

The complaint

Mr C has complained that NewDay Ltd trading as Marbles and Aqua irresponsibly lent to him.

What happened

Mr C opened a credit card account with NewDay (trading as Aqua) in October 2015. His credit limit was initially £300. In July 2016 his credit limit was increased to £700. In January 2017 Mr C opened another credit card with NewDay (this time trading as Marbles). That credit card had a limit of £300, making his effective credit limit across both NewDay accounts £1,000.

Mr C, through his representative, says that NewDay shouldn't have allowed him to open an account and it shouldn't have increased his credit limit once it had. Mr C says he was struggling to meet his repayments and had a lot of credit elsewhere, too. He says if NewDay had done adequate checks on his situation it would have seen that he wouldn't be able to repay his balance in a reasonable length of time.

NewDay says it didn't lend irresponsibly to Mr C and that it did all the necessary checks before it lent to Mr C – and when it increased his credit limit and provided him with a further credit card account.

Our adjudicator thought that Mr C's complaint should be partially upheld. They thought that the initial credit given to Mr C was acceptable, but that by July 2017 when NewDay increased Mr C's credit limit for the first time, that reasonable and proportionate checks would have shown that Mr C's finances were overextended and that he couldn't afford to sustainably meet the repayments on more credit.

Our adjudicator said that NewDay should not have allowed Mr C further credit on his Aqua account and shouldn't have allowed him to open the Marbles account. The adjudicator thought that any interest and charges applied over his original £300 limit should be removed and his account re-worked.

NewDay disagreed. It said it had done sufficient checks and there were no indications of any financial strain.

As NewDay disagreed the case has been passed to me to make a 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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I've taken that into account when I have considered Mr C's complaint.

NewDay needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr C could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mr C's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

Certain factors might point to the fact that Marbles should fairly and reasonably have done more to establish that any lending was sustainable for Mr C. These factors include things like understanding Mr C's income, the total amount Mr C borrowed, and the length of time Mr C had been indebted. There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

When Mr C opened his account NewDay conducted a credit check. NewDay told us there were no signs of financial difficulties based on the checks it did. Mr C only had one other credit card and had only around £800 of active external unsecured debt. He had no accounts in arrears, no defaults and no payday loans. This is consistent with the information on the credit report Mr C has supplied separately.

Having reviewed the information, I don't think there is anything to suggest that it would have been unreasonable for NewDay to have approved the account. I think this suggests that the original limit of £300 was manageable for Mr C. There were no signs of financial distress and he had relatively low levels of debt, even when taking into account his relatively low income. So I don't think NewDay did anything wrong with its original lending decision.

However, I think that when NewDay made the decision to increase Mr C's credit limit to £700 in July 2016 things were rather different for Mr C. While NewDay says there was some adverse data when it did its check, such as regular cash transactions (albeit low value), some late payments and some months when Mr C had exceeded his credit limit (which had resulted in late fee and over limit fee charges), it considered that it was not unfair to increase Mr C's limit.

I disagree. In the eight billing cycles between the account opening and the credit limit increase, Mr C was charged for exceeding his credit limit on four occasions, had late payment fees on two occasions and withdrew cash on six occasions. I think these data were significant and should have caused NewDay to do further checks.

Mr C, through his representative, has supplied information to show that at that point he was regularly borrowing from high cost lenders, including payday loans. This ought to have indicated that it was likely Mr C was overly reliant on borrowing and that further credit may not have been sustainable.

For these reasons, I agree with our adjudicator that based on what NewDay knew at the time of the increase in his credit limit to £700, it should have realised that further borrowing would not have been sustainable. I think Mr C lost out as a result of NewDay did wrong.

Putting things right

As I don't think NewDay should have increased Mr C's credit limit from £300 (or opened the Marbles account which increased his overall limit further), I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit.

However, Mr C has had the benefit of all the money he spent on the accounts, so I think he should pay this back. Therefore, NewDay should:

- Rework the account removing all interest and charges that have been applied to balances above £300 in total on both accounts from 19 July 2016.
- If the rework results in a credit balance, this should be refunded to Mr C along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information recorded after 19 July 2016 regarding this account from Mr C's credit file.
- Or, if after the rework the outstanding balance still exceeds £300, NewDay should arrange an affordable repayment plan with Mr C for the remaining amount. Once Mr C has cleared the outstanding balance, any adverse information recorded after 19 July 2016 in relation to the account should be removed from his credit file.
- If NewDay has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

•
*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mr C a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting tax.

My final decision

I uphold Mr C's complaint in part and direct NewDay Ltd, trading as Marbles and Aqua, to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 July 2022.

Sally Allbeury
Ombudsman