

Complaint

Mr H has complained about credit cards and the associated credit limit increases which NewDay Ltd ("NewDay") provided to him. He says the credit cards as well as the limit increases were provided without his circumstances and ability to repay being sufficiently checked.

Background

Mr H's borrowing history with NewDay

NewDay provided Mr H with three accounts all of which were provided under different brands. Mr H's borrowing history with NewDay is as follows:

"Aqua" branded credit card:

January 2014 – card provided with an initial limit of £250
May 2014 – limit increased to £500
December 2014 – limit increased to £650
May 2015 - limit increased to £1,250.00
October 2015 – limit increased to £2,000.00
February 2016 - limit increased to £3,000.00
July 2016 – limit increased to £3,900.00

"Marbles" branded credit card:

August 2015 – card provided with an initial limit of £900
December 2015 – limit increased to £1,600.00
April 2016 – limit increased to £2,200.00
December 2017 - limit increased to £3,300.00
May 2018 - limit increased to £4,100.00

"AO" branded credit card:

June 2021 – card provided with an initial limit of £1,200.00

Mr H's complaint to NewDay and its response

In May 2024, Mr H complained to NewDay that all three of his credit cards as well as the credit limit increases had been provided irresponsibly. NewDay accepted that it hadn't always acted fairly and reasonably towards Mr H in its dealing with him.

NewDay agreed that it shouldn't have provided the credit limit increases on the Aqua card and therefore agreed to refund all interest fees and charges Mr H paid as a result of the limit increases from May 2014 onwards. However, NewDay didn't think that it had done anything wrong in the course of its dealing on both the Marbles and AO credit cards.

Mr H remained dissatisfied and referred his complaint to our service.

Our investigator's assessment

One of our investigators subsequently reviewed what Mr H and NewDay had told us. And she thought that:

- what NewDay had agreed to do in relation to the Aqua card was fair and reasonable in all the circumstances. Therefore, she didn't think that NewDay needed to do anything further;
- NewDay shouldn't have provided the Marbles credit card or any of the credit limit increases on it. In the investigator's view, NewDay failed to carry out reasonable and proportionate checks before providing this credit and had such checks been carried out they would have shown Mr H shouldn't have been lent to. The investigator recommended that NewDay refund all interest, fees and charges that it added to the Marbles credit card in order to put things right.
- NewDay acted fairly and reasonably when it provided the AO credit card as it carried out reasonable and proportionate checks and these showed that the monthly payments to this credit card were affordable for Mr H. So the investigator didn't recommend that the complaint about this credit card be upheld.

Events subsequent to the investigator's assessment

Mr H accepted the investigator's assessment in full. NewDay accepted that it had acted unfairly in relation to the Marbles credit card as it ought to have realised that it shouldn't have provided the credit card or any of the credit limit increases.

However, NewDay disagreed on how it should put things right for Mr H. It believed that it only needed to refund the interest it added to Mr H's account in the six years prior to it receiving his complaint. In other words, it thought that it should refund the interest added to the Marbles credit card account from June 2018 onwards, rather than from when the account was opened in August 2015.

As Mr H didn't accept NewDay's alternative offer, the complaint was passed to an ombudsman for a final decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've explained how we handle complaints about irresponsible and unaffordable lending, including what we typically expect a lender to put things right should we consider that it failed to act fairly and reasonably, on our website. And I've used this approach to help me decide Mr H's complaint.

What I need to decide

As the parties are in agreement that Mr H should not have been provided with the Marbles credit card at all and that NewDay didn't fail to act fairly and reasonably when initially providing the Aqua and AO credit cards, I do not need to look at whether NewDay acted fairly and reasonably in the course of these lending decisions.

As this is the case, this decision is solely considering whether what NewDay has agreed to do to put things right (in relation to the Marbles card) is fair and reasonable in all the circumstances of Mr H's complaint.

Having considered the available evidence, I'm satisfied that NewDay needs to do a bit more in order to put things right for Mr H in a fair and reasonable way. I'll now proceed to explain why I think that this is the case in a bit more detail.

Our typical approach to putting things right where a lender provided credit when it shouldn't have done

It might help for me to start by explaining that where a business accepts it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place.

And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have. However, that's not possible in cases where funds that shouldn't have been advanced were advanced. This is because typically those funds will have already been spent like they have been done here.

In these circumstances, we have to look at some other way of asking a business to put things right in a fair and reasonable manner. Where a business provided credit that it shouldn't have we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any interest and charges on the credit that shouldn't have been provided.

This would see the customer repay the funds that they borrowed and had the use of but we'd normally expect the lender to refund (or remove) any extra interest and charges that were added. And if those interest and charges were paid also add 8% simple interest per year. So in terms of applying this to the fact and circumstances of this case, this would involve NewDay refunding all of the interest fees and charges on Mr H's Marbles account from the outset.

Are there any reasons why NewDay should put things right for Mr H, on his Marbles account, in a way that differs from how we'd typically expect a lender to put things right for a customer in such cases?

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it provided credit that it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a compelling reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

NewDay argues that such a reason exists here. It has said that the event Mr H has complained of (the decision to provide the credit card) took place over nine years ago. In these circumstances, it believes that it would be fair and reasonable to limit the amount of compensation it now needs to pay to the six years prior to Mr H making his complaint.

I've carefully considered what NewDay has said.

In the first instance, I've noted that NewDay's position on Mr H's Marbles credit card contrasts with the position it has taken on the Aqua credit card. I say this because the offer it made on the Aqua credit card, in its final response, was to refund all interest fees and charges applied to balances over £250 from May 2014. So it agreed to refund all the interest, fees and charges added to the account from when it agrees that it shouldn't have lent. This has resulted in it offering to refund interest, fees and charges for ten years prior to Mr H making his complaint.

In this case, NewDay has accepted it shouldn't have accepted Mr H's application for the Marbles credit card in August 2015 and therefore it shouldn't have provided any credit at all on this credit card. As explained, applying our typical approach to putting things right would involve NewDay refunding all the interest and charges added from August 2015. Although this is a period of eight years and nine months prior to Mr H making his complaint, is a significantly shorter period than the equivalent ten-year period of the refund on the Aqua card.

NewDay says that it appropriate to limit the refund on the Marbles credit card in this way because, in some cases, we've agreed that the lender should only pay redress for the period six years prior to the complainant's complaint. It believes that Mr H's redress should be limited in the same way.

I've carefully considered what NewDay has said.

However, I don't think that the facts in Mr H's complaint are analogous with the facts in the cases NewDay has referred to. I say this because the examples of the cases it has referred to are all cases where we have agreed that the complainants concerned complained outside the time limit for complaining about the individual lending decisions.

Section 140A of the Consumer Credit Act 1974

In the cases NewDay has referred to, we were only able to consider a complaint regarding whether any irresponsible lending resulted in the lending relationship between the creditor and the debtor being unfair to the debtor (under section 140A Consumer Credit Act 1974), as this was made in time. So, in effect, any remedy granted, in those cases, was solely limited to a remedy for any unfair lending relationship.

However, in this case, there appears to be no dispute that Mr H complained within three years of when he became aware of a problem, that he may have suffered, or been suffering a loss and that someone else might be responsible for his problem. NewDay accepted that this was the case when it submitted its business file to our service.

I've noted that was why NewDay believed that Mr H's complaint about all of its lending decisions was made within the time-limit in DISP 2.8.2R (2). I've not seen anything to suggest that its position on this matter has changed. Neither have the facts of this complaint persuaded me that Mr H's complaint was made too late either.

I'm therefore satisfied that Mr H's complaint about the lending decisions (on the Marbles credit card) was made in time. And so there isn't a reason for me to consider redress from the point of view that I'm limited to considering whether there was an unfair lending relationship and how any unfairness solely as a result of this, should be corrected.

As this is the case, I don't think that it would be fair and reasonable for the redress, as a result of NewDay failing to act fairly and reasonably by granting credit it shouldn't have, to be limited to the six-year period prior to Mr H making his complaint.

It follows that I'm satisfied that there isn't a compelling reason to depart from our typical approach to putting things right, on the Marbles credit card, where we find (or like here, where a lender agrees) a lender provided credit it shouldn't have. As this is the case, I'm satisfied that it would be fair and reasonable in all the circumstances of Mr H's complaint for NewDay to put things right in the way I direct it to do so below.

Fair compensation – what NewDay needs to do to put things right for Mr H

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Mr H's complaint for NewDay to put things right by:

- as per what it has already agreed to do, if it hasn't paid this already, reworking Mr H's Aqua account to ensure that from May 2014 interest is only charged on the first £250 outstanding - to reflect the fact that none of the credit limit increases on this account should have been provided. All late payment and over limit fees should also be removed;
- rework Mr H's Marbles account to ensure that no interest, fees and charges are added from the opening of the account. This is to reflect the fact that this credit card as well as all the credit limit increase should not have been provided to Mr H. All late payment and over limit fees should also be removed;
- if outstanding balances remain on Mr H's Aqua or Marbles accounts once all adjustments have been made NewDay should contact Mr H to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr H's credit file, it should backdate this to when it shouldn't have provided the additional credit in question in the first place;
- if the effect of all adjustments results in there no longer being outstanding balances, then any extra should be treated as overpayments and returned to Mr H along with 8% simple interest† on the overpayments from the date they were made until the date of settlement. If no outstanding balances remain on one or both of Mr H's accounts after all adjustments have been made, then NewDay should remove any adverse information it has recorded, in relation to the affected account, from Mr H's credit file.

† HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Mr H a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr H's complaint. NewDay Ltd should put things right in the way that I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 July 2025.

Jeshen Narayanan
Ombudsman