

The complaint

Miss J's complaint is about two credit cards that she says were irresponsibly lent by NewDay Ltd.

What happened

The details of this complaint are well known to both parties, and have been summarised by our investigator, so I won't repeat them again here. The facts are not in dispute, so I'll focus on giving the reasons for 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.

Having done so, I agree with the conclusions reached by our investigator for these reasons:

- NewDay was required to lend responsibly. And it needed to check Miss J could afford to make her credit card repayments *sustainably* on both accounts, and in line with the rules set out by the FCA's Consumer Credit Sourcebook ("CONC"), specifically CONC 5.3.1. There was no set list of checks NewDay needed to do, but the checks should have been proportionate to the circumstances of each card application (and subsequent credit limit increase), which might include considerations about the amount borrowed, Miss J's borrowing history, and so on.
- More specifically, I think that NewDay's checks needed to be more thorough; the *lower* a customer's income; the *higher* the amount to be repaid; the *longer* the term of the repayments; and the *greater* the number of cards, and the longer the period of time Miss J held an outstanding credit balance on each card.
- NewDay says it believes it acted fairly, and that sufficient checks were done at the time of each credit increase. It says there wasn't anything shown which indicated Miss J was under financial strain, nor that she had any arrears, defaults, overlimit fees, or late payment fees.
- I've first considered whether NewDay did everything it should have when assessing Miss J's application and subsequent credit increases. And if I don't think it did, I've gone on to consider whether or not any assessment failings resulted in NewDay agreeing to lend to Miss J when it should've known it was difficult for her to repay.
- For the Marbles account, I am persuaded NewDay's checks were proportionate for Miss J's initial application and her credit limit increase around October 2015. I find NewDay's checks for the next credit increase in March 2016 weren't proportionate. I say this because:
 - NewDay's own data shows Miss J's credit card debt had increased from £100 to over £22,000.

- Miss J was using short-term lending.
- I think this was sufficient to prompt NewDay to carry out further checks to ensure Miss J could sustainably make the repayments required for an increased credit limit – for example requesting evidence of her income and expenditure.
- Based on Miss J's evidence, I'm persuaded that had NewDay done so, it would've seen that her outgoings exceeded her income, leaving no disposable income to sustainably make the repayments required. So, I don't think NewDay should've provided Miss J with any further credit increases after March 2016.
- For the Aqua account, I'm not persuaded NewDay's checks were proportionate for the initial application. I've already determined that had NewDay carried out proportionate checks on the Marbles account in March 2016 it wouldn't have lent further to Miss J.
- In any event, I can see that if NewDay had verified the income Miss J stated on her Aqua card application, it would've likely raised further questions as to whether this additional borrowing could be sustainably repaid. And Miss J's evidence shows that had NewDay asked further questions around her income it would've determined the borrowing wasn't affordable for her. So, I don't think NewDay should've lent the Aqua card to Miss J either.

For these reasons, I uphold this complaint.

My final decision

My final decision is that this complaint is upheld. In order to resolve Miss J's complaint, NewDay Ltd should:

- Refund any interest and charges paid by Miss J on the Marbles account for any credit amount above £1,100. NewDay should apply this refund on any charges which fall between March 2016 until the account was sold.

As the Marbles account has been sold to a third party, NewDay should do one of the following:

- Buy the debt back from the third-party purchaser and reduce it to ensure Miss J doesn't pay any interest or charges; or
- Make a payment to the third-party purchaser so that the outstanding debt is reduced to ensure Miss J doesn't pay any interest or charges; or
- Make a payment to Miss J to reflect any interest and charges that she'll now have to pay the third-party debt purchaser as a result of the outstanding balance having been sold.

It is up to NewDay to decide which of the above options it would prefer to take. It should let Miss J know its proposed course of action if Miss J accepts my final decision.

If Miss J has made any payments to the third party and ended up paying more than the amount she initially borrowed, then NewDay should:

- Clear any outstanding balance with the third party.
- Refund any extra amount over and above what Miss J borrowed.
- Add interest at 8% per year simple on this amount from the date the extra amount was paid to the date of settlement†.

In addition, New Day must:

- Refund any interest and charges paid by Miss J on the Aqua account from September 2017.
 - NewDay says the Aqua account has been charged off. If NewDay has written off any capital from the Aqua account as part of the charge off, it can use the refund to repay any written off capital as well as any outstanding capital.
 - If, after this, the refund results in a positive balance on the Aqua account, NewDay must refund this to Miss J and add interest at 8% per year simple from the date of each payment until the date of settlement†.

And:

- Remove any adverse information about the accounts up to the date Miss J tells us she accepts my final decision from her credit file.

†HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Miss J a certificate showing how much tax it's taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 20 July 2022.

Dan Prevett
Ombudsman