

## The complaint

Mr D complains NewDay Ltd lent him money on two credit cards irresponsibly when he was in financial hardship.

## What happened

I issued a provisional decision setting out what'd happened, and what I thought about that. I've copied the relevant elements below, and they form part of this final decision.

*My understanding is Mr D held two different credit card accounts with NewDay – one card branded as Aqua, and another branded as Marbles.*

*Mr D said these two accounts had been lent irresponsibly, and they should be written off. In providing their response to Mr D's complaint, NewDay gave the following information about the accounts:*

### Aqua

- *Account opened on 9 May 2013 with a £250 limit*
- *Six credit limit increases took place – the first being 18 September 2013 to £600, and the last being 11 May 2016 for £3,550.*

### Marbles

- *Application completed 8 February 2016 with a £300 limit*
- *Two credit limit increases took place – the first being 10 June 2016 to £1,300, and the second being 23 January 2017 to £2,300.*

*NewDay said for each lending decision taken by them, Mr D's circumstances were taken into account and they found no reason to turn down the application. NewDay added they could see Mr D had contacted them about his financial situation in May 2017 – and as a result of that they set up repayment plans to assist him. They said they wouldn't write off the balance as Mr D had asked, as he'd made purchases on the cards, so the debts were valid.*

*NewDay added both of Mr D's accounts had been sold on to different debt collectors. Mr D's Aqua debt had been sold to a company I'll call H in August 2018, and his Marbles card was sold to another company I'll call L in July 2017.*

*Unhappy with NewDay's responses, Mr D asked us to look into things.*

*While doing so, NewDay raised objections to our service considering some of the credit limit increases – as they said they'd been brought out of time. NewDay also made an offer to settle Mr D's complaint. He asked that we just focus on the offer, which is what our Investigator did.*

*The offer NewDay made was to uphold the credit limit increase that occurred in January 2017 on Mr D's Marbles card. The offer was for £186.71 and refunded interest, late*

payment charges, over limit fees and cash advance fees. NewDay added there was still a debt on Mr D's Marbles card which had been sold to L in July 2017, so the redress would be used to reduce that.

Mr D wanted the money paid directly to him – and when NewDay said they wouldn't do that, our Investigator issued his outcome – saying he thought they should. Mr D accepted this outcome, but NewDay didn't – saying Mr D had an outstanding balance with L of £931.41. They said as with all complaints of this nature, they'd apply any refund of interest and charges to the balance first – and anything remaining would then be paid to the individual directly.

As NewDay didn't agree to the outcome our Investigator reached, the complaint's been passed to me to decide.

### **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.

I can see during our conversations with Mr D we've asked him if he's able to provide any further information to help us investigate his other credit limit increases. He's let us know he's not been able to do that. This is fine, but I think Mr D needs to be aware that once I've issued my final decision, it'll be very unlikely we'd be able to consider these credit limit increases again in future. So, if Mr D decides he wants to provide us with further information in response to this decision, and our Investigator can let him know what's required, then he should do so.

Without further information, I can't reasonably say the outcome NewDay have reached – in only offering to refund the credit limit increase on the Marbles credit card – is wrong. So, I'll focus on that.

The offer NewDay have made is to refund interest and charges applied because of the credit limit increase. This is in line with our usual approach for cases where lending was granted irresponsibly.

I've noted Mr D initially wanted the debt written off and given the difficult personal circumstances he's mentioned I can understand why. Mr D has my sympathy for the issues he's mentioned. But to ask a lender to write off a debt, when the person has spent the money, I'd usually need to be satisfied NewDay did something wrong when granting the lending. Or that Mr D was unlikely to ever be able to repay the funds owed. Based on what I've seen so far, no circumstances apply that would give me fair grounds to tell NewDay to write off the debt.

That means I think the offer NewDay have made is a fair one – given it's in line with our usual approach for these types of cases and I've been provided with no evidence to suggest otherwise.

The remaining point in dispute, is over how this money should be credited for Mr D's benefit. Due to Mr D's personal circumstances, he's asked for the money to be paid to him directly. NewDay have said they'd apply this as a credit to the account the debt collector now owns to reduce the balance.

I can see our Investigator explained our usual approach to compensation in these circumstances is for the money to be paid directly to Mr D. But I think there is some confusion here. NewDay's offer is a refund of the financial loss they've accepted they

*caused Mr D by granting him lending they shouldn't have – not compensation. So, in effect, this is a financial loss that needs to be put right. It'd be right to refund that money to Mr D – but only if he'd lost out by paying this money himself. If, for example, the account had been fully repaid, then he would be owed that money. But NewDay have said L still holds a balance of £931.41. So, I don't think I can fairly say Mr D has directly lost out by these interest and charges being applied – as he still owes money under the agreement.*

*I can see our Investigator asked NewDay if they would be prepared to pay the money directly to Mr D. They said they wouldn't be. And I don't think it'd be fair for me to require them to refund interest and charges directly to him, when he still owes money under the agreement. I'll simply direct them to refund the money, so this leaves it open for NewDay to refund the money directly to Mr D if they choose to. But, as I've explained, I'm not requiring them to do so, and I expect NewDay to arrange for the refund to be used to reduce Mr D's account with L.*

### **Responses to my provisional decision**

Mr D said he didn't accept my outcome – and thought he should get the money.

NewDay didn't reply by the deadline.

### **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've noted Mr D didn't accept my outcome but didn't say why he didn't agree.

I do understand why Mr D would like to receive the money directly. But, as I've set out above, I can't reasonably say he's paid that money. He currently still owes £931.41 on the agreement, so I still don't think it'd be fair for me to direct NewDay to refund it to him directly.

### **My final decision**

For the reasons I've explained above, I find what NewDay Ltd have offered to do to put things right is fair and reasonable in all the circumstances of Mr D's case.

I require NewDay Ltd to refund interest and charges of £186.71.

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

Jon Pearce  
**Ombudsman**