DRN-5452258

The complaint

Mr I complains that NewDay Ltd irresponsibly lent him money on two credit cards.

What happened

Mr I took out two credit cards with NewDay – one under its Aqua brand, and one under its Marbles brand.

The Aqua card was granted in January 2020 with an initial credit limit of £450. The limit was subsequently increased on the following occasions:

- September 2020, to £950
- January 2021, to £1,950.
- March 2022, to £3,450.
- June 2022, to £4,950.

The Marbles card was granted in September 2021 with an initial credit limit of £1,200. This limit was also increased:

- February 2022, to £2,450.
- June 2022, to £3,700.

In 2024, Mr I complained about NewDay's lending decisions. He said that at the time of applying for the Aqua card, he had several other credit and store cards and was making only the minimum payments. He said it didn't reassess his financial situation before increasing the credit limits. He said that the Marbles card should never have been issued because he already had an Aqua card, and he said that at the time of this lending he was only making minimum payments on the Aqua card, and he had other credit commitments. He said that both cards had substantial limit increases at the same time on two occasions. He said that if NewDay had done proper checks it would have seen that Mr I was struggling with his existing commitments and that increasing the limits would make his situation worse.

NewDay said it had lent responsibly. It said it typically lent to borrowers with a less than perfect credit history, so it generally started with smaller credit limits which were increased later if the credit was well manged. On each occasion it had considered whether the lending was affordable and sustainable.

It said that when Mr I applied for the Aqua card, he said his annual income was £26,000. By the time of the application for the Marbles card, this had increased to £35,000.

Our investigator didn't think the complaint should be upheld. Mr I didn't agree and asked for it to be reviewed by an ombudsman. I thought the complaint should be upheld in part, so I issued a provisional decision.

My provisional decision

I said:

"When deciding whether to lend – including whether to increase the credit limit – NewDay should carry out proportionate checks to decide whether the lending is affordable and sustainable. There's no set list of checks that is required, but it should take into account income expenditure and other credit commitments, and the level of checks should be proportionate to the amount and type of the credit and the repayments required.

With that in mind, I've looked at the decisions NewDay made. Although Mr I had two separate cards, I think it's also relevant that both were with the same lender, and I'd expect NewDay to take into account what it knew in respect of one account when making decisions about the other. As well as the individual lending decisions on each separate card, therefore, I've also thought about their impact on Mr I's overall indebtedness to NewDay.

Date	Decision	New total limit	Limit increase(s)
January 2020	Aqua lending	£450	
September 2020	Aqua increase	£950	£500
January 2021	Aqua increase	£1,950	£1,000
September 2021	Marbles lending	£3,150	£1,200
February 2022	Marbles increase	£4,400	£1,250
March 2022	Aqua increase	£5,900	£1,500
June 2022	Aqua and Marbles increases	£8,650	£2,750

At the time of the original Aqua lending decision, Mr I declared that he had an annual income of £26,000. NewDay verified that his monthly net income was around £1,619 using credit reference agency checks. It estimated his expenditure on housing and other essentials at around £666 using modelled expenditure for households of similar type – which it is allowed to do – and found that his other credit commitments were £220 using credit reference checks. I'm satisfied that the checks it carried out at this time were proportionate, and that it was reasonable for NewDay to conclude that the initial lending was affordable. There were no concerns on Mr I's credit file which ought to have led NewDay to question whether the lending was sustainable for him. I'm satisfied that this was a fair lending decision.

Almost immediately, Mr I made full use of the initial credit limit. He only made the minimum payment for the first few months, but then in July 2020 reduced the balance by £205. It stayed at around £220 per month for the next few months, until the first limit increase.

At the time of the limit increase, Mr I had had the card for around eight months. He had made regular use of it and while he had only paid the minimum payment most months, he had also made a substantial balance reduction. I don't think there was anything in his management of the card that ought to have caused NewDay concern.

Over the same period, his other credit commitments had not increased and there were no other issues of concern on his credit file, and nothing else to suggest that an increased limit was unaffordable. I'm satisfied that the first limit increase was a fair lending decision.

Following the second limit increase, Mr I quickly increased his borrowing towards the new limit. Other than in September 2019, he only made the minimum payments to the card. By January 2021, the balance was over £900.

At the time of the second credit limit increase, NewDay carried out further checks. It found that Mr I's monthly income was £3,121 and that his expenditure was estimated as around £700. His credit commitments were around £480 per month. So it concluded that the limit increase was affordable.

I'm not persuaded that this limit increase was responsible. NewDay didn't ask Mr I for income information. It obtained it from a credit reference agency, using an estimate of income based on turnover through his current account. But NewDay doesn't appear to have considered whether that was a plausible estimate, given it would have involved his income having doubled – from £1,619 to £3,121 – in the year since he first applied for the card. Given that this was the second increase in a few months, and a relatively large increase, and given that it's questionable whether the current account turnover had produced a realistic income figure, I think it would have been proportionate for NewDay to have carried out further checks to satisfy itself what Mr I's income actually was.

I think there were also concerns about the sustainability of a further increase at this time. Mr I had quickly increased his borrowing to the new limit on both previous occasions. And his credit file showed that he was using more of the available limit on other revolving credit too – increasing from 71% of the total available limits at the time of the earlier increase, to 90% of available credit at the time of this increase. Although there were still no missed payments or defaults, I think this does show an increasing reliance on credit.

For those reasons, I'm not persuaded that increasing the limit in January 2021 was a fair lending decision.

There were no further limit increases on the Aqua card before Mr I applied for the Marbles card later in 2021.

At the time of his application, Mr I told NewDay that his gross annual income was now £35,000. NewDay used a monthly income of £2,393. It found that his existing credit commitments were now £911 per month, and estimated his housing and living costs at around £750. On that basis, it concluded that the new Marbles card was affordable. I'm satisfied that, on their own terms, the checks on income and expenditure were proportionate to the application, and showed that the lending was affordable.

However, I think NewDay also needed to take into account what it knew about Mr I from their existing relationship. This is relevant to whether the lending was sustainable for him. It also needed to consider the evidence of his credit file.

Since the last limit increase on the Aqua card – which I've found above wasn't fair – Mr I had again increased his balance to the limit, with most of that spending coming immediately after the limit increase. Since then, Mr I had been paying more than the minimum payment, so reducing the balance gradually, and by the time of the Marbles lending the balance on the Aqua card was down to around £1,600, He'd also reduced his reliance on other revolving credit to below 70%. But he had taken out a substantial loan in around July – his overall credit had increased by £20,000 and his repayments on loans by around £350 per month.

Taken together, I think there was enough here that ought to have lend NewDay to question whether the new lending was sustainable for Mr I. This new lending increased his total indebtedness to NewDay – up from £450 to £3,150 in less than two years – while at the same time his other debts had increased from around £5,000 to around £30,000 and his monthly credit commitments had increased from £220 to over £900. Although there were still no missed payments, that represents a substantial increase. I think NewDay ought to have done more to question why this was, and whether increasing the credit it made available to Mr I further was going to be sustainable for him. On balance, I'm not persuaded this was a fair lending decision.

Again, Mr I made full use of the credit available to him. By the time of the first Marbles increase, in February 2022, the Marbles balance was £1,150 and the Aqua balance was £1,900. Mr I was using over 80% of his total revolving credit and his total credit commitments were now around £1,270 per month – up from £911 a few months earlier. It appears he had taken another loan for around £3,500 in around November 2021. For the same reasons, therefore, I think NewDay should have questioned whether further lending was sustainable.

In the month following the Marbles increase, Mr I again increased his borrowing to the limit, spending £1,250 on the card. Yet NewDay offered him a further substantial increase on the Aqua card the following month – which, again, Mr I spent immediately. NewDay assessed his monthly income as £4,565. It obtained this figure from a credit reference agency based on current account turnover, not from Mr I directly. It doesn't appear to have questioned why this was almost double the amount declared on the Marbles application a few months earlier. I'm satisfied, in the circumstances, that proportionate checks ought to have included checking this further.

By June 2022, Mr I was at the limit on both cards. His revolving credit debt had increased in six months from £8,000 to £13,500 and he was using 88% of his available limits. His monthly credit commitments were now up to £1,571.

NewDay found that Mr I's monthly net income was now £4,674 – again, it did not ask Mr I for evidence of income, instead obtaining this figure from estimated income based on his current account turnover as recorded by a credit reference agency. NewDay does not appear to have questioned whether that was plausible, given that it was double the monthly income of £2,393 used in the Marbles lending decision nine months earlier. I'm satisfied, in the circumstances, that proportionate checks ought to have included checking this further.

Despite that, NewDay offered further limit increases on both cards – a total increase of £2,750 in June 2022, and cumulatively of £5,500 in four months. For the same reasons, I'm not persuaded that this was sustainable either. I think NewDay ought to have done more to consider whether there were signs that Mr I was over-reliant on credit.

In summary, then, I'm satisfied that the initial decision to offer an Aqua card, and the first limit increase, were fair lending decisions. But I'm not satisfied that the further Aqua increases, or the Marble lending, were fair and reasonable in all the circumstances.

Finally, I've also thought about the impact of s140A Consumer Credit Act, and whether the lending decisions might have given rise to an unfair relationship. But, for all the reasons I've already set out, I don't think the initial Aqua lending decisions gave rise to an unfair relationship, and I don't think s140A adds anything to my conclusions that the other lending decisions were not fair and reasonable for the reasons I've already given.

To put things right, therefore, NewDay should refund all interest and charges in respect of the Marbles card, and all interest and charges in respect of balances above £950 on the Aqua card, and then apply all payments Mr I has made in respect of those balances to reducing the capital. Any refunds should be applied to the outstanding balances on the cards first. If that leaves an outstanding balance on either or both cards, NewDay should engage with Mr I to agree an affordable repayment plan. But if both balances are cleared, NewDay should pay any excess to Mr I, adding simple annual interest of 8% running from the date of each payment making up the excess to the date the redress is paid. NewDay may deduct income tax from the 8% interest element of the redress, if applicable, but should tell Mr I what it has deducted so he can reclaim the tax if he's entitled to. NewDay should also remove any adverse information it has recorded to Mr I's credit file in respect of the Marbles card, and in respect of the Aqua card relating to balances above £950.

I'm satisfied this is fair redress. I don't think it's fair that NewDay retains interest it has charged on lending that shouldn't have been granted, or charges arising from unfair lending. But I don't think it would be fair to write off the capital that Mr I borrowed, since he has had use of that money and so it's fair and reasonable for it to be repaid."

NewDay didn't respond to my provisional decision. Mr I said that he accepted it.

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've considered the outcome I reached in my provisional decision, but I see no reason to change my mind. For the reasons I gave in that decision, reproduced above, I uphold this complaint.

My final decision

My final decision is that I uphold this complaint and direct NewDay Ltd to take the following steps:

- Refund all interest and charges on the Marbles card, using the refund to reduce the balance.

- Refund all interest and charges on the Aqua card in respect of balances above £950, using the refund to reduce the balance.

- Apply all repayments Mr I has made to the Marbles card, and all repayments in respect of balances above £950 to the Aqua card, to reduce the outstanding balances.

- If that results in a credit balance on one card but not the other, NewDay should use the credit balance to repay the other card.

- If having taken the steps above, there is still an outstanding debit balance on either or both cards, NewDay should work with Mr I to agree an affordable repayment plan.

- If, having taken the steps above, both debit balances are cleared, NewDay should refund any remaining overpayments to Mr I, adding simple annual interest of 8% running from the date of each overpayment to the date of refund. NewDay may deduct income tax from the 8% interest element, as required by HMRC, but should tell Mr I what it has deducted so he can reclaim the tax if he is entitled to do so.

- NewDay should remove all adverse information in respect of the Marbles card, and all adverse information in respect of balances above £950 on the Aqua card, from Mr I’s credit record.

- NewDay should take steps to prevent further borrowing on the Marbles card and further borrowing above £950 on the Aqua card.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr I to accept or reject my decision before 1 May 2025.

Simon Pugh
Ombudsman