulty, affordability indicators or arrears reported by the CRAs. And NewDay said that Mr C maintained payments for another 2 years after the increase, again with many over and above the contractual amount due.

NewDay also said that on Mr C's store branded card, the balance remained under £500 (the limit prior to the increase) until September 2018 when it went to £575.96. So it didn't think it had to refund interest earlier than this.

NewDay agreed with what our investigator suggested for the second Marbles card, and it said it would pay £200 in compensation.

Our investigator shared this response with Mr C. He was concerned that NewDay had been able to give him new cards, when he didn't think it would've increased the limit on his

existing cards. He thought this was a loophole, allowing irresponsible lending.

Our investigator then set out a fresh view, to respond to the points made by both sides. He said he hadn't changed his mind about the appropriate outcome.

Our investigator said that there wasn't any regulation he was aware of, preventing a lender offering multiple cards under different brands. But he reassured Mr C that this wasn't a way for lenders to avoid ensuring the credit granted at the time was suitable and affordable. And he hadn't changed his mind about the lending on Mr C's first card.

Our investigator also said that when NewDay increased the limit on Mr C's first Marbles card from £450 to £1,350 in a single instant after four months, it should've carried out borrower focused checks. NewDay relied on a method which provides data based on predictions. This is not borrower focused and provides information to show the risk a lender is willing to take, not necessarily whether lending is suitable for a consumer.

Given the size of the increase, and what NewDay knew about how Mr C had used his cards, our investigator said that in this instance NewDay ought to have conducted a more borrower focused check before providing Mr C with such a large unsolicited increase. And if it had done that, it would've found payments to multiple payday loans and transactions to online betting companies, which would've been a risk indicator.

Our investigator still proposed the same outcome.

Mr C said he was prepared to agree to this, if the adverse information on his credit files for the first Marbles card could also be removed. But NewDay didn't agree. It wanted this complaint to be considered by an ombudsman. Mr C said in that case, he wanted an ombudsman to look at whether the credit limit increases on his first card were reasonable.

This case then came to me for a final decision.

### **My provisional decision**

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

In considering the lending that NewDay made to Mr C, I need to think about whether it made a reasonable assessment of affordability, on the basis of the information it had. We know that NewDay didn't ask Mr C for further and more detailed information about his financial position.

And we also know, because Mr C has shown us his current account and payday lending history from the time, that if NewDay had asked for this further information, it would have been most unlikely to lend to Mr C.

So what I need to think about is whether NewDay should've realised it needed more information, in order to be sure that it was lending responsibly. And if NewDay should've realised that, then I need to identify when that happened.

Mr C opened his first card account, an Aqua card, with NewDay in January 2015. I know he had a considerable number of payday loans at the time, but NewDay has told us that it didn't get this information then. And I can't see these payday loans on the 2018 credit report Mr C has shown us. Historically, payday lenders didn't always report this lending to CRAs.

Given the information NewDay had at the time it made this lending decision, I don't think that NewDay was obliged to do additional checks on Mr C's financial position when he opened his first credit card account.

From then on, NewDay started to accrue additional information about Mr C, because it knew how he was using and managing his first credit card.

NewDay said that most of Mr C's spending was retail spending. But I don't think it was. I think it's relevant that Mr C seems to have used much of this credit for essential spending - like payments to a local council and utility bills. This isn't the normal usage I'd expect to see on a credit card.

That was a warning sign for the future, but I don't think that it was enough alone to mean that NewDay shouldn't lend to Mr C. I don't think there were sufficient causes for concern, to mean that NewDay had to do more detailed investigations when it increased Mr C's credit limit in August 2015 and in December 2015. However, I would have expected NewDay to note that Mr C spent the first increase on gambling, and the second increase on essential spending. These were also warning signs.

The second card, Marbles card 1, was opened in May 2016. By this time, NewDay had already lent Mr C £1,000 on his first card. But he was, as NewDay said, making payments largely over the minimum, and he'd declared an increased income, with no other signs of financial difficulties. So, although I've noted some initial warning signs above, I don't think that NewDay ought to have realised this additional lending wouldn't be affordable for Mr C.

Mr C said he thought NewDay was opening new cards for him as a way of getting around the rules on lending. So I'd like to be clear that my view on this wouldn't have been different if this was a further limit increase of £450 on Mr C's existing card, instead of a new card with a limit of £450.

But, as our investigator said, Mr C was then offered very large increase on this Marbles card, very quickly. He went from £450 to £1,350 in one step.

I think it's important to note that NewDay had recently started to get information on how much Mr C owed in total in unsecured credit, both with NewDay and all his other creditors. So, in September 2016, NewDay could see that Mr C had over £16,000 of unsecured debt. That's almost twice what he'd declared when he took out the card.

Given the level of unsecured credit Mr C had, and the issues I've already noted on his first card, as well as the fact that this card had also been used primarily for essential spending, I think that NewDay should have done further investigations of Mr C's financial position before it made this additional lending. And we know, from background data that Mr C has shared with us, that if NewDay had done those additional checks, it would have been unlikely to make this lending to him.

Mr C's September 2016 statement for Marbles card 1 shows his limit had increased to £1,350. His October statement shows that Mr C had spent almost all of that increase, just under £1,000, in less than a month. He spent it all on gambling. Given what NewDay already knew, I think that from this point, it should have been clear to NewDay that it should not have made any further lending to Mr C.

So I think that NewDay has to do a little more than our investigator suggested, to put things right.

I don't think that NewDay has to refund interest and charges on Mr C's first card (the Aqua card).

On his second card (Marbles card 1), I think NewDay must refund all interest and charges applied to any lending after August 2016 over the initial limit of £450, because that additional lending should not have been made. And I think NewDay should remove any adverse information recorded with the CRAs after August 2016, because this additional lending should not have been made. I understand that Mr C has an outstanding debt on this card. The refund should be used to reduce this in the first instance. I don't anticipate there will be a surplus, but if there is, then the remainder should be paid to Mr C with 8% simple interest.

On his third card (the store branded card), I think NewDay should refund all interest and charges applied to this card, because I think that both the initial lending in January 2018 and the increase in July 2018 should not have been made. And I think NewDay should get this account deleted in its entirety with CRAs, again, because this lending should not have been made. I understand that this card has been paid in full and closed, so NewDay should pay this refund to Mr C with 8% simple interest.

On his fourth card (Marbles card 2), I agree that NewDay's proposal to remove any balance outstanding with the debt agent if applicable, get the account deleted in its entirety with CRAs, and refund the payments along with 8% interest, provides a fair outcome to this part of his complaint.

I also think that NewDay should pay compensation in this case. And I don't think the amount our investigator suggested properly reflects the impact on Mr C of what has happened here.

I've explained why I think that NewDay should not have made any further lending to Mr C after August 2016. It has, unfortunately, continued to do so for some time. I think that means that lending which should not have been made has both worsened and prolonged financial difficulties and personal issues for Mr C. So I think NewDay should pay Mr C £500 in compensation in recognition of the unnecessary distress and inconvenience Mr C has experienced.

I invited the parties to make any final points, if they wanted, before issuing my final decision. NewDay didn't reply. Mr C sent a substantive reply.

### **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.

Mr C said that he was happy to accept the outcomes I'd proposed.

Mr C noted that he had experienced difficulties with the first Aqua card he was given, and he set out for us that he went over his limit in the first month, due to a gambling transaction. He also said that he used the card again for gambling, taking it back up to the limit, only two months later. He then used the card to make a number of small payments. He said that he thought at the time that the number of payments would look good on the account and small payments would stop him going overlimit. Mr C said that when the limit was increased in August, he used most of that increase on gambling, with the remainder used to part pay his rent. Mr C said he used most of the December increase to pay rent too.

Mr C wanted to alert us to these issues in case NewDay contested my provisional decision. But NewDay hasn't done so, and I haven't changed my mind. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that NewDay Ltd must take the following steps –

- Marbles card 1 - refund all interest and charges applied to any lending made after August 2016 over the initial limit of £450, and remove any adverse information recorded with the CRAs after August 2016. The refund should be used to reduce this debt in the first instance. If there is any surplus, the remainder should be paid to Mr C with 8% simple interest.
- Store branded card - refund all interest and charges applied to this card, and get this account deleted in its entirety with CRAs. NewDay should pay this refund to Mr C with 8% simple interest.
- Marbles card 2 - remove any balance outstanding with the debt agent if applicable, get the account deleted in its entirety with CRAs and refund all payments received on this card to Mr C along with 8% interest.
- pay Mr C £500 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 November 2021.

Esther Absalom-Gough

**Ombudsman**