

The complaint

Mr O complains that NewDay Ltd lent irresponsibly when it increased the credit limit on his Aqua and Marbles credit cards in 2021.

What happened

The background to this complaint and my initial conclusions were set out in my provisional decision. I said:

Mr O applied for a Marbles credit card in December 2018. In the application, Mr O gave his income as £25,000. A credit search was completed and found Mr O had four defaults, totalling around £4,300, that were at least 21 months old. NewDay says it found no evidence of arrears at the point of application. A Marbles credit card with a credit limit of £450 was approved.

In July 2019 the Marbles credit limit was increased to £1,050. NewDay says it reviewed Mr O's account activity and his credit file before deciding to proceed.

Mr O applied for an Aqua credit card with NewDay in July 2020. In this application, Mr O gave his income as £25,000. NewDay again looked at Mr O's credit file and noted the defaults were now 40 months old with no arrears on existing commitments. NewDay approved an Aqua credit card with a limit of £900.

NewDay increased both the Aqua and Marbles credit limits on a number of occasions in 2021. The increases occurred as follows:

Card	Date	Existing Limit	New Limit
Aqua	Jan-21	£900	£1,700
Marbles	Mar-21	£1,050	£2,550
Aqua	Apr-21	£1,700	£2,700
Marbles	Jul-21	£2,550	£4,700
Aqua	Aug-21	£2,700	£3,700

NewDay says each time it increased the credit limit on either card it carried out affordability assessments and checked Mr O's credit file. And NewDay says each of the credit limit increases were approved in line with its lending criteria.

Both credit cards were terminated in December 2021 with defaults being recorded on Mr O's credit file. The debts were later sold to a third party business. Last year, Mr O complained to NewDay that it had lent irresponsibly when increasing his credit limit. NewDay partially upheld the complaint and offered to refund interest and charges applied to the Aqua credit card from August 2021 onwards. NewDay agreed to refund interest and charges applied to the Aqua credit card on balances over £2,700 along with late and overlimit fees applied.

Mr O referred his complaint to this service and it was passed to an investigator. We asked NewDay to send us its file submission. Within its submission, NewDay said it had taken the opportunity to review Mr O's credit cards again and wanted to offer a refund on the Marbles credit card from July 2021 onwards, following the credit limit increase from £2,550 to £4,700. Our investigator looked at Mr O's complaint. They thought NewDay had failed to carry out reasonable and proportionate checks before approving the credit cards. But the investigator didn't think the information Mr O had submitted showed his circumstances and didn't ask NewDay to take any further action.

Mr O asked to appeal and explained he was complaining about the credit limit increases in 2021 and that the statement evidence and credit file information he'd supplied already showed they were unaffordable. Mr O asked to appeal, so his complaint has been passed to me to make a decision. I recently contacted Mr O and asked him for a full copy of his credit report along with more bank statements as well as information about his income and expenditure. Mr O supplied his credit report. Mr O advised he had submitted the necessary bank statements and given information about his day to day living expenses already.

What I've provisionally 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.

In response to the investigator's findings, Mr O explained he was only complaining about the credit limit increases that occurred in 2021. NewDay has already confirmed it's upheld Mr O's complaint about the Marbles credit limit increase to £4,700 in July 2021 and the Aqua credit limit increase in August 2021. So I'm not going to make a finding on those increases as they've already been covered.

Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website. I've taken our approach into account when reviewing Mr O's complaint. In summary, before providing credit, lenders need to complete reasonable and proportionate affordability checks. There isn't a set list of checks a lender is required to carry out, but it needs to ensure the checks are proportionate when considering things like: the type and amount of credit being provided, the size of the regular repayments, the total cost of the credit and the consumer's circumstances.

As a lending relationship continues over time and the level of credit increases, lenders may need to obtain further information from a borrower to check whether they're lending responsibly and that the repayments are sustainable for the customer.

Here, Mr O had two active credit cards with NewDay in 2021. In January 2021, the Aqua credit limit was increased to £900. At this point, the card had been open for around six months. NewDay says it found £1,100 when Mr O applied for the Aqua credit card but I note the figure had gone up to around £5,300 when the credit limit increase was approved. In my view, the increase in unsecured credit ought to have indicated to NewDay Mr O may've been relying on credit to make ends meet. I also note that NewDay had no data from Mr O's original application concerning his residential status, regular outgoings or the nature of his declared income. And I think these factors ought to have caused NewDay to carry out better, more comprehensive checks before proceeding with a credit limit increase.

With that said, whilst we've asked Mr O for bank statements for the three months prior to the January 2021 increase, they haven't been provided. So I can't verify what Aqua would've seen if it had asked for more comprehensive information, like Mr O's bank statements. As I'm unable to see what Aqua would've found if it had carried out better checks in January 2021, I'm unable to say it lent irresponsibly when it approved the credit limit increase.

Mr O recently sent us a full copy of his credit file. It shows Mr O has a basic bank account. The credit report doesn't show any other active bank accounts in Mr O's name. So, on balance, I'm satisfied Mr O has sent us a copy of his statements for the period January 2021 to August 2021. And I'm satisfied it doesn't appear Mr O has another bank account.

As I've said above, I think NewDay ought to have obtained more information from Mr O before agreeing to offer further borrowing in 2021. By this point, Mr O's lending relationship with NewDay was three years old. Neither application recorded how Mr O's income was earned, his residential status or information about his day to day living expenses. Whilst Aqua was able to review Mr O's account activity and credit file each month, I think the lack of details about his circumstances ought to have led it to carry out better checks, especially as the level of unsecured credit in his name was substantially higher than recorded on each of his applications.

Mr O has told us he wasn't receiving an income during 2021 and was borrowing money to make ends meet. Looking at Mr O's bank statements for the three months before the March 2021 Marbles increase, there's no evidence of a regular income. For instance, Mr O's statement for February 2021 shows credits totalling £200. And whilst Mr O's outgoings appear to have been limited at the time, they exceeded the credits received into his account. In my view, had NewDay carried out better checks in March 2021 it would've found Mr O was unlikely to be in a position to sustainably manage further borrowing and decided not to proceed.

In much the same way, I think NewDay should've done more to check Mr O was able to afford the April 2021 Aqua credit limit increase. The bank statements on file for the three months before April 2021 again don't show a regular income for Mr O in line with the application figure of £25,000. And whilst the statements continue to show a reasonably low level of regular outgoings, I'm satisfied the lack of a regular, income in line with the application figure provided, would've most likely led NewDay to decline to increase the Aqua credit limit in April 2021. I'm satisfied NewDay lent irresponsibly when it approved the Aqua credit limit increase to £2,700 in April 2021.

As I've noted above, NewDay has already confirmed it accepts the final credit limit increases on both cards were irresponsible and upheld that part of Mr O's complaint.

Based on the information I've seen so far and for the reasons I've given above, I intend to uphold Mr O's complaint and direct NewDay to refund all interest, fees and charges applied to the Marbles credit card from March 2021 onwards on balances over £1,050 and the Aqua credit card from April 2021 onwards on balances over £1,700.

I understand both credit card debts have since been sold to a third party. In resolution of the complaint, NewDay will potentially need to work with the new owners of the debts to ensure the following settlement can be put in place. It may be more appropriate for NewDay to retrieve the account from the new owners so it can implement the following settlement directly. In either case, NewDay should ensure Mr O isn't negatively impacted by the sale of his credit card debts to the third party.

I invited both parties to respond with any further comments or information they wanted me to consider before I made my final decision. Mr O responded and said that NewDay hadn't upheld his complaint in its final response. We didn't hear back from NewDay.

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.

In response to the provisional decision, Mr O said NewDay hadn't upheld his complaint. NewDay's final response confirms it refunded interest applied to both his credit cards.

As neither party supplied new information, I see no reason to change the conclusions I reached in my provisional decision. I still think Mr O's complaint should be upheld, for the same reasons.

My final decision

My decision is that I uphold Mr O's complaint and direct NewDay Ltd to settle as follows:

- Rework Mr O's Marbles credit card to remove all interest, fees and charges that have been applied to balances above £1,050 from March 2021; and
- If the effect of these reworkings results in a credit balance on the account, then this should be refunded to Mr O along with 8% simple interest* on the overpayments from the date they were made to the date of settlement. In this case, NewDay should remove any adverse information reported to Mr O's credit file about the Aqua credit card after the April 2021 increase was applied; or
- If an outstanding balance remains on the Marbles account once these adjustments have been made, NewDay needs to ensure that Mr O is only liable for this adjusted balance and arrange an affordable repayment plan. Once Mr O has cleared the outstanding balance, any adverse information recorded about the Marbles credit card after March 2021 should be removed from his credit file.

And

- Rework Mr O's Aqua credit card to remove all interest, fees and charges that have been applied to balances above £1,700 from April 2021; and
- If the effect of these reworkings results in a credit balance on the account, then this should be refunded to Mr O along with 8% simple interest* on the overpayments from the date they were made to the date of settlement. In this case, NewDay should remove any adverse information reported to Mr O's credit file about the Aqua credit card after the April 2021 increase was applied; or
- If an outstanding balance remains on the Marbles account once these adjustments have been made, NewDay needs to ensure that Mr O is only liable for this adjusted balance and arrange an affordable repayment plan. Once Mr O has cleared the outstanding balance, any adverse information recorded about the Marbles credit card after March 2021 should be removed from his credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 9 June 2023.

Marco Manente
Ombudsman