

## **The complaint**

Mr C complains that NewDay Ltd lent to him irresponsibly.

## **What happened**

In August 2015 Mr C opened a credit card account with NewDay, trading as Aqua. He had an account limit of £300, which was increased to £1,300 in January 2016 and then to £1,900 in May 2016.

In September 2017 Mr C opened a separate credit account with NewDay, this time trading as Marbles. It had an initial credit limit of £300, making the total credit available to Mr C from NewDay £2,200. A further increase in the credit limit of this card in April 2018 brought his total credit limit across both cards to £2,700.

Mr C says that NewDay shouldn't have lent to him because he couldn't afford it. He says if NewDay had done the checks on him which it should have done it would have realised he had a lot of debt and couldn't afford any more.

NewDay says that it did all the necessary and proportionate checks, and these showed that Mr C could afford the credit that was extended to him.

Our adjudicator thought that NewDay shouldn't have increased Mr C's lending after he opened the Aqua account in August 2015. They thought that because Mr C had used the card for cash advances many times since it was opened that this should have prompted NewDay to do more checks before it lent more money to Mr C. The adjudicator considered that Mr C was so indebted elsewhere that NewDay should have realised he would struggle with any more debt. Our adjudicator thought that NewDay's checks showed that Mr C had very little disposable income and would have struggled to make his repayments on the card in a sustainable way. Our adjudicator said that NewDay should refund any interest and charges paid by Mr C after this point, including on the Marbles card he opened in September 2017.

As NewDay did not agree, the case was passed to me to make a decision.

Having reviewed the complaint I considered that Mr C's complaint should be upheld in full, rather than just from the first credit limit increase after August 2015. I wrote to both parties explaining my position and invited comments before I made my final decision.

Mr C agreed with my decision. NewDay said that it had no further comments to make, although it did not formally accept my provisional decision. Consequently, I have to make a formal final 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 considering Mr C's complaint.

Having done so, I think Mr C's complaint should be upheld from the opening of the first account. I will explain my decision.

NewDay needed to take reasonable steps to ensure 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, Mr C's borrowing history and his income and expenditure.

NewDay says its credit check results didn't show anything negative to suggest it would have been unreasonable to have provided Mr C with the credit. It says it asked him about his income and it also had information about other credit he had elsewhere and that none of this caused concern.

NewDay has provided copies of the results of these checks. I don't think they are as reassuring as NewDay asserts. At the point of application Mr C's credit file showed that he had previously defaulted on seven other accounts to a total of £9,300. Indeed, one of these was a previous NewDay credit card. However, those defaults appeared to be at least 28 months before Mr C's application in August 2015 and his total unsecured lending balance elsewhere appeared to only be £200 at the point of application. Checks showed that he had settled all arrangements to pay with other creditors – one of these by means of a settled payment arrangement, which indicates that Mr C had trouble paying it. However, the checks didn't show any results for recently settled payday loans or results for any arrears or defaults in the preceding six to 12 months respectively. It is important to note that this didn't mean there were no arrears or defaults on Mr C's record – only that checks hadn't returned any results at all.

In many cases it would be acceptable to make a decision on initial lending without information on payday loans, particularly where other information is reassuring – for example where information about indebtedness or other risk scores indicate a healthy financial position. But I think the number of historic defaults apparent on Mr C's credit check and the settled payment arrangement ought to have prompted NewDay to make further checks. NewDay knew it didn't have data about Mr C's potential payday loans and other arrears. Even at this early stage in the relationship, given the warning signs, I think NewDay should have asked Mr C about the defaults and about his recent financial circumstances. Had it done so it would have realised that Mr C had been in recent financial trouble.

Mr C has provided his credit file for this time. From this I can see that in the months leading up to his application there was activity on his file which wasn't reflected in the result of the checks NewDay made. Mr C took a payday loan in March 2014 and fell into arrears with the repayments in October 2014 until he settled it in April 2015 – four months before he took out the card with NewDay. In July 2014 he took out another payday loan. With this one he fell into arrears on the loan in September 2014 and he remained in arrears until June 2015 when he settled the entire loan. On a third loan, Mr C had been in a debt management arrangement with the business, making only a token payment of £1 a month from December 2013 to April 2015 when a partial settlement was agreed – four months before he took out the Aqua credit card.

On the evidence available to me I think it was irresponsible of NewDay to extend even the small amount of credit provided to Mr C in August 2015. I think if it had done proportionate checks that it would realised any lending to Mr C was likely to be unaffordable for him. So, I

think Mr C's complaint in relation to this card should be upheld from the opening of the account and not from the point of the first credit limit increase.

To avoid any doubt, I also consider that Mr C's complaint in relation to his second card – the Marbles card – should also be upheld for the same reasons given by our adjudicator. I view the second card, taken in September 2017 with an opening limit of £300, as effectively a further credit limit increase because Mr C had an existing credit relationship with NewDay. There is no evidence to suggest that Mr C's financial circumstances had changed significantly for the better. He was still in overdraft, still up to or close to the limit on his other credit cards and his repayments weren't making any impact on his outstanding debt. He continued to take cash advances on credit cards – 41 in the year to the point of opening and he had substantially greater unsecured borrowing - £17,400.

### **Putting things right**

As I don't think NewDay ought to have opened either account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I think Mr C should pay back the amounts he has borrowed. Therefore, if my decision becomes final, NewDay should:

- Rework the accounts removing all interest and charges that have been applied.
- 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 regarding this account from Mr C's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mr C for the remaining amount. Once Mr C has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

\*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 the tax.

### **My final decision**

I uphold Mr C's complaint in relation to both cards in full. I direct NewDay Ltd to pay compensation as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 8 November 2022.

Sally Allbeury  
**Ombudsman**