

## The complaint

Ms W complains that NewDay Ltd (NewDay) lent to her irresponsibly.

## What happened

Ms W applied for two credit cards from NewDay - a Marbles card and an Aqua card. These were agreed, and the limits increased as shown:

### *Marbles:*

Date	Limit
March 2020	£1,200 (new card)
August 2020	£2,200
March 2021	£4,950
March 2022	£6,450

### *Aqua:*

Date	Limit
June 2021	£900 (new card)
April 2022	£1,550

Ms W complained. She said the limit increases were huge and unaffordable. She said NewDay couldn't have done sufficient checks. She got into a position where she struggled to pay the interest and had to use other cards and loans to buy food and live. NewDay increased the interest rate on her card at least three times. And didn't give her any support when she was struggling.

She said NewDay should refund interest from the first limit increase in August 2020 and add 8% interest p.a. to the refund. She also said her credit file should not be affected.

Ms W asked that an ombudsman look at her complaint. During our investigation, NewDay said to us that they accepted the limit increase in March 2021 (Marbles card) wasn't, in hindsight, sensible and offered to refund interest and fees from March 2021 on borrowing over £3,700 (Marbles) and all interest and fees on the Aqua card. The amounts are:

### *Marbles:*

Proportionate interest	£1,708.92
Over-limit fees	£72.00 (after March 2021)
Cash fees	£0.00
Money Transfer fees	£105.30
Late fees	£0.00
<b>Total</b>	<b>£1,886.22</b>

*Aqua:*

Interest from inception	£737.55
Over-limit fees	£36.00
Cash fees	£0.00
Money Transfer fees	£0.00
Late fees	£0.00
<b>Total</b>	<b>£773.55</b>

Our investigator said this was a reasonable offer and agreed it was a fair way to resolve Ms W's complaint. He didn't look at any of the limit increases after March 2021 – as NewDay had offered to refund interest and charges after that date.

Ms W didn't agree. She said our investigator had sided with NewDay and that was unfair.

She said there should be more interest refunded, and compensation of £4,000 paid (£2,000 for each card). She repeated that she didn't want her credit rating to be affected. She asked that an ombudsman look at her complaint, and so it has come to me to do that.

*I issued a provisional decision which upheld Ms W's complaint:*

I've seen Ms W's comments to our investigator – so let me say at the outset that we are not a consumer group – we don't take sides. We are independent and impartial and our role is to listen to both sides of a complaint, take evidence from both parties, and then decide on a fair and reasonable outcome.

All lenders have an obligation to lend money responsibly. We have to check whether NewDay acted in line within the Financial Conduct Authority (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 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:
  - the lower a customer's income, and the higher amount to be repaid.
  - the greater the number of loans and frequency of loans.
  - 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 respect, I think it's reasonable to say that the limit on the Aqua card was low.

Marbles card:

*Issue of the card:*

In the application for the card, Ms W said she earned £40,000 per annum and was in rented accommodation with no dependents. NewDay could see she had nine other active accounts with debts of £5,800. There was a default but this was a long time before – 29 months. I've considered whether NewDay's checks were reasonable and at that stage, I think they were – total debts of say £7,000 (including Marbles) is reasonable and not excessive compared to Ms W's salary and circumstances.

*Limit increases:*

I looked at these. And I can see that from when the card was issued until the limit increase to £4,950 in March 2021, Ms W made all monthly payments to the card – there were no arrears. There weren't any over limit fees charged either – so she appeared to be managing the card well.

I looked at Ms W's other debts – to see if she had taken on a lot of other borrowing. If she had, we would expect NewDay to have considered that. But her other debts (March 2021) remained at about £5,000 – so again, this indicated she was managing her accounts and other borrowings well.

I looked at Ms W's credit report – and this also showed she was paying her other debts on time, with no late payments or difficulties shown.

So I can see why NewDay agreed the limit increases up to March 2021. And I don't think NewDay need to take any action up to then.

*Limit increase to £4,950 – March 2021:*

At this point, Ms W's situation appeared to be unchanged. She was still making all the payments to her Marbles card and to her other lenders. Her total debts were around £7,000. So – in fact, I can see why NewDay agreed to increase her limit again at that time – to £4,950.

It appears that it was after this time that she started to take on more debts – as by July 2021, she had debts of over £14,000 – which was a large increase. And it was at that time that we would expect NewDay to have asked more questions. But when NewDay increased the limit in March 2021, it's not reasonable to expect them to know this was going to happen in the future – they can only make a lending decision based on the information they had at the time.

I accept that NewDay have offered to refund interest and charges from March 2021 and for the borrowing over £3,700 (i.e. the previous limit). So, given my assessment, I think this is a fair and generous offer. And I don't consider NewDay need to do more than that in this case.

Aqua card:

*Issue of the card:*

NewDay could see that Ms W was a tenant earning £40,000 per annum with no dependents. Her records show she had six defaults (by that time) – but the last one was a long time before – 43 months. But also – NewDay could (by then) see she had debts of £13,200 – which is a lot. But – as the limit of £900 was a low and modest one, I can see why NewDay agreed it.

*Limit increase:*

I can see that Ms W was making the necessary payments to the card each month, with no arrears. Nor had there been any overlimit situations. NewDay could also see that she was managing her other debts (in addition to the NewDay cards). Ms W's other debts stayed at the same level – about £13,000. So as far as NewDay was concerned, all seemed to be satisfactory.

So - I can see why NewDay agreed to increase the limit when they did. I can see that it was later that Ms W appeared to take on more debts – as by March 2023, she was borrowing £20,000 in unsecured debts – and so it appears her problems mounted up some time after the limit increase on her Aqua card. And – I can't reasonably expect NewDay to have known that was going to happen when they increased the limit.

NewDay have though agreed to refund all interest and charges on the card from when it was issued – and this is a generous offer which in all honesty goes further than I would've decided was reasonable. But I am not suggesting that NewDay withdraw it.

*Interest rate increases:* Our service takes the view that increases in interest rates are a commercial decision for a lender to take, and we don't interfere with that.

*Credit File impact:* NewDay confirmed they didn't advise credit reference agencies of any adverse information regarding Ms W's card accounts – for example, any defaults, or late payments. They will of course report her account information (such as balances and limits) just as all lenders have to.

*Support:* Ms W says NewDay didn't give her any support when she fell into financial difficulty. I looked at NewDay's notes on Ms W's accounts – and there isn't any reference to her contacting NewDay at the time. She did later get advice from a debt advice charity (in September 2023) and this was referred to NewDay. If Ms W had made her situation known to NewDay at the time (or just after) the increases in limit – then we would've expected NewDay to have given her support (such as a standstill on payments and zero interest) – but I can't reasonably expect NewDay to do that if Ms W didn't contact the firm. So – I can't expect NewDay to have done anymore.

*Compensation:* Ms W says that increased borrowing caused her distress and anxiety as she had to take on other debts to enable her to make the payments to NewDay. But here – as I have set out – it appears that the further debts she took on were some while after the two cards and limit increases were agreed by NewDay. So – I can't reasonably hold NewDay responsible for the difficulties she later experienced. So - I don't agree she should get compensation from NewDay.

*Further payment of interest at 8% per annum:* I've considered this. But we would only add this if the interest refunds resulted in a credit balance. And NewDay told us that wouldn't be the case – there will still be debts outstanding on both cards. So - I set this claim aside.

In summary, I support the offers made by NewDay to settle Ms W's complaint. I know Ms W wants this to be more, but my provisional decision sets out why I don't think that is necessary or reasonable.

*Responses to the provisional decision:*

NewDay accepted the findings. So did Ms W, with the comment that the refunds should not be noted on her credit file nor have any negative affect on it.

I now need to consider these comments 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.

On Ms W's comments – all lenders, including NewDay, must advise credit reference agencies (CRAs) of factual data. E.g. limits, balances, monthly repayment information. I can't ask NewDay not to do that – and so in Ms W's case, her balances will be advised to the CRAs after the refunds have been made. Whether that affects her credit rating is for the CRAs to work out. In doing that, the CRAs consider all the other information sent in from Ms W's other lenders (not just NewDay).

But, as the provisional decision said, NewDay have told us they haven't advised any adverse information to the CRAs about Ms W's account, e.g. defaults or late payments or overlimit situations – and that would've affected her credit score if that was the case. And so that is the important information as far as Ms W is concerned. I hope that helps.

All that said, my final decision is unchanged from the provisional decision. **(continued)**

**My final decision**

I uphold this complaint. NewDay Ltd must:

- Marbles card: refund interest and fees on borrowing over £3,700 from March 2021. This totals £1,886.22.

- Aqua card: refund all interest and fees since the card was issued. This totals £773.55.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 23 April 2024.

Martin Lord  
**Ombudsman**