DRN-3745316

The complaint

Mr H complains that NewDay Ltd trading as Marbles lent to him on his marbles and Aqua cards irresponsibly.

What happened

Mr H had two cards from NewDay, a marbles card (agreed in October 2016) and an Aqua card (agreed in September 2013). For simplicity, I will refer to the lender as NewDay in this provisional decision.

The card limits were increased as follows:

Marbles card

Date	Limit
October 2016 (new card)	£300
January 2017	£900
June 2017	£1650

Aqua card

Date	Limit
September 2013 (new card)	£250
March 2014	£750
August 2014	£1800
March 2017	£2400
November 2017	£3400

The marbles account was defaulted and sold to a debt collection agency (DCA) in October 2020; the Aqua account was defaulted and sold to a DCA in August 2018.

Mr H complained. He said that NewDay lent irresponsibly – they shouldn't have increased his limits on both cards. As a result, defaults were now showing on his credit file. Also, NewDay forced him to pay a higher amount on the marbles card, which he couldn't afford. And when he called NewDay in April 2018 to say he was in financial difficulty; they didn't help him. Mr H wants the adverse information removed from his credit file and all charges and interest refunded. He would like compensation for the way he has been treated.

NewDay said that Mr H passed all their credit checks when he applied for the cards and at each limit increase. On the Aqua card – the issue of it was more than six years before Mr H complained, and so they couldn't look at it under the complaint handling rules. But they noted that when Mr H applied for the card, he said he had household income of £27,000 per annum. There were five defaults on his credit record for £8,200, but the oldest was 19 months before. Other than that, there weren't any arrears or payday loans showing.

On the marbles card, Mr H said he then had household income of £38,000 per annum, and unsecured debt of £25,600. There were four defaults for £1,400, and no payday loans or arrears showing. So, a modest limit of £300 was given.

On the limit increase on the cards, NewDay said that Mr H was given the chance to opt out of the offered increases but didn't. After considering how Mr H had used the cards, and their normal credit checks, they applied the increases. On Mr H's financial difficulty, they'd agreed a payment plan on his account in April 2018. But after Mr H's payments stopped, the accounts fell into arrears and the debts were passed to a DCA to manage. So overall, NewDay said they'd acted fairly and reasonably.

Mr H didn't agree and brought his complaint to us. Our investigator said that we couldn't look at events more than six years before Mr H complained in June 2020 – so we couldn't investigate the issue of the Aqua card in 2013, or the increase in limit in March 2014. She considered that the marbles card shouldn't have been issued in the first place, nor its increases in limit. And on the Aqua card – the limit shouldn't have been increased in August 2014 and thereafter. She said that interest and charges should be refunded on the marbles card from when it was issued. And interest and charges should be refunded on the Aqua card from August 2014. She didn't think the defaults should be removed, nor should there be any compensation paid.

Mr H didn't agree – he said the defaults should be removed, and compensation should be paid. And NewDay didn't agree either – they said they'd carried out proportionate checks when agreeing the credit facilities.

I sent a provisional decision which said:

All lenders have an obligation to lend money responsibly. We must check whether NewDay acted in line within the Financial Conduct's (FCA) rules on creditworthiness assessment as set out in its handbook, (CONC) section 5.2. These say that a firm must undertake a reasonable assessment of creditworthiness, considering both the risk to it of the customer not making the repayments, as well as the risk to the customer of not being able to make repayments. We look at:

- Whether the lender completed reasonable and proportionate checks to satisfy itself that the borrower would be able to repay any credit in a sustainable way?

- If reasonable and proportionate checks were completed, did the lender make a fair lending decision made bearing in mind the information gathered and what the lender knew about the borrower's circumstances?

- And a reasonable and proportionate check would usually need to be more thorough:

  o the lower a customer's income, and the higher amount to be repaid.

- o the greater the number of loans and frequency of loans.
- o the longer the term of the loans.

It's important to note that the checks must be proportionate to the amount being lent – so the higher the amount, the greater the checks must be, and the lower the amount, then fewer checks can be made.

In this context, I think it's fair to say that the initial issue of the marbles card with a limit of £300, and also the Aqua card (£750) can be considered modest amounts of credit – and so I think that the checks could've been less than for the higher limits. And – as our investigator said the first issue of the Aqua card in 2013, and the first increase in limit in March 2014 is out of scope anyway due to our six-year rule. Mr H has accepted this.

Marbles card:

As I've said, a limit of £300 is a modest one. NewDay's information shows that Mr H earnt £28,000 a year and had 'other' income of £10,000. There were four defaults on his records with a value of £1,400. And I noted that they knew Mr H had unsecured debts of £25,600.

But – there wasn't any other adverse information. So, I think that – given the low level of Mr H's limit, I can see why NewDay agreed to it. So, I think the first issue of the card was reasonable.

But after that – I don't think NewDay should've agreed to the increases in limit – without more checks being made. I can see and accept that Mr H had made all the monthly payments on time, nor had he gone over his limit. But - given what they knew about Mr H's circumstances from his card application – they could see he had some debt problems in the past. And more importantly, he had significant other debts at the time of the increases: £24,880 in January 2017 and £22,298 in June 2017. And – Mr H's limits were increased from £300 to £1,650 in just nine months – a short period of time. This should've caused NewDay to ask more questions about Mr H's circumstances before agreeing the increases – but didn't.

And so – I think the increase in limits on the marbles card in January 2017 and June 2017 weren't subjected to sufficient proportionate checks.

Aqua card:

As I've said the first issue of the card in 2014 is out of scope, as is the first increase in limit to £750 in March 2014. I looked at the subsequent increases.

On the increase to £1,800 in August 2014 – I considered this to be reasonable. I say that because Mr H had made all the monthly payments to the card from when it had been given to him. And there weren't any overlimit situations evident – so Mr H seemed to be managing the card properly. And at that time – NewDay's checks didn't include finding out about his other unsecured debts – so their analysis showed he didn't have any. In all fairness we can't expect NewDay to have known about them at this stage. And so – in that respect, I think NewDay did sufficient checks for the limit increase in August 2014.

But after that – I consider NewDay should've done more checks. I accept that Mr H was making the monthly payments on time and regularly. But by the time of the limit increase in March 2017, they could see Mr H had unsecured debts of £22,049. By November 2017, these had increased to £33,996. By comparison with what NewDay knew about Mr H's means and income, this at least warranted some further inquiries of Mr H – but I can't see that was done. And so – I don't think the limit increases in March 2017 and November 2017 were reasonable.

Financial Difficulty:

Mr H had said that when he contacted NewDay in April 2018 about his Aqua card – they didn't help him. I've looked at NewDay's notes of the call. Mr H advised that his work had slowed down and he was struggling. NewDay worked out Mr H's income and expenditure and as a result agreed to a payment plan of £1 per month – until October 2018. So – I think that was a reasonable response from NewDay – they were trying to help him. But I can also see that Mr H didn't make those payments as the last payment made by Mr H was in January 2018. And I can't see that he contacted NewDay after April 2018 to discuss his situation. And I think it would've been reasonable for him to do that it he needed more help.

So, I think that NewDay acted reasonably here.

Persistent debt letters:

Mr H had said he was forced by NewDay to agree to higher repayments which he couldn't afford. I can see that NewDay wrote to Mr H with persistent debt letters in connection with his marbles card.

The Financial Conduct Authority (FCA)'s persistent debt rules are set out in the FCA's handbook, CONC 6.7.27. They say (in summary) that firms such as NewDay must look at too much interest. And so – where a borrower is paying more in interest and fees than they are paying towards reducing the amount of the debt, then a repayment plan should be put in place to deal with this. And, where this can't be agreed, the card may be suspended – to stop customers from increasing their debts further. The intention of the rules is to ensure that customers are protected from paying too much interest – and in some cases, never actually repaying their debts. This typically happens if customers only pay the minimum amount each month, while still spending on their cards.

I looked at what NewDay did in this context. They wrote to Mr H in September 2018 and the letter recommended that he started to make higher repayments because he was in 'persistent debt'. They wrote again in January 2020, again with a similar recommendation – and so at that stage NewDay were trying to help Mr H – by trying to save him money in interest. In February 2020, NewDay wrote again and recommended Mr H take action – and said that they'd move him to higher payments if he didn't reply or take action. And in March 2020, they moved his account to payments of £59.11 per month. Mr H complains that wasn't affordable – but I can see that in the months before that, his minimum payments were around £68 per month – so the paydown plan had lower payments than before – but they reduced his limit also to £1,500. So – here NewDay were trying to help Mr H get out of debt and save him some money in interest – and acted within the FCA's rules. So – I don't think they did anything wrong here.

Aqua card: My view is that NewDay shouldn't have increased Mr H's limit to £2,400 in March 2017, but the limit increase to £1,800 in August 2014 was reasonable. I've set out below what NewDay should do to put things right.

Marbles card: My view is that NewDay shouldn't have increased Mr H's limit to £900 in January 2017, and to £1,650 in June 2017. But the prior limit of £300 was reasonable. I've set out below what NewDay should do to put things right.

On the entries on Mr H's credit file – the adverse information, including defaults should be removed once Mr H has repaid the debts on his accounts – which may arise after the refunds of interest and charges, or at some time in the future – see below. I say this because Mr H has had the use of the credit facilities and had spent the money – and so it seems only right that he repays the debts before the defaults are removed. I've seen what Mr H has said about a similar complaint made by his wife two years ago. But I'm not familiar with the details of Mr H's wife's case and I don't think it's appropriate for me to look at a case decided some time ago. In any event, given the matter before me, my role here is limited to deciding how NewDay should put things right for Mr H in a fair and reasonable way.

I haven't awarded any payment for distress and inconvenience as Mr H hasn't argued strongly for that or set out what that should be paid. If he can do so in responding to this provisional decision, I may review that.

Responses to the provisional decision:

NewDay said they believed they lent responsibly but accepted the provisional decision. Mr H accepted the findings but asked for compensation - as he said he had paid more for credit because of the markers on his credit file.

We asked Mr H for evidence of his claim. He sent us a mortgage illustration dated March 2021 which showed a rate of 5.04% fixed for two years. Mr H says that was more than typical mortgage rates at the time.

I now need to consider this and make a 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.

I accept that the interest rate on the mortgage illustration was probably higher than a typical market rate at that time. But – it was in the name of Mr H's wife, not Mr H. And to agree to compensation we need to ensure that the increased interest rate was direct result of the markers on Mr H's credit file. And here, we can't be sure that was the case, as the illustration doesn't say that. And typically, a mortgage illustration is only an early indication from a lender, which doesn't take account of a full assessment of a customer's means, salary, property valuation as well as a credit search. So - I can't in all fairness conclude that the interest rate quoted was due to the marks on Mr H's credit file. And therefore, I don't think any compensation can be paid to Mr H. Therefore, my final decision is in line with the provisional decision.

My final decision

I uphold this complaint. NewDay Ltd must:

Aqua card:

- Rework the account removing all interest and charges that have been applied to balances above £1800 from March 2017.

- If the rework results in a credit balance, this should be refunded to Mr H 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 March 2017 regarding this account from Mr H's credit file.

- Or, if after the rework the outstanding balance still exceeds £1800 NewDay should arrange an affordable repayment plan with Mr H for the remaining amount. Once Mr H has cleared the outstanding balance, any adverse information recorded after March 2017 in relation to the account should be removed from their credit file.

- As 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.

Marbles card:

- Rework the account removing all interest and charges that have been applied to balances above £300 from January 2017.

- If the rework results in a credit balance, this should be refunded to Mr H 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 January 2017 regarding this account from Mr H's credit file.

- Or, if after the rework the outstanding balance still exceeds £300, NewDay should arrange an affordable repayment plan with Mr H for the remaining amount. Once Mr H has cleared the outstanding balance, any adverse information recorded after January 2017 in relation to the account should be removed from their credit file.

- As 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 December 2022.

Martin Lord
Ombudsman