

## The complaint

Mr O complains that NewDay Ltd lent irresponsibly when it approved two credit card applications and increased the credit limit on both accounts.

## What happened

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

*Mr O applied for an Aqua credit card with NewDay in July 2012. The application was approved with a credit limit of £750. Mr O applied for a Marbles credit card with NewDay in November 2015. In this application, Mr O said he was earning £62,000 a year which NewDay calculated left him with £3,120 a month after deductions. NewDay applied estimates for Mr O's general living expenses of £496 and rent of £273 a month. A credit search found Mr O owed around £7,500 to other lenders and was making monthly repayments of around £530. NewDay applied its lending criteria and says Mr O had an estimated disposable income of £1,803 after meeting his existing outgoings. NewDay approved a Marbles credit card with a limit of £450.*

*There were various lending decisions that increased the credit limit of both credit cards as follows:*

<b>Aqua</b>		
<b>Date</b>	<b>Event</b>	<b>Limit</b>
Jun-12	Application	£750
Feb-20	CLI1	£2,000
Jun-20	CLI2	£2,500
Nov-20	CLI3	£3,500
Jul-21	CLI4	£4,750

<b>Marbles</b>		
<b>Date</b>	<b>Event</b>	<b>Limit</b>
Nov-15	Application	£450
Mar-19	CLD	£350
Feb-20	CLI1	£1,600
Jun-20	CLI2	£2,100
Nov-20	CLI3	£3,100
Jul-21	CLI4	£4,500

*Mr O used both credit cards until around June 2023 when he repaid the outstanding balances and they were closed a short time later.*

*Last year, representatives acting on Mr O's behalf complained that NewDay lent irresponsibly. NewDay issued a final response but didn't uphold Mr O's complaint. NewDay said it had carried out the relevant lending checks and didn't agree it lent irresponsibly to Mr O.*

*An investigator at this service looked at Mr O's complaint. They thought NewDay had carried out proportionate checks before lending and its decision to approve the credit cards and limit increases were reasonable based on the information obtained. Mr O's representatives asked to appeal and explained a review of his bank statements would've quickly shown NewDay Mr O had a gambling addiction throughout his lending relationship with it. As Mr O's representatives asked to appeal, his complaint has been passed to me to make a decision.*

## ***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.*

*Before agreeing to lend or increasing the credit limit, the rules say NewDay had to complete reasonable and proportionate checks to ensure Mr O 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.*

*Unfortunately, because the Aqua application was approved around 12 years before Mr O complained to NewDay the original information is no longer available to review. And no evidence of Mr O's circumstances from that time has been provided either. As a result, I'm unable to make a finding on whether NewDay lent irresponsibly when it approved Mr O's Aqua application with a credit limit of £750.*

*The next lending decision NewDay made was when Mr O applied for his Marbles credit card in November 2015. NewDay has been able to provide a copy of the application details Mr O submitted and the lending data it used. As noted above, Mr O's income was recorded as £3,120 a month. Estimates for Mr O's regular outgoings were used along with his monthly payments for his existing credit. When deducted from Mr O's income, NewDay calculated he was left with around £1,803 as an estimated disposable income. Mr O's credit file showed a missed payment in the previous six months but no other adverse credit.*

*I'm conscious that Mr O's history with his Aqua credit card shows a lot of overlimit and late charges applied between June 2012 and September 2015. But I think it's reasonable to note Mr O had cleared his Aqua credit card balance in September 2015. I also think it's fair to note the Marbles credit limit NewDay went on to approve was reasonably modest at £450. Taking Mr O's estimated disposable income and size of the new credit limit into account, on balance, I'm satisfied the lending checks NewDay carried out were reasonable and proportionate. And I'm satisfied that the decision to approve Mr O's Marbles credit card with a limit of £450 was reasonable based on the information NewDay obtained.*

*Mr O's Aqua and Marbles account histories show he continued to incur regular charges until around the middle of 2019. I note the Marbles credit limit was reduced to £350 in March 2019. But Mr O's circumstances appear to have improved in the second half of 2019 and I can see his other unsecured debts reduced from a high of around £26,000 to zero in February 2020.*

*It was in February 2020 that NewDay increased Mr O's Aqua credit limit to £2,000. At that point, Mr O had no other outstanding debts and no recent missed payments or defaults*

recorded on his credit file. I can see NewDay used a service provided by the credit reference agencies to check current account turnover to verify Mr O's income and says he was earning £2,359 a month. Deductions for Mr O's regular outgoings were also made, leaving him with an estimated disposable income of £1,292. In my view, the information available to NewDay showed Mr O was in a stronger financial position and I think it carried out reasonable checks before approving the credit limit increase to £2,000. I haven't been persuaded NewDay lent irresponsibly by relying on the information it obtained which indicated the February 2020 Aqua credit limit increase was affordable.

The Marbles credit limit was increased to £1,600 in March 2020, a month later. NewDay's lending checks were the same as it completed for the Aqua credit card the previous month and reached a similar conclusion with an estimated disposable income of £1,829 being calculated. I note that whilst Mr O's Aqua credit limit had only recently been increased, he only owed £10 on that account in March 2020. And Mr O's Marbles balance had been reduced to £70 in January 2020, £10 in February 2020 and £0 in March 2020. Again, I'm satisfied the level and nature of checks NewDay completed were reasonable and proportionate to the Marbles credit limit increase to £1,600. And I'm satisfied the decision to increase Mr O's credit limit was reasonable based on the information NewDay obtained.

Both credit limits were increased in July 2020, Aqua's to £2,500 and Marbles' to £2,100. I'm going to look at both lending decisions together. Mr O's Aqua and Marbles credit card payments had all been made on time and in full. Both accounts had very low balances in the months after the previous credit limit with the highest being £455 with Marbles in June 2020. I can also see Mr O had no other outstanding debts in July 2020 and no new arrears or adverse information had been recorded on his credit file. NewDay's checks indicated Mr O was paid around £5,490 a month and had an estimated disposable income of around £4,200. I haven't seen anything in the lending data NewDay used that showed Mr O was overcommitted or struggling to make ends meet. In my view, the checks completed by NewDay were reasonable and proportionate to the new credit limits it went on to approve. And I'm satisfied the decision to proceed was reasonable based on the information NewDay obtained.

NewDay increased both credit limits again in November 2020. I appreciate that by extending both credit limits in the same month, NewDay was increasing the limits by a total of £2,000. But I think the way Mr O was managing his Aqua and Marbles credit cards, along with his other credit, strongly indicated it was affordable for him. Mr O's highest Aqua balance since the previous credit limit increase was £797 against a credit limit of £2,500 and on his Marbles account was £198 against a limit of £2,100. No charges for late payments or being over the credit limits were incurred. And Mr O's other debts were still very low at £393 in November 2020.

NewDay's checks found Mr O's income to be around £5,400 a month and after applying outgoings calculated he had an estimated disposable income of around £4,100. I'm satisfied the level and nature of NewDay's checks were reasonable in relation to the credit limit increases it went on to approve. Given Mr O's Aqua and Marbles account histories and the other information obtained, I'm satisfied the decision to approve the credit limit increases for both cards was reasonable.

NewDay increased Mr O's Aqua credit limit to £4,750 in July 2021 and the Marbles credit limit to £4,500 in August 2021. NewDay's data shows no affordability checks were completed beyond providing a score and likelihood they were affordable for Mr O. But given the existing credit limits and fact his credit file data shows Mr O's unsecured debt levels had begun to increase again, I'm unable to agree reasonable and proportionate checks were completed. In my view, it would've been reasonable for NewDay to have carried out more detailed checks for both the Aqua and Marbles cards before increasing the credit limits

*further in July and August 2021. One option NewDay had would've been to review Mr O's bank statements for the preceding months which is the approach I've taken.*

*Mr O's bank statements show he was receiving a regular income of between £2,774 and £4,987 a month between April and July 2021. I can also see regular contributions made by a third party each month of around £1,600. On the face of it, Mr O's regular outgoings were affordable. But a review of Mr O's bank statements show he was gambling heavily during this period and borrowing from other sources to fund his habit. In May 2021, Mr O made payments of at least £1,000 to gambling websites. In June 2021 it was £9,000 and in July 2021 it was £17,000. Whilst there were some winnings paid back into Mr O's account, they were significantly below the amount he originally transferred. I also note Mr O obtained a loan of £10,000 in June 2021 and that the funds were either used for gambling or to cover general living expenses.*

*Whilst I can see Mr O did have a reasonably high regular income and was receiving contributions from a third party, I think a review of his bank statements before the July and August 2021 credit limit increases would've quickly shown he was gambling at an unsustainable level, using credit to do so. In the circumstances, I'm satisfied it's more likely than not the information in Mr O's bank statements would have led NewDay to decline to lend further on both Mr O's Aqua and Marbles credit cards. In my view, it wasn't reasonable for NewDay to increase the Aqua credit limit to £4,750 in July 2021 and the Marbles credit limit to £4,500 in August 2021. As a result, I intend to uphold Mr O's complaint from that point and direct NewDay to refund all interest, fees and charges applied to balances over the previous credit limits from those dates.*

*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 O 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.*

I invited both parties to respond with any new information or additional comments they wanted me to consider before I made my final decision. Mr O's representatives responded to confirm he was willing to accept. 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.

As no new information has been received 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 the accounts removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £3,500 for the Aqua card from July 2021 and £3,100 for the Marbles card from August 2021
- If the rework results in a credit balance, this should be refunded to Mr O 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 recorded

from July 2021 for the Aqua card and from August 2021 for the Marbles card regarding the accounts from Mr O's credit file.

- Or, if after the rework the outstanding balance still exceeds £3,500 for the Aqua card and £3,100 for the Marbles card, NewDay should arrange an affordable repayment plan with Mr O for the remaining amount. Once Mr O has cleared the outstanding balance, any adverse information recorded from July 2021 for the Aqua card and August 2021 for the Marbles card should be removed from their credit file.

\*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mr O 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 O to accept or reject my decision before 1 May 2025.

Marco Manente  
**Ombudsman**