

## **The complaint**

Mr G complains that NewDay Ltd lent irresponsibly when it approved two credit card applications he made and then increased the credit limits.

## **What happened**

Mr G applied for a Marbles credit card with NewDay in November 2015. In his application, Mr G said he was employed with an income of £13,000 that NewDay calculated left him with around £975 a month after deductions. NewDay applied a rent figure of £428 and an estimate of Mr G's general living expenses of £408 to the application. NewDay carried out a credit search and found Mr G owed around £1,000 to other unsecured lenders and was making monthly repayments of £60. No adverse credit, defaults or recent missed payments were found. NewDay calculated Mr G had an estimated disposable income of £50 a month after his commitments were met. NewDay approved a credit card with a limit of £300.

The Marbles credit limit was increased to £1,300 in February 2016, £2,500 in August 2016 and £3,750 in January 2017. NewDay says that before each credit limit increase it looked at how Mr G had handled his Marbles credit card, checked his credit file and applied its lending criteria.

Mr G applied for a second credit card with NewDay branded as Aqua in June 2016. In this application, Mr G said he was earning £16,250 that NewDay says left him with £1,184 a month after deductions. Rent of £308 and general living expenses of £416 were applied to Mr G's application. A credit search was completed and no new adverse credit or missed payment was found. Aqua says Mr G was making monthly repayments of £130 and owed a total of £2,850 to other lenders. Aqua says Mr G had a disposable income of £324.81 after meeting his outgoings and approved the Aqua credit card with a limit of £900.

The Aqua credit limit was increased to £2,100 in March 2017, £2,600 in July 2017 and £3,350 in November 2017. NewDay says that before each credit limit increase it looked at how Mr G had handled his Aqua credit card, checked his credit file and applied its lending criteria.

Last year, representatives acting on Mr G's behalf complained to NewDay and said it had lent irresponsibly. NewDay issued a final response to Mr G's complaint. NewDay didn't agree it had failed to carry out the relevant lending checks before approving the Marbles credit card and increasing the credit limit. NewDay didn't uphold Mr G's complaint about the Marbles credit card. NewDay agreed to refund interest, fees and charges applied to balances over £2,600 for the Aqua credit card from November 2017.

Mr G's representatives referred his complaint to this service and it was passed to an investigator. They thought NewDay had already agreed a fair settlement in relation to the Aqua credit card and didn't ask it to do anything else. Mr G's representatives confirmed they accepted the investigator's view of how to fairly settle his Aqua credit card complaint.

The investigator upheld Mr G's Marbles credit card complaint in full. They noted that NewDay's lending checks found Mr G only had £50 available once his existing outgoings

and commitments were met in November 2015. The investigator thought that Mr G's estimated disposable income was too low and showed he wasn't in a position to sustainably afford new borrowing and said NewDay lent irresponsibly. The investigator asked NewDay to refund all interest, fees and charges applied to Marbles credit card from inception.

The investigator issued their view of Mr G's complaint to both parties on 4 December 2024. Mr G's representatives responded to confirm they accepted on his behalf. Despite being chased on 19 December 2024 and being notified Mr G's case would be referred to an ombudsman on 8 January 2024 (giving a further two weeks to respond) no further comments have been received from NewDay. As a result, Mr G's complaint has been passed to me to make a 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.

Before agreeing to lend or increasing the credit limit, the rules say NewDay had to complete reasonable and proportionate checks to ensure Mr G could afford to repay the debt in a sustainable way. These affordability checks needed to be focused on the borrower's circumstances. The nature of what's considered reasonable and proportionate will vary depending on various factors like:

- The amount of credit;
- The total sum repayable and the size of regular repayments;
- The duration of the agreement;
- The costs of the credit; and
- The consumer's individual circumstances.

That means there's no set list of checks a lender must complete. But lenders are required to consider the above points when deciding what's reasonable and proportionate. Lenders may choose to verify a borrower's income or obtain a more detailed picture of their circumstances by reviewing bank statements for example. More information about how we consider irresponsible lending complaints can be found on our website.

As Mr G's representatives have already confirmed they're willing to settle the Aqua complaint in line with the agreement reached in NewDay's final response I'm not going to comment further in relation to that credit card.

I've considered the information NewDay had available when assessing Mr G's Marbles application in November 2015. As I've set out above, the end result of NewDay's lending checks showed Mr G had around £50 a month available as a disposable income once his existing commitments were met. In my view, that figure was very low in terms of Mr G's ability to make repayments to his existing debts (beyond the contractual minimums) or afford any unexpected or emergency expenses that may have arisen. In my view, a disposable income of £50 a month should've shown NewDay the Marbles credit card was unaffordable for Mr G and caused it to decline to proceed altogether. I'm satisfied NewDay lent irresponsibly when it approved Mr G's Marbles application with a credit limit of £300.

It follows that if I think the original decision to approve the Marbles credit card with a limit of £300 was irresponsible I think the same about the credit limit increases that ultimately took it to £3,750 in January 2017. I've looked at the lending data NewDay has provided for the Marbles credit card. I can see Mr G's unsecured debts continued to increase and that defaults were noted. I haven't seen anything that shows the credit card became more affordable to Mr G over time or that the decision to increase his credit limits was reasonable.

For the reasons I've noted above, I'm upholding Mr G's complaint. In addition to the settlement NewDay agreed in its final response, I'm also directing it to refund all the interest, fees and charges applied to the Marbles credit card from inception.

I've considered whether the business acted unfairly or unreasonably in any other way including 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 below results in fair compensation for Mr G 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.

### **My final decision**

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

In relation to the Aqua credit card, NewDay should settle in line with its final response to Mr G's complaint dated 22 July 2024.

In relation to the Marbles credit card, NewDay should settle as follows:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied from inception.
- If the rework results in a credit balance, this should be refunded to Mr G 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 G's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mr G for the remaining amount. Once Mr G 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 G 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 February 2025.

Marco Manente  
**Ombudsman**