

The complaint

Mr M is complaining about NewDay Ltd because he says it lent irresponsibly by providing him with three separate credit cards and increasing the credit limit on each account.

What happened

Mr M opened the following credit card accounts with NewDay:

- Aqua – opened October 2012, with an initial credit limit of £250. This was increased a number of times until the credit limit reached £3,650 in April 2015.
- Marbles - opened October 2017, with an initial credit limit of £900. This was increased to £2,400 in February 2018 and £2,850 in October 2018.
- Debenhams – opened September 2018, with an initial credit limit of £500. This was increased to £1,000 in February 2019.

My provisional decision

After the complaint was referred to me, I issued my provisional decision setting out why I thought it should be partly upheld. My reasons were as follows:

Although some of the lending Mr M has complained about occurred more than six years before he complained, NewDay has consented to us investigating all lending decisions on all three of the above accounts.

Before lending to Mr M, NewDay was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider in respect of each lending decision are:

- *Did NewDay complete reasonable and proportionate checks to establish Mr M would be able to repay the credit in a sustainable way?*
- *If so, was the decision to lend fair and reasonable?*
- *If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?*

I've considered the lending in respect of each account separately.

Aqua

Unfortunately, the information still held by NewDay in respect of the original application and subsequent credit limit increases is limited. It has provided details of the account history after it was opened, which appear to show Mr M was managing the account well enough. But it doesn't have records of the information obtained from the credit reference agencies (CRAs) prior to each lending decision. Without sight of

this information, I can't reasonably conclude NewDay carried out a reasonable and proportionate affordability assessment on each occasion or that further checks weren't required.

I can't know exactly what further checks NewDay might have carried out at the time. But to establish what information could reasonably have been discovered, and therefore allow me to assess whether the lending was appropriate, we have asked Mr M for copies of bank statements and his credit file from the time.

Unfortunately, Mr M has been unable to provide this information due to the amount of time that's passed. Without it, there simply isn't sufficient evidence to demonstrate the credit provided by NewDay was unaffordable or for me to conclude it shouldn't have been granted.

It's for these reasons that I'm not upholding this part of the complaint.

Marbles

After carefully reviewing the information NewDay obtained when Mr M applied for the account, I think there were factors that should have prompted it to carry out additional checks before approving further credit and I don't agree the affordability assessment was reasonable and proportionate in this case.

NewDay's records indicate Mr M declared his annual income was £24,000 in the application. While the information obtained from the CRAs appears to have shown he was up to date with payments, Mr M's total debt was recorded as over £32,000. This is significantly more than his annual income, suggesting he was already heavily indebted and may have been in some financial difficulty, and I think further checks were required to complete a proportionate affordability assessment.

I can't know exactly what further checks NewDay might have carried out at the time, but I think a consideration of Mr M's actual income and expenditure would have been reasonable. So we've obtained copies of his bank statements for the three months prior to the lending to establish what information could reasonably have been discovered.

A review of the statements shows Mr M's account was consistently overdrawn by as much as £3,000 to £4,000 (and sometimes more) throughout the period. Mr M has also told us he had a gambling addiction. While the value of each transaction was low, I've counted 19 payments to online gambling websites during the month of September 2017 alone, along with other payments to football pools and bingo. Given the amount by which the account was overdrawn and the frequency with which he was gambling, I think it's clear Mr M was living beyond his means and wasn't managing his money well. If NewDay had seen this information, it's my view that it shouldn't have approved his initial application for the Marbles account. This is where my view differs to that of the investigator.

With regard to the credit limit increases on this account, our investigator has already found these to have been unaffordable and NewDay accepted that assessment. After reviewing the information provided, I've seen no reason to depart from the investigator's conclusions.

It's for these reasons that I'm currently proposing to uphold all aspects of the complaint about this account.

Debenhams

Our investigator has already found this account and subsequent credit limit increase to have been unaffordable and NewDay has accepted that assessment. After reviewing the information provided, I've seen no reason to depart from the investigator's conclusions and I currently propose to uphold this part of the complaint on the same basis.

In summary

I don't think there's sufficient evidence available to support the conclusion that Mr M's Aqua account shouldn't have been opened or the credit limit increased. But I do think the evidence shows further checks should have been completed before the Marbles and Debenhams accounts were opened. And if reasonable and proportionate assessments had been completed, I think NewDay should have concluded neither was affordable and that it wasn't responsible to offer them.

It's for these reasons that I'm currently proposing to partly uphold Mr M's complaint.

The responses to my provisional decision

Mr M didn't accept my provisional decision and provided further documentation that he believes shows he shouldn't have been approved for the Aqua card. He also said NewDay has recently sold the debt accumulated on his Aqua and Marbles accounts to a third party and questioned whether this is something it should be able to do.

NewDay didn't provide any further submissions.

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.

Having done so, my findings haven't changed from those I set out previously. I haven't necessarily commented on every single point raised. I've concentrated instead on the issues I believe are central to the outcome of the complaint. This is consistent with our established role as an informal alternative to the courts. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Mr M has provided a considerable amount of historic information. Most notably, this includes a credit report from 2004 and documentation confirming a previous credit card account had defaulted in 2009.

I thank Mr M for this additional information and I've reviewed it carefully. But I don't think it's sufficient to show the Aqua card shouldn't have been offered. The previous default was three years earlier and I don't believe this alone demonstrates he couldn't afford payments on a credit limit that started at £250. To fully assess whether this card was initially affordable and whether NewDay acted appropriately in increasing the credit limit after that, I really need information relating to Mr M's income, debts and other outgoings from the time of each lending decision. This information would be most easily accessible from historic bank statements but unfortunately Mr M has been unable to provide these. Without this information, I can't reasonably conclude NewDay lent irresponsibly in respect of this account.

I note NewDay appears to have sold the Aqua and Marbles accounts to a third party and the timing of this is perhaps unusual given our investigation of this complaint hadn't been completed. But it is ultimately something it's entitled to do, although it's likely the Marbles account will now need to be repurchased so the complaint can be settled in accordance with this decision, if Mr M accepts it.

Putting things right

The principal aim of any award I make must be to return Mr M to the position he'd now be in but for the errors or inappropriate actions of NewDay. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think NewDay should have lent to Mr M, I don't think it's fair for him to pay interest or charges on the amount borrowed. But he has had use of the money that was lent, so I think it's fair he repays the amount borrowed (without the addition of interest or charges).

To put things right, NewDay should take the following steps for each of the Marbles and Debenhams accounts:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since the account was opened.
- If the reworking results in a credit balance, this should be paid to Mr M with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires NewDay to deduct tax from any interest. It must provide Mr M with a certificate showing how much tax has been deducted if he asks for one. If NewDay intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance, NewDay should arrange an affordable payment plan with Mr M for the shortfall.
- Remove any adverse information recorded on Mr M's credit file relating to this credit, once any outstanding balance has been repaid.

If NewDay no longer owns the debt, it should liaise with whoever does to ensure any payments Mr M has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mr M in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Finally, I do believe the issues outlined in this complaint have caused Mr M some unnecessary distress and inconvenience, particularly in view of the various health issues he's experienced. The amount to award for a consumer's distress and inconvenience can be difficult to assess as the same situation can impact different people in different ways. But in the circumstances of this case, I think a payment of £150 as recommended by the investigator and accepted by NewDay is fair and reasonable. This amount would be payable in addition to any compensation due as a result of the above calculations.

My final decision

My final decision is that I partly uphold this complaint. Subject to Mr M's acceptance, NewDay Ltd should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 December 2024.

James Biles
Ombudsman