

## **The complaint**

Ms P complains NewDay Ltd trading as Aqua (NewDay) gave her unaffordable credit limits.

## **What happened**

Ms P applied for a NewDay credit card, branded as Marbles.

NewDay gave Ms P an initial £300 credit limit. Five months later, NewDay increased the credit limit to £1,550, then £2,300 then a final increase to £3,300.

Five months after the last Marbles credit limit increase Ms P was accepted for an Aqua card, also from NewDay. This card was agreed with an initial credit limit of £250. Six months later the limit was increased to £1,250, then £2,500, and a final increase to £3,750.

Ms P complained to NewDay. Ms P said she'd had to enter a debt management plan (DMP). Ms P said she'd told NewDay her income was £7,200 a year and it should never have given her such large credit limits.

Ms P felt if NewDay had given her smaller limits, she'd never have entered a DMP. Ms P also said her credit file now had adverse information on it and she was struggling to get credit anywhere else. Ms P asked NewDay to refund all the interest and late fees, and 8% interest on those refunds.

NewDay responded to Ms P and didn't think it had done anything wrong. NewDay said it had, among other checks, checked with credit reference agencies and looked at how Ms P had handled her NewDay accounts.

NewDay said Ms P had run her accounts well. NewDay said the credit limit increases were carried out correctly and checks were done to ensure they were affordable.

Unhappy with this answer, Ms P brought her complaint to this service.

An adjudicator looked into things and thought Ms P's complaint should be upheld. The adjudicator thought the last credit limit increase on the Marbles card, to £3,300, was unaffordable.

The adjudicator thought NewDay should have asked for proof of Ms P's income and expenditure. Ms P sent the adjudicator her bank statements, and from the income and expenditure on them, the adjudicator felt Ms P couldn't afford the highest limit on her Marbles card.

The adjudicator thought NewDay should refund any interest and charges on the Marbles card, for balances above £2,300 (the last, affordable, credit limit increase). And since the last Marbles' increase was unaffordable the adjudicator thought all the Aqua lending was unaffordable.

So, the adjudicator thought NewDay should refund all the interest and charges on the Aqua

account too. The adjudicator also thought NewDay should remove all the adverse credit file data recorded after the last Marbles increase.

NewDay didn't agree. NewDay said Ms P had managed her accounts well, her debt was low, there were no charges or cash withdrawals, and the repayments were higher than the minimum required.

NewDay asked for an ombudsman to decide things.

### **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.

There's little dispute about Ms P's income. NewDay's said Ms P declared her income as £6,500 per year for the Marbles card and £7,200 per year for the Aqua card.

NewDay's said it doesn't ask for proof of income and expenditure when it first agrees lending. I don't believe NewDay needed to request proof of income and expenditure for the initial Marbles application, but this is because the limit was low, it was £300.

But for the future increases, I think NewDay should have been asking for proof of income and expenditure. I've considered what the Consumer Credit Sourcebook (CONC) says, to decide where I think it would have been fair to ask for proof of income and expenditure.

CONC says, in 5.2A.4(3), income checks should be carried out where NewDay is significantly increasing the credit limit. I think increases of over £800 are, in Ms P's individual circumstances, significant.

I think the increases are significant because of what NewDay knew about Ms P's income, it was relatively low compared to the increases agreed.

CONC says, in 5.2A.27(2), NewDay must assume Ms P draws down the entire available balance at the earliest opportunity and repays by equal instalments over a reasonable period. This would mean NewDay should assume Ms P would spend £3,300 (or the remainder available on the card) the moment it increased her credit limit.

For someone NewDay knew was earning just over £7,000 per year, this is a lot to lend immediately. I think NewDay, at the point it increased Ms P's Marbles' limit to £3,300, should have asked for bank statements, to check her income and outgoings.

Had NewDay done this, it should have been clear Ms P wasn't in a position to handle a credit limit this high. Ms P's income was a little over £1,100 per month, including benefits, and her priority bills totalled more than half her income.

Ms P has two children, and the priority bills don't include food, clothing, travel to work or any other leisure spending. I don't think Ms P would have been in a position to make payments, over a reasonable time, to pay off borrowing of £3,300.

Like the adjudicator, I think NewDay should have stopped increasing Ms P's Marbles' limit when it reached £2,300. And I think all the lending on the Aqua card was unaffordable, because of the existing limit on the Marbles card.

### **Putting things right**

Because I think NewDay should have stopped increasing Ms P's credit limit when it reached £2,300, I think it should refund all the interest and charges on Ms P's Marbles card for borrowing above £2,300.

Looking at Ms P's Marbles' statements, it looks like she never borrowed much more than £800. It's likely there's no refund due on Ms P's Marbles card.

I think all the borrowing on the Aqua card was unaffordable, so all the interest and charges for this card should be refunded.

The final increase on the Marbles card was March 2020. I think NewDay should remove any adverse data, on both the Marbles and Aqua accounts, from March 2020. This adverse data includes any defaults NewDay may have applied.

### **My final decision**

My final decision is I uphold this complaint. NewDay Ltd trading as Aqua must:

- refund all the interest and charges applied to any balances over £2,300 to Ms P's Marbles card
- refund all the interest and charges applied to Ms P's Aqua card
- if either of these refunds result in a credit balance owing to Ms P, NewDay should pay this to Ms P including 8% simple interest per year\*
- if Ms P still has a balance owing on either card, NewDay should agree an affordable repayment plan for the outstanding balance
- remove any adverse data on Ms P's credit file in respect of her Marbles card after March 2020
- remove any adverse data on Ms P's credit file in respect of her Aqua card after March 2020

\*HM Revenue & Customs may require NewDay to deduct tax from any award of interest. If it does, it must give Ms P a certificate showing how much tax has been taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 23 November 2022.

Chris Russ  
**Ombudsman**