

The complaint

Mr E complains about credit limit increases made by NewDay Ltd on two credit cards that he held with it. Mr E said that he was already in a difficult financial situation, and this increased lending made things worse.

What happened

Mr E told us he'd taken out two credit cards with NewDay, a marbles card and an aqua card. He said on both of these cards, the credit limits were increased to levels that he simply couldn't afford. He said if NewDay had checked his financial position at the time, it would've seen that he was struggling. He'd been in a debt management plan since well before the cards were taken out. He was also at the limit of his overdraft, and he was relying heavily on payday loans.

Mr E didn't think that these increases should have been made. He wanted NewDay to pay back all the interest and charges it had applied after these limit increases had been made, with interest.

NewDay didn't think it had done anything wrong. It said that it assessed whether Mr E could afford each of these increases, and it thought he could. NewDay said it had checked again since, and still thought these increases had been affordable for Mr E.

Our investigator thought this complaint should be upheld. First, he set out the position on both cards.

The Aqua card was opened on 20 September 2012. The limits were then increased on the following dates:

- May 2014 - £500 to £650
- November 2014 - £650 to £1,300
- May 2015 - £1,300 to £2,050
- October 2015 - £2,050 to £3,100
- April 2016 - £3,100 to £4,050
- December 2016 - £4,050 to £4,800

The Marbles card was then opened in September 2015 with a limit of £900. The credit limit was then increased on the following dates:

- January 2016 - £900 to £1,900
- May 2016 - £1,900 to £3,100

Mr E challenges the credit limit increases given from 2015 onwards.

Our investigator explained that before deciding whether to lend, NewDay had to carry out a reasonable and proportionate assessment of Mr E's ability to repay any increased lending in a sustainable manner. He then looked at each account in turn.

Our investigator had understood that NewDay hadn't considered fresh and up to date data from credit reference agencies ("CRAs") each time it agreed to make further lending to Mr E,

after 2012. He inferred that it had continued to rely on the data it received in 2012.

Our investigator didn't think that NewDay should've increased Mr E's aqua card credit limit from £1,300 to £2,050 in May 2015. He thought NewDay should've done a complete credit check on Mr E at this point. He also said that NewDay shouldn't have made limit increases between October 2015 and December 2016, which added a further £2,750 to Mr E's available lending. He also noted that the CRA data that NewDay had, started to show a high level of payday lending from March 2016 onwards.

Our investigator also looked at the lending NewDay made on Mr E's marbles card. He didn't comment on the initial lending, which Mr E hadn't complained about. But he said that when NewDay increased this card's limit, in January 2016 from £900 to £1,900, it was clear that no proportionate affordability check was done. And Mr E already had a card with a limit of £2,050. Mr E had been consistently taking out payday loans within this period.

Our investigator listed a very high number of payday loans taken by Mr E, from 2013 to 2018. He said Mr E was living in his overdraft, and using this to pay his credit card and payday loans. Payments to his debt management programme were also being missed. So our investigator felt it was clear that Mr E was in an unstable financial position from at least May 2015 onwards. Our investigator thought NewDay made a mistake by providing Mr E with the credit limit increases on his marbles and aqua cards, because a more proportionate check would've shown he was in an unstable financial position.

Our investigator said that because NewDay shouldn't have increased Mr E's card limits, it should restructure both accounts to refund all interest and fees paid up to and including the May 2015 credit limit increase on the aqua credit card and January 2016 limit increase on the marbles card. If there were any surplus after this money was refunded, that should be paid back to Mr E with 8% simple interest applied.

Our investigator said NewDay should reduce Mr E's credit limits back to where they were before the disputed increases. And if there were any late payment markers associated with these accounts, then the credit file should be amended.

NewDay didn't agree. It thought that the checks it had done on Mr E's cards were sufficient. It wanted to stress how well managed the cards were. It said it would be unusual if Mr E's limits hadn't been increased during this time.

Because no agreement was reached, this case was passed 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:

I note that the Lending Standards Board, which provided best practice guidelines for credit limit increases that have been in place since 2011, starts its guidelines for responsible lending with the following –

General Checks for Credit Limit Increases

Issuers should undertake appropriate checks to assess a customer's ability to repay and overall creditworthiness before increasing a credit limit. These checks should include reference to information from credit reference agencies plus at least one of the following three points:

- *The customer's income and financial commitments*

- *How they have handled their finances in the past*
- *Internal credit scoring techniques*

I think what this means is that NewDay should use recent, up to date information from CRAs. Not that it should use the old information it had received when it first lent to Mr E.

Unusually, NewDay hasn't been able to show us that when all of these lending decisions were made, it had access to a monthly update detailing Mr E's overall lending, including a running total of Mr E's total debt position throughout the time that the contested lending decisions were made.

It looks as if NewDay didn't start to get this information until March 2016. So NewDay does appear to have made a number of lending decisions without reference to recent, up to date information from CRAs. I don't think that's compatible with the guidelines I've reproduced above. I don't think that NewDay is able to demonstrate, using Mr E's use and management of his NewDay cards alone, that the contested lending was responsible.

I think, as our investigator noted, that the position was slightly different after March 2016, because NewDay did then start to get regularly updated information on Mr E's overall debt position, including the number of payday loans he had. But again, I agree that additional checks should have been done at this stage, because the information NewDay was getting then showed that Mr E had a high number of payday loans.

I think our investigator was right to say that further checks should have been done, before credit limit increases from May 2015 onwards were made. My overall conclusion here is the same as that of our investigator, that NewDay simply didn't have enough up to date information about Mr E's financial position to make a decision on increased lending from May 2015 onwards.

So now I have to consider what NewDay would have done, if these additional checks had been made.

Our investigator has looked in considerable detail at Mr E's financial position, and what NewDay would have uncovered if it had looked closely at this. He set out in detail the very high number of payday loans that Mr E had taken out, over the time that NewDay made the contested increases.

What our investigator said about Mr E's reliance on payday loans is consistent with what I can see on Mr E's credit file. NewDay has said that it wouldn't have seen this data before March 2016. But I can also see other things on Mr E's file which would have been clear to NewDay if it had checked – such as the additional credit card he'd taken out in 2013, which had an increased credit limit in April 2015 and substantially increased lending almost immediately after this.

I think if NewDay had carried out additional checks, so that proportionate and borrower focussed checks were done, then it's likely that at least some of the information indicating Mr E's precarious financial position would have been revealed. And if so, I think it's reasonable to assume that NewDay wouldn't have offered Mr E additional lending at this time.

For that reason, I also think this complaint should be upheld.

To put things right, I've reached a slightly different conclusion to our investigator. Mr E hasn't complained about lending made before May 2015, or about the initial decision to open a marbles card for him in September 2015. So the lending that NewDay made then has not been challenged. I don't think it's appropriate to ask NewDay to make a refund of interest on this lending. I'll ask NewDay to refund any fees and interest applied on lending above these amounts.

So I think NewDay should –

- Refund onto Mr E's aqua account, all interest and fees charged from May 2015, on amounts above the limit of £1,300, which was in place prior to the May 2015 credit limit increase on this card. It should do that from May 2015 to date.
- Refund onto Mr E's marbles account, all interest and fees charged from January 2016, on amounts above the limit of £900, which was in place prior to the January 2016 credit limit increase on this card. It should do that from January 2016 to date.

This rarely results in a surplus, but if there is any surplus after this money was refunded, that should be paid back to Mr E with 8% simple interest applied.

Our investigator said that NewDay should reduce Mr E's credit limits back to where they were before the disputed increases, but NewDay couldn't responsibly make this change where Mr E's current balance exceeds those amounts. And Mr E's accounts are closed for further spending, so I don't think this is required.

Our investigator also said if there were any late payment markers associated with these accounts, then these should be removed from Mr E's credit file. I also think this is appropriate. Although I note that no such markers are visible on the file Mr E has shared with us, I cannot be entirely confident that no such markers are shown on other CRA files, or have been added since, so I will also include this in my award.

I invited the parties to make any final points, if they wanted, before issuing my final decision. NewDay acknowledged receipt of my provisional decision, but said it didn't intend to reply. Mr E replied to ask me to expand the scope of my 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.

Mr E said he accepted my decision about the aqua card in full. But he also wanted me to look at whether he should have been granted a marbles card in September 2015. He said he'd like to get back all the interest and charges ever applied to that card, not just from the first credit limit increase.

Mr E said when he first made this complaint in early 2021 this was one of many such complaints he made at the time, and he just got his dates muddled up. He thought the marbles account had been opened earlier, so NewDay would have said he was out of time to look at the decisions taken when the account was opened.

Mr E said we'd be able to see, from an email he sent us in October 2021, that he had realised then he should also have complained about the marbles card application. Mr E said, having read my provisional decision closely, he thought NewDay Ltd had admitted it didn't get any monthly credit report data for him before March 2016. So he thought it was clear

that, just as the May 2015 and October 2015 increases were wrong, the approval of the marbles card in September 2015 must also be wrong.

Mr E said he didn't want to cause me extra work, or delay my decision. But he thought the conclusion on his marbles application would be clear from the findings I'd already made. And he said it would be unfair if he didn't ask for it to be looked at now, as it could make a big difference to the redress figure. He said if he'd known that NewDay Ltd never accessed his regular credit report, then he would have asked for the account to be looked at from the start, not just from the first credit limit increase.

I'm sorry to have to tell Mr E that I'm not able to add this point into his case now. That's for two reasons.

Firstly, it has been clear from the start that Mr E didn't include the initial lending on the marbles card in this complaint. And this position does appear to me to have been consistent. As late as October 2021, Mr E told us he'd clearly missed this at the start, but he also indicated then that he wasn't asking us to go back to add this in.

NewDay addressed the issue of Mr E's marbles card in its complaint response letter to him. But, because Mr E didn't then include this in his complaint to us, NewDay hasn't had an opportunity to expand on this reasoning, or to address any conclusions our service might reach on this lending.

And secondly, a conclusion on the initial marbles card lending doesn't follow quite as simply from my existing findings as Mr E suggests. My findings on his limit increases were made on the basis that NewDay hadn't specifically requested credit file information on Mr E before those increases, and we know it wasn't receiving regular summary information on his credit file before March 2016. It should not be inferred from this that NewDay did not specifically request credit file information when Mr E asked it to open a new marbles account for him in September 2015.

So I don't think I'm able to simply add in this issue to Mr E's existing complaint now. I could not do so without significantly delaying a final decision in this case, which Mr E has said he doesn't want. And I'm not clear that it would be fair to both sides to add this in now.

For those reasons, I make no findings on whether or not it was appropriate for NewDay to open a new card for Mr E in September 2015. That will need to form the subject of a different complaint.

I still think Mr E's complaint about credit limit increases should be upheld, for the reasons I gave in my provisional decision. So I'll now make the award I originally proposed.

My final decision

My final decision is that NewDay Ltd must –

Refund onto Mr E's aqua account, all interest and fees charged from May 2015, on amounts above the limit of £1,300, which was in place prior to the May 2015 credit limit increase on this card. It should do that from May 2015 to date.

Refund onto Mr E's marbles account, all interest and fees charged from January 2016, on amounts above the limit of £900, which was in place prior to the January 2016 credit limit increase on this card. It should do that from January 2016 to date.

If there is any surplus after this money was refunded, that should be paid back to Mr E with 8% simple interest applied. And if there are any late payment markers associated with these accounts, then these should be removed from Mr E's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 12 January 2022.

Esther Absalom-Gough
Ombudsman