

## **The complaint**

Miss K complains that NewDay Ltd trading as Marbles (NewDay) acted irresponsibly by agreeing to lend to her.

## **What happened**

Around March 2021 Miss K applied for a revolving credit facility (Aqua credit card) with NewDay. Miss K's application was successful with NewDay issuing her with a credit card that had a credit limit of £1,200. NewDay increased Miss K's credit limit incrementally over several years. Around July 2021 to £2,200, November 2021 to £3,000, February 2022 to £4,250 and around March 2024 to £5,350.

Around July 2022 Miss K applied for another revolving credit facility (Marbles credit card) with NewDay. Again, her application was successful with NewDay issuing her with a credit card with a credit limit of £300. NewDay increased Miss K's credit limit incrementally, around January 2023 to £650, May 2023 to £1,650 and October 2023 to £2,650.

Miss K said NewDay hadn't checked whether she could sustain the repayments and that she'd had to borrow to meet her credit commitments which had caused her to spiral into debt. Miss K said as she couldn't sustain the repayments she'd entered into a payment plan with NewDay. She complained to NewDay saying their failure to properly check her financial situation had caused her financial loss and distress.

NewDay said their checks were reasonable and proportionate. And based on these checks all their lending decisions had been fair. Miss K wasn't happy with NewDay's response and referred her complaint to us.

Our investigator said that for the Aqua credit card NewDay's checks for the initial opening and the first, second and fourth credit limit increases were reasonable and proportionate. But said NewDay should have done further checks for the third credit limit increase. But if they had checked further found that it was most likely NewDay would have still lent to Miss K as they considered the lending was sustainable and fair.

For the Marbles credit card our investigator found NewDay's checks to be reasonable and proportionate and their lending decision(s) fair.

Miss K didn't agree and asked for an ombudsman to decide.

## **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.

While I empathise with Miss K, for me to say NewDay must do something different I must first be satisfied that they've done something wrong. I can't see that they have here which is why I won't be asking them to do anything else. I'll explain why.

I've considered the relevant rules and guidance on responsible lending set by the regulator, laid out in the consumer credit handbook (CONC). In summary, these say that before NewDay offered the facility they needed to complete reasonable and proportionate checks to be satisfied Miss K would be able to repay the debt in a sustainable way.

In deciding what was proportionate NewDay needed to consider things such as (but not limited to): the amount of credit, the size of any regular payments (taking into consideration the rules and guidance in CONC relating to assumptions concerning revolving credit), the cost of credit and the consumer's circumstances.

There isn't a set list of checks a lender must do. This means to reach my decision I need to consider if NewDay carried out proportionate checks at the time of each of Miss K's lending decisions, if so, did they make fair lending decision based on the results of these checks, and if not, what better checks would most likely have shown. I also need to consider the circumstances at the time of each additional advance in credit, whether there was a point at which NewDay ought reasonably to have realised they were increasing Miss K's indebtedness in a way that was unsustainable or causing financial duress.

We consider that the affordability assessment should be "borrower-focused", meaning NewDay needed to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Miss K. Basically it's not enough for NewDay to only think about the likelihood of Miss K being able to pay them back they must also consider the impact of repayment on Miss K herself.

CONC says a lender must take reasonable steps to estimate a consumer's income and non-discretionary outgoings. And must base its credit worthiness assessment on information they're aware of or obtained from the consumer or a credit reference agency (CRA).

What's important to note is that Miss K was provided with a revolving credit facility rather than a loan. As it was revolving credit there's no set amount that needed to be repaid each month, but CONC requires a firm to assume when carrying out their assessment that the entire credit limit is drawn down at the earliest opportunity and repaid in equal instalments over a reasonable period. NewDay were initially approving a credit limit of £1,200. So, I think they should have reasonably assumed Miss K would need to be able to repay around £60 each month.

NewDay said they'd used Miss K's application, CRA and statistically modelled data (which CONC allows a lender to do) to assess Miss K's credit worthiness. Miss K stated she'd an annual income of £15,000. NewDay validated Miss K's income through a Current Account Turn Over (CATO) check and further CRA checks. These are industry standard ways of assessing income and expenditure without requesting proof of income and expenditure, which wouldn't be proportionate for each lending decision. NewDay's checks also showed Miss K wasn't subject to any county court judgments (CCJ), on any reportable repayment arrangements with her credit commitments, and didn't have any active short-term lending.

NewDay's CRA check did show Miss K had a default against her credit history which had been registered around 23 months prior to the new lending, but showed she was managing her active accounts being up to date with no recent missed payments.

It may help to explain here that, while information like a default on someone's credit file may often mean they're not granted further credit – it doesn't automatically mean that a lender won't offer borrowing. Here, NewDay considered the information that Miss K had on her credit file and still decided to lend which, in the circumstances, I think was reasonable. I say this as the default would be considered as historic, and the CRA check showed Miss K was now managing her active accounts well with no evidence of missed or arranged payments.

NewDay's affordability assessment calculated Miss K to have a monthly income of £1,193.30, non-discretionary outgoings for cost of living of £449.21, credit commitments of £49.12 and housing costs of £231.90 which should have left Miss K with a disposable income of £448. NewDay's checks also showed Miss K's debt to income ratio was low being assessed at 3.93%.

So, I'm satisfied the checks NewDay did were reasonable and proportionate for the type and amount of credit they were providing. I think they've shown they took reasonable steps to estimate Miss K's income and non-discretionary expenditure. And I don't think that there was anything immediately obvious in the information that they had, including Miss K's existing credit and credit history which meant they shouldn't rely on it. So, I don't think NewDay needed to have asked Miss K to provide further evidence in support of her income and expenditure before providing her with a credit limit in this instance. And based on these checks Miss K should have had sufficient disposable income to sustain her repayments, so I'm satisfied NewDay made a fair lending decision.

Around July 2021 NewDay increased Miss K's credit limit by £1,000 to £2,200. As NewDay would be lending a further £1,000 they needed to assess whether Miss K could sustain an additional repayment of around £50. NewDay did similar checks as for the initial account opening. These showed Miss K to have a monthly income of £1,193, rent £323, credit commitments £112 and cost of living outgoings of £521. Which should have left Miss K with a disposable income of £237.

NewDay also had the additional evidence as to how Miss K was managing her account with them. This showed over the months prior to the credit limit increase Miss K had repaid in total around £750 against her minimum required repayment total of around £75, which showed the additional lending ought to have been sustainable.

While the ability to repay credit without issue doesn't mean that there isn't financial distress. A good repayment history is a fairly reliable indicator that an individual can manage debt responsibly. And the opposite is also usually the case, if credit is unaffordable this is usually demonstrated by a problematic repayment history, either to the credit or other bills. I note Miss K's comment that she'd incurred a late and over the limit fees during this time. But overall, I don't think this was an indicator of financial difficulty when considered alongside the other evidence. Also, the checks showed Miss K's overall indebtedness remained stable, her revolving credit balance had increased but this was reflective of her NewDay credit facility. And the registered default now had been around 27 months prior to the lending.

So, I'm satisfied the checks NewDay did were reasonable and proportionate for the type and amount of credit they were providing. And I don't think that there was anything immediately obvious in the information that they had, including Miss K's existing credit and credit history which meant they shouldn't rely on it. So, I don't think NewDay needed to have asked Miss K to provide further evidence in support of her income and expenditure before providing her with an increased credit limit. And based on these checks Miss K should have had sufficient disposable income to sustain her repayments, so I'm satisfied NewDay made a fair lending decision.

Around November 2021 NewDay increased Miss K's credit limit by £800 to £3,000. So, an additional monthly commitment of around £40. Having considered NewDays' records, Miss K had repaid over the months prior to the increase around £1,850 against a minimum requirement repayment of around £75. I can see that Miss K incurred an over the limit fee, but I can't say NewDay acted unfairly by increasing Miss K's credit limit as NewDay's records show she was able to sustain the additional repayments. And increasing her credit

limit would prevent Miss K incurring over the limit charges. So, I don't think NewDay acted unfairly in increasing Miss K's credit limit in this instance.

But I do think NewDay should have done further checks when they increased Miss K's credit limit around February 2022 by £1,250 to £4,250. I can see NewDay took reasonable steps to assess Miss K's income and non-discretionary outgoings. But these showed Miss K's income had decreased with NewDay assessing this to now be around £866. And Miss K had again incurred an over the limit fee, albeit she made a repayment of £1,500 in one month to bring her account back within its limit. As outlined above I think NewDay needed to consider whether they could be increasing Miss K's indebtedness in a way that was unsustainable or causing financial duress.

While I wouldn't generally expect a lender to seek bank statements, for our purposes these are a good indicator of a consumer's income and expenditure. Miss K has provided her bank statements for the three months prior to NewDay increasing her credit limit to £4,250. Miss K has also provided her credit report which should be reflective of the CRA checks NewDay did. I can see Miss K didn't have a salaried income but was in receipt of benefits. A business providing lending or credit will have its own lending criteria. This is likely to include a list of the sources of income they will consider for a lending or credit application. For the three months prior to the lending, November, December 2021 and January 2022 on average Miss K's income was around £1,400. I can also see she'd regular payments into her account from her partner that averaged (after also taking account of any transfers out to the same source) around £1,500.

From Miss K's bank statements, I can see that she was meeting her non-discretionary outgoings including her credit card commitments. I didn't see any signs of financial vulnerability such as returned direct debits. Miss K did use her overdraft facility, but this was intermittent and not persistent use. And while I can see some gambling activity, I haven't seen any signs that this was of a compulsive nature.

Miss K's credit report showed she'd previously used short term lending, but this had been several years before the new lending. Her known registered default had a balance of £1,224 but I can see this was satisfied by April 2021. Miss K had a loan from August 2021 that was repayable at £44 over 24 months, but I can see that she'd settled this early within 15 months. And she'd another credit card with a credit limit of £500, with an outstanding balance of around £480. So, Miss K's level of indebtedness was relatively low and her active accounts were up to date with no signs of missed payments.

So, I think had NewDay considered this additional evidence they would have still lent to Miss K as the lending should have been sustainable without causing any financial duress.

NewDay increased Miss K's credit limit around March 2024, some two years later, to £5,350. An increase of £1,100 which would be a further credit commitment of £55 to repay the additional lending within a reasonable time. NewDay again took reasonable steps to assess Miss K's income and non-discretionary outgoings. These checks showed Miss K to have an income of £2,698 a month, rent £344, credit commitments of £612 and cost of living outgoings of £670, which should have left Miss K with a disposable income of around £1,072.

The CATO check showed Miss K's income had increased which given two years had passed could indicate that Miss K may have had a pay rise/promotion/job change which would explain the difference in her income or another source of income. A CATO check is a recognised industry standard. In fairness to Miss K as she has provided her bank statements, I've checked her income for the three months prior to the new lending and this showed the figure used by NewDay could be relied on as Miss K's average income,

including regular income from a payment service provider and without taking account of any income from her partner averaged around £2,621, reflective of the amount used by NewDay.

NewDay also had the additional evidence as to how Miss K was managing her account with them. This showed over the preceding months prior to the credit limit increase Miss K had regularly paid more than the minimum payment required, only having paid the minimum amount on two occasions. There weren't any signs of missed payments, but Miss K had exceeded her limit on two occasions, but this had been several months prior and she'd brought her account back into order each of the following months. Miss K did have a cash advance shortly before the new lending, but this was for a low amount.

So, I'm satisfied the checks NewDay did were reasonable and proportionate for the type and amount of credit they were providing. And I don't think that there was anything immediately obvious in the information that they had, including Miss K's existing credit and credit history which meant they shouldn't rely on it. So, I don't think NewDay needed to have asked Miss K to provide further evidence in support of her income and expenditure before providing her with an increased credit limit. And based on these checks Miss K should have had sufficient disposable income to sustain her repayments, so I'm satisfied NewDay made a fair lending decision. I've now considered Miss K's other credit card.

The credit card was offered with an initial credit limit of £300 which would mean a financial commitment of £15 a month for Miss K to settle any outstanding balance within a reasonable period. NewDay has show they took reasonable steps to assess Miss K's income and outgoings which showed she'd an income of £2,393.30. The CRA checks showed credit commitments of £239, and using statistical modelling they assessed Miss K has cost of living outgoings of £523.15 and housing costs of £285.79. This should have left Miss K with a disposable income of £1,326.78. Her level of debt-to-income ratio was 15.75%. Miss K had a default registered but this was around 38 months prior and as mentioned previously, would be considered historic. And as Miss K was maintaining her credit commitment, given the type and amount being borrowed was relatively low I think any further checks would have been disproportionate. And based on the checks Miss K had sufficient disposable income to sustain her repayments. So, I'm satisfied NewDay made a fair lending decision.

Around January 2023 NewDay increased Miss K's credit limit to £650, an additional £350 which to settle any balance within a reasonable time would mean Miss K needed to be able to repay an additional £17.50 a month. NewDay did similar checks and from these assessed Miss K should have had a disposable income of £785. They also had the additional information as to how Miss K was managing her credit card account. Miss K had incurred a late payment fee a few months prior to the credit limit increase but I can see she was also repaying more than the minimum required, so I can't say there was evidence of any ongoing financial struggle. So given the type and amount of the new lending I'm satisfied NewDay's checks were reasonable and proportionate, and based on these checks they'd made a fair lending decision.

Around May 2023 NewDay increased Miss K's credit limit to £1,650, an additional £1,000 which would require an additional monthly repayment of £50 to settle the balance in a reasonable period. NewDay again took reasonable steps to assess Miss K's income and expenditure which showed she should have had a disposable income of around £949. From NewDay's records just prior to this increase I can see Miss K had settled her account in full. So, I'm satisfied the checks NewDay did were reasonable and proportionate for the type and amount of credit they were providing. And I don't think that there was anything immediately obvious in the information that they had, including Miss K's existing credit and credit history which meant they shouldn't rely on it. And I haven't seen anything that should have caused concerns that Miss K would struggle to sustain her repayments.

After the credit limit was increased Miss K didn't use her account for a couple of months as she'd a zero balance. In August 2023 I can see Miss K utilised her credit limit in full incurring foreign exchange fees, which would indicate her credit card was being used abroad, and which resulted in an over the limit fee being applied. NewDay reviewed Miss K's account and assessed she'd sufficient disposable income to sustain another credit limit increase of £1,000 to £2,650. While Miss K had incurred an over the limit fee I don't think this would have been considered as signs of financial vulnerability, as Miss K brought her account within its credit limit with her next payment, paying more than the minimum required.

I understand Miss K's frustration, and hope that my reasoning explains why I can't say NewDay has done anything wrong. They've taken reasonable steps to estimate her income and non-discretionary outgoings. They haven't solely relied on Miss K's declared income but carried out a recognised industry standard CATO check. Used CRA data to assess Miss K's credit commitments and management of her credit commitments. And used statistical modelling to estimate Miss K's other non-discretionary outgoings. They also used their own records which showed Miss K was managing her credit card account(s) well, with no evident signs of ongoing financial distress or struggle. So, I can't say NewDay has acted unfairly or unreasonably in lending to Miss K.

I've also considered whether NewDay acted unfairly or unreasonably in some other way given what Miss K has complained about, including whether their relationship with her might have been viewed as unfair by a court under Section 140A Consumer Credit Act 1974. But for the reasons I've already given, I don't think NewDay lent irresponsibly to Miss K or otherwise treated her unfairly. I haven't seen anything to suggest that s.140A or anything else would given the facts of this complaint lead to a different outcome here.

Although I'm not upholding this complaint. I'd like to remind NewDay of their obligation to exercise forbearance if they intend to collect any outstanding balance remaining on Miss K's credit card accounts, and it's the case that Miss K is experiencing financial difficulty.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 4 February 2026.

Anne Scarr  
**Ombudsman**