

## **The complaint**

Mr S complains that NewDay Ltd irresponsibly provided him with credit.

## **What happened**

My decision here focusses on only two of Mr S' accounts (the "Marbles" and "John Lewis" brands); all remaining accounts are subject to another complaint – for which I'll issue a separate decision – except Mr S' "Aqua" account, which hasn't been reviewed given it was already upheld by NewDay prior to him contacting this Service.

The overall complaint is well-known to both parties. So, I won't go over every detail here; instead, I'll briefly summarise events up until this point:

- Mr S held several credit cards with NewDay: six in total, each carrying a different brand.
- Mr S considers NewDay to have provided credit irresponsibly for each account. He doesn't believe sufficient checks were carried out to properly assess his ability to sustainably repay the credit.
- Mr S says his financial position was much worse than what NewDay uncovered in its checks. He also disputes some of the data gathered by NewDay, and he thinks it was unreasonable of NewDay to have relied upon it.
- An Investigator here reviewed what had happened; having done so, they didn't think Mr S' complaint should be upheld. They considered that proportionate checks had been carried out for the majority of lending decisions on both Marbles and John Lewis accounts, and nothing in the data returned to NewDay would've caused it not to lend.
- That said, there were also occasions where checks weren't proportionate. For those lending decisions, the Investigator reviewed Mr S' bank statements – to determine what proportionate checks likely would've revealed – and concluded that NewDay still would've provided Mr S with credit. His statements showed the lending was likely affordable.
- Mr S disagreed. He reiterated his points about how his financial position was, in reality, much worse than NewDay uncovered. Mr S provided evidence which he considered supportive of his position, like his pay slips.
  
- The Investigator reconsidered, but they didn't change their mind.
- Mr S asked for an Ombudsman's decision and, as no agreement has been reached, his complaint has been passed to me.

## **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.

### Preamble

At the outset, I want to acknowledge Mr S' clear strength of feeling over what happened here. I'm left in no doubt whatsoever that he is, and has been, in a very difficult position both financially and personally. Before I cover anything else, I'd certainly encourage Mr S to reach out to organisations which can provide support and advice; our Service will be happy to pass on contact details of such groups, should Mr S like them.

Moreover, I know Mr S is frustrated at how his complaints have been administered; I entirely understand why he'd prefer for all accounts and lending decisions to be considered under one case. So, I want to reassure Mr S that even though his overall complaint has been split across two cases, I have considered things holistically; I've looked at all events, and incorporated actions on all accounts into my overall review. Put simply, while Mr S will receive two separate decisions, within which there may be some repetition, I have considered his overall complaint as one.

Finally, before I move to address the merits of Mr S' complaint, I'll be clear that I have read and considered all that he – and NewDay – have said and provided, but I haven't commented on each and every point. Instead, I've focussed on what I deem to be the crux of the matter, and I've deliberately not addressed each lending decision individually. That's because I consider there to be little value in me covering the same ground, in the same way, as our Investigator – Mr S has been very clear about why he disagrees with those findings, so his rebuttal is what I've focussed on. Fundamentally, our role is to be an informal service; I don't intend any discourtesy in my concise approach, it's simply to align with that purpose.

### Mr S' complaint about his "Marbles" and "John Lewis" cards

Mr S opened his Marbles account in 2016; the limit was increased three times in total. As I understand it, Mr S was initially given a low limit – of £300 – which was increased to £1,300 in July 2021, then £2,300 in November 2021 and finally £3,400 in March 2023. His John Lewis account was opened much later, with an initial limit of £1,200 in May 2023; that limit was increased once, in 2024, to £2,200.

Our Investigator already set out the level of checks NewDay completed for each lending decision across both accounts, so I won't repeat the same ground in the same detail. In summary though, NewDay carried out an affordability assessment by reviewing Mr S' income and expenses, and it also looked at Credit Reference Agency ("CRA") data to build a view of his existing credit commitments and how he was managing them. NewDay has said it would've taken Mr S' management of the other accounts he held with it into consideration too, and I've kept that in mind here.

To highlight an important point upfront, there are no fixed checks a business must complete when reviewing an application for credit. There isn't a requirement, of any kind, on a lender to review specific things such as payslips, or bank statements, for example. Rather, it was up to NewDay to determine what it would like to see; its obligation was to perform proportionate checks to be able to understand whether Mr S could make his payments in a sustainable manner before agreeing to lend. How it did so, was ultimately up to NewDay.

From what Mr S has said in response to our Investigator, his opinion is such that NewDay shouldn't have simply relied upon the data returned to it, and that it ought to have carried out significantly more detailed checks into his finances before agreeing to lend. And although not necessarily in all instances, there are some occasions where I'd agree with Mr S there. When increasing Mr S' limit on his Marbles card for the first time, for example, NewDay's initial checks discovered he'd been several payments behind with another credit commitment some months prior. That's an indicator that something might not be quite right, and that a deeper review may need to take place.

When thinking about further checks, and what they would have revealed, I'll reiterate that there's no set list of actions NewDay had to take, or specific items it had to review – but assessing Mr S' bank statements are one way for me to understand what more detailed checks likely would've uncovered. Having looked at those, I think it's more likely than not that if NewDay *had* done further checks it still would've lent to Mr S. I say that largely because his bank statements at that time indicate a reasonable running balance and an account which wasn't overdrawn. The statements imply that Mr S would – on the face of it – have had enough disposable income remaining, after essential expenses and existing commitments, to afford repayments and unforeseen expenses.

Mr S will, I'm sure, disagree with that – and we know it wasn't the full picture. He's mentioned how he had lots of expenses which weren't obvious, and how he had made several lifestyle restrictions which masked affordability. He's pointed out too that his salary wasn't as high as NewDay perceived it to be from current account turnover data, and that he took consolidation loans.

To address those points, NewDay is, broadly speaking, entitled to rely upon the results of the checks it carried out if it's proportionate to do so. Generally, any data returned to it is viable for use; so, if NewDay's checks returned a particular turnover amount for Mr S' account, it could rely on that if reasonable to do so in the circumstances. There's nothing prohibiting that. That said, there's argument to say that if NewDay's checks returned an income considerably higher than what Mr S had previously declared to it, then it should look further into that; and given what I've seen, that could apply here. The income figure from some of NewDay's checks does appear higher than Mr S had initially declared, by more than a reasonable margin.

I'll be clear that such instances don't categorically mean NewDay was obliged to request and review bank statements; in fact, I think that would likely have been too much scrutiny given the other data returned didn't suggest any significant financial struggles. NewDay could, perhaps more appropriately, have simply asked Mr S to declare his income and essential expenditure again. After all, it's entirely possible that Mr S could've changed jobs, or have developed income from other sources. Overall though, even if NewDay should have been prompted to go further because of an apparent income discrepancy, I think it likely the lending decisions would be the same; Mr S' statements from the time still indicate that the credit was likely affordable. As I've referenced above, his account wasn't overdrawn and after subtracting essential expenses, and other commitments, it would seem he had sufficient disposable income remaining.

In terms of expenses, NewDay wouldn't have needed to know about *everything* Mr S was spending, or any self-imposed lifestyle restrictions; nor do I think proportionate checks would have revealed this. There was no requirement for NewDay to forensically review his outgoings or current account conduct – even if Mr S thinks it should have. It's important to remember that the rest of the data from NewDay's checks didn't display any County Court Judgments or Individual Voluntary Arrangements, it didn't suggest Mr S was using a substantial amount of his available credit, and nor did it show any significant adverse reporting either. That data would include the management of any other NewDay accounts

too.

I also note that over the period Mr S held the cards, he was often making overpayments to the account – sometimes by a significant amount. The relevant rules and guidance suggest that NewDay could consider how Mr S was managing his existing credit limits before deciding whether it was appropriate to provide him with more lending. Here, the management of Mr S's account would have demonstrated that he was likely to be able to afford much more than the limit he already had.

The reality of Mr S' wider financial situation, we know now, was different. I wholly accept that, and I don't at all doubt any of the testimony he's provided. What's crucial here, though, is what NewDay knew – or ought to have known – *at the time*. Mr S makes the point that he ultimately had to remortgage and take out consolidation loans; but while that's true, the fact is I can't use hindsight here. At the time of the lending decisions, across both Mr S' Marbles and John Lewis cards, the lending appeared affordable – or would likely have appeared affordable, if further checks had been undertaken. I also don't think NewDay would have necessarily been aware that Mr S was making repayments to his account as a result of being provided with consolidation loans elsewhere, for example. It would have simply seen that Mr S was able to manage his account positively.

I know Mr S has referenced his "Aqua" account, and how this was upheld in full by NewDay; he considers that to show NewDay's acknowledgement of a general affordability issue. I see his perspective, but I don't view things in quite the same way. To explain, as I understand it, NewDay upheld Mr S' complaint about his Aqua card because of circumstances relative to the time it was opened, in 2017. It doesn't categorically follow that such circumstances were present at any of the lending here, for Mr S' Marbles and John Lewis accounts, or indeed any other brand of credit card he was provided. From what I've seen, they weren't. And it follows that I can't rationally conclude the rest of the credit provided to Mr S was done so irresponsibly, solely because another complaint was upheld.

In fact, based upon what I have, and for all the reasons I've set out, I don't think NewDay could have known – or ought to have known – that the credit provided was unaffordable at the time of lending. Mr S will no doubt disagree with that statement too, and he will be significantly disappointed by what I've said; I'm sorry about that, but in all the circumstances I can't reach the conclusion that NewDay lent irresponsibly. To be clear, and to reiterate again, I'm not discounting the evidence Mr S has provided when reaching that finding; his situation was, and is, just as he's said – but thinking about what NewDay uncovered at the time, and what further checks would likely have revealed, I can't fairly say that NewDay did something wrong by approving the lending here. I don't think it would have had, or should have had, concern enough to decide not to lend.

I've seen that Mr S has referenced persistent debt, and how he received several letters about it for his Marbles card. That's accurate, he was in persistent debt and NewDay did write to him; but it's also true to say that Mr S had been out of persistent debt for over a year before NewDay provided a credit limit increase for his Marbles account – and several years before his John Lewis account was opened. So, I don't find that previous time spent in a state of persistent debt categorically means that things would be the same at the time of new lending; or that NewDay ought to have unconditionally believed new lending would follow the same route. Overall, Mr S having been in a state of persistent debt doesn't change my

thinking here.

To sum up then, some checks NewDay carried out before lending to Mr S here were proportionate and it could've relied upon the data returned which revealed that the lending was likely to have been affordable. That said, some other checks weren't necessarily proportionate and NewDay should've gone further. In the round though, with everything I've set out in mind, I can't say it's likely that NewDay ever would've uncovered the true position of Mr S' finances. It simply wouldn't have known that his situation was much worse than it appeared – and that isn't a failing, for the reasons I've explained. So, for the reasons I've already given, I can't fairly conclude that NewDay acted irresponsibly or otherwise treated Mr S unfairly in relation to this matter; it follows that I don't uphold the complaint. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

### **My final decision**

My final decision is that I don't uphold Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 February 2026.

Simon Louth  
**Ombudsman**