

The complaint

Mr L complains NewDay Ltd irresponsibly lent him two credit cards, and a loan.

What happened

Mr L took out the following:

- Aqua credit card in May 2015 with an initial limit of £100
- Marbles credit card in December 2016 with an initial limit of £600
- Marbles loan in March 2018 for £2,500

He complained to NewDay about irresponsible lending and asked about a Subject Access Request (SAR) that hadn't been sent to him yet.

NewDay said:

- Aqua credit card – in the application Mr L told them he was employed with an income of £44,000, and that he had unsecured debt of £100. Extra information available to them at the time, found he had six defaults with the oldest being 50 months ago. The value of these defaults was £26,000, there were no payday loans, and no accounts in arrears. Mr L met their acceptance criteria, so they offered their card with a £100 credit limit. In August 2015 the limit was increased to £1,100, in December 2015 it was increased to £1,350, and the last increase was in August 2016 to £2,100. This account was repaid in full and closed on 7 February 2017.
- Marbles credit card – Mr L told them he was employed with an income of £44,000, and unsecured debt of £20,000. Extra information available to them at the time, found he had six defaults with the oldest being 69 months ago. The value of these defaults was £26,000, there were no payday loans, and no account in arrears. Mr L met their acceptance criteria, so they offered their card with a £600 credit limit. In March 2017 the limit was increased to £1,600, in July 2017 it was increased to £2,600, and the last increase was in November 2017 to £3,100. This account was repaid in full and closed on 4 December 2018.
- Marbles loan – Mr L told them he was employed with a monthly net income of £2,150, and from the information he provided they worked out he had a disposable household income of £855 per month. Mr L met their criteria, so he was given a loan for £2,500, over 48 months, with monthly payments of £81.98.

They added that for the credit card limit increases they sent letters allowing Mr L to opt out of the increases but can't see that he did. They said they'd carried out an in-depth evaluation of each time a credit limit increase was provided and found appropriate checks had been carried out to ensure the limit increases were affordable.

NewDay said they were sorry to hear Mr L was experiencing financial difficulties. They said they didn't have any records of him contacting them before the credit cards were closed. And the first record they had of financial difficulties was when he contacted them regarding the loan in December 2019. They added they could see Mr L's latest offer to repay the loan of

£56.85 per month for the next 12 months, made through a debt charity, had been accepted on 27 January 2021.

Overall, they didn't uphold Mr L's complaint about the lending, but said sorry for the SAR taking longer than it should have.

Unhappy with NewDay's reply, Mr L asked us to look into things.

One of our Investigators did so and upheld the complaint. Mr L accepted this, but NewDay didn't saying they didn't think they'd done anything wrong, so the complaint's been passed to me to decide.

For completeness, I have noted Mr L held another Aqua credit card which had been opened on 27 June 2013, but that he accepts it's outside of the timescales for us to investigate it – so isn't pursuing it further. Because of that, I won't mention it again.

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.

The rules require NewDay to make sure they didn't lend irresponsibly. This means NewDay needed to carry out proportionate checks to be able to understand what Mr L could afford to repay, before granting the lending. What this means in practice varies depending on the individual circumstances of the borrower, how much lending is being granted, and the type of lending.

NewDay have described themselves as a "low and grow" lender – offering a second chance to those with poorer credit histories. This approach refers to low credit limits initially being granted, while NewDay will then look to "grow" the credit limit as time goes on – subject to the borrower's conduct and their own checks. NewDay's own checks for credit cards uses a credit reference agency's estimate of someone's affordability.

If I find NewDay didn't carry out appropriate checks, then it doesn't automatically mean I'd uphold a complaint about that lending decision. I'd need to decide whether I think it'd have been irresponsible for NewDay to lend, had they carried out appropriate checks. If I find they didn't carry out appropriate checks, then I wouldn't usually require NewDay to write off the debt, as Mr L has had the benefit of the funds. Instead, I'd likely require them to refund interest and charges that'd been applied.

Aqua credit card

For a credit card, the expectation is Mr L would repay what he owed within a reasonable period of time – this would include interest on his borrowing.

The initial credit limit given here in May 2015 was £100. I think this was reasonable. I say that because Mr L had explained he earned £44,000, with only £100 unsecured debt. Although Mr L had a poor credit history with £26,000 worth of defaults, these had all been satisfied over four years earlier. And, having looked at his history of borrowing, I can see he took out three loans with a payday lender, for £100 each, all of which had been closed in July / October 2014. So, nothing to cause any concern for such a low limit – and therefore I think this lending was reasonable.

I can't though say the same for the first credit limit increase to £1,100 in August 2015. I've noted NewDay have said Mr L was sent opt-out letters, and he never opted out. But I'd

expect NewDay to be aware at this point that opt-out letters aren't sufficient – this is about whether NewDay have carried out their responsibilities appropriately.

What NewDay knew at the time of this increase was Mr L had been running his account, with a £100 limit, for three months successfully. I don't think running a very small balance is automatically proof that the customer could successfully run a higher balance – and certainly not one as high as 11 times the existing limit.

Given the substantial increase, I'd expect substantial checks to be carried out to confirm Mr L's ability to sustainably repay the balance. NewDay have said their checks didn't uncover any other outstanding debts but did note £26,000 worth of defaults that had been settled just over four years ago.

I think the existence of £26,000 worth of defaults, even if this was just over four years ago, suggests Mr L might not be able to sustainably repay a large amount of debt – as he didn't previously.

I also think the three payday loans are relevant. Although two of them were closed in July 2014, and one in October 2014, this does suggest Mr L's pattern of spending is beginning to increase which, given his history of defaults from four years earlier, should have caused NewDay to ask more questions. Had they done so, I don't think they'd have granted this credit limit increase.

So, here, I think increasing the credit limit by 11 times from a small £100, to £1,100 was irresponsible lending. As I've found this first limit increase was irresponsible lending, it follows the remaining credit limit increases were also. I'll set out the way to put this right towards the end of my decision.

Marbles credit card

Between taking out the Aqua card in May 2015, and this Marbles card in December 2016, Mr L took out a number of different lending products. This included:

- Credit cards
- Payday loans
- Personal loans

The personal loans included one for over £16,000 just six weeks before his application for this credit card. Mr L also took out a second mortgage on his property.

This means in around 18 months, Mr L has taken out a significant amount of different lending products, and now has around £20,000 unsecured credit – as he declared on the application.

At the time, NewDay did complete some credit checks and said there were no arrears with other lenders, no payment arrangements and no debt management plans. They said there were defaults, but these were from 69 months ago.

But, I don't think these checks went far enough. At the time of presenting this information to NewDay, Mr L has gone from having only £100 in unsecured credit around 18 months earlier – to now having £20,000 credit. Given his declared income was £44,000, this means nearly 50% of his annual salary was now taken up by unsecured credit.

I note NewDay's argument about them being a second chance lender, but I think such a significant increase – combined with Mr L's £26,000 worth of defaults from a number of years earlier, should have led to them carrying out more checks.

And, I think had they carried out more checks, they'd have realised this lending wasn't affordable for Mr L. He took out a loan for over £16,000 just six weeks earlier, so I think NewDay really should have asked why he'd need a credit card so soon afterwards. As I don't think NewDay should have granted this credit card at all, it follows I also don't think they should have granted the credit limit increases either.

Overall, I don't think NewDay carried out proportionate checks, and had they done so, then I think they'd have realised this lending was unaffordable for Mr L. Again, I'll set out the way to put this right towards the end of my decision.

Marbles loan

NewDay have explained when granting the credit limit increases, they carried out thorough checks to ensure these were affordable for Mr L. The last of these checks was on the Marbles credit card in November 2017 where the limit was increased to £3,100, around four months before this loan was granted. So, Mr L already had a high amount of borrowing with NewDay prior to taking out this loan.

NewDay have said from the information Mr L gave them when taking out this loan in March 2018, they worked out he had around £855 per month disposable income. In the statements I've been provided for the Marbles credit card, Mr L is close to the limit of the card in the months leading up to the loan. And Mr L had also taken out several credit cards and loans in the months leading up to the granting of this loan – with at least one payment being missed on one of those loans in February 2018. This suggests Mr L was struggling with his debts, so giving more credit wasn't sensible or affordable.

Taking everything into account, I don't think NewDay carried out proportionate and appropriate checks – and if they had of done so, then I don't think they'd have granted Mr L this loan either.

Compensation

Like our Investigator, I'm also satisfied some compensation is due. Mr L has told us about his health. Out of respect for his privacy I won't go into details, but I can see he's told us his health is linked to these debts. Had NewDay performed their role correctly, I think it unlikely they'd have granted so much credit to him. With that in mind, I also award £100 compensation.

I've noted NewDay apologised for the SAR being delivered late. From my understanding this wasn't very long overdue, so I think an apology is fair for this aspect of the complaint. I've also seen Mr L has concerns NewDay sold his debt for the loan on to a debt collector. As our Investigator said, the act of NewDay selling the debt to a debt collector is a new complaint which NewDay have to be given time to address initially. But I think this is relevant given I'm upholding the complaint. As will be seen in the next section, my direction will result in either the debt being paid off, or the balance being reduced. If there is an outstanding balance, I'd expect NewDay to work with Mr L to ensure any arrangement remains affordable.

Putting things right

I require NewDay to:

- Refund all interest applied to the Aqua credit card from the £100 limit and above
- Refund all interest applied to the Marbles credit card
- Refund all interest applied to the Marbles loan
- Apply the interest refunds from the above three products to the loan balance
- If this results in an overpayment of the loan, then the balance should be refunded to Mr L plus 8%* simple interest, and any default registered should be removed
- If this doesn't result in an overpayment, then the debt should be brought back from the debt collection agency, and the default should reflect the new amount.
- Pay Mr L £100 compensation.

*HM Revenue and Customs requires NewDay to deduct tax from the interest payment referred to above. NewDay must give Mr L a certificate showing how much tax they've deducted if he asks them for one.

My final decision

For the reasons I've explained above, I require NewDay Ltd to carry out the actions in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 26 July 2022.

Jon Pearce
Ombudsman