

complaint

Mr G complains that NewDay Ltd (trading as Marbles) repeatedly increased his credit limit to levels he could not afford.

background

Mr G has a Marbles credit card with NewDay. NewDay raised his credit limit five times in 2016 and 2017. Mr G complains that NewDay acted irresponsibly when it did so, because NewDay should have known he could not afford it. He makes the following points:

- He had only been making minimum payments,
- He had been using his full credit limit,
- He had been exceeding his credit limit,
- His outgoings had increased,
- No affordability checks had been done,
- He already had another credit card with NewDay (an Aqua card), and cards with other lenders. (Mr G's complaint about his Aqua card is being dealt with separately.)

Mr G is not in arrears on either of his NewDay cards, and he is still making adequate repayments on his Marbles card (the Aqua account is now closed). But he has pointed out that at his usual rate of payment, it will take him over 30 years to repay his Marbles card. He argues that NewDay permitted him to incur an excessive level of debt which he cannot afford to repay within a reasonable time.

NewDay says it did do affordability checks, which included checking Mr G's credit file, and the increases had been affordable. Its cards were marketed to people who find it hard to get credit elsewhere. Mr G had only briefly exceeded his credit limit and then brought his balance back within the limit, and this would not prevent a limit increase. It had written to him before each increase and explained that he could decline an increase, but he had not done so. Mr G had asked for further increases, which NewDay had declined.

Our adjudicator did not uphold this complaint. He accepted that NewDay had done proper checks. He said that NewDay had offered Mr G the opportunity to decline the increases but he hadn't. So he didn't think NewDay had done anything wrong.

Mr G asked for an ombudsman's decision. He said NewDay had been more focused on making money than on considering his financial circumstances. So this complaint has been passed to me.

I wrote a provisional decision which read as follows:

my provisional findings

I have considered all the available evidence and arguments (including about the Aqua card) to decide what is fair and reasonable in the circumstances of this complaint.

In particular, I have had regard to the UK Card Association's best practice guidelines, dated 1 January 2011 and entitled *Credit Card Limit Increases*. I recognise that the guidelines are advisory, not mandatory. But they reflect best practice in the industry, and so I think it is fair and reasonable for me to have regard to what they say when evaluating this complaint.

The Marbles credit limit increases are summarised in the following table:

Date	New credit limit	Amount of increase	Offered / requested by
1 December 2015	£900	Account opened	Mr G
11 March 2016	£1,900	£1,000	NewDay
26 July 2016	£2,500	£600	Mr G
23 November 2016	£3,500	£1,000	Mr G
10 February 2017	£4,750	£1,250	NewDay
21 November 2017	£5,500	£750	Mr G

To put that in context, Mr G also requested or accepted six credit limit increases on his Aqua card. I won't list them all here, but three of them were in a month immediately before or after a Marbles limit increase. These were in February 2016, October 2016 and March 2017, when his Aqua limit was increased by £1,000, £1,250 and £1,800 respectively.

Adding together the consecutive credit limit increases on the Marbles and Aqua cards shows a clearer picture of how much Mr G's borrowing actually increased by:

- February and March 2016: total increase = £2,000
- October and November 2016: total increase = £2,250
- February and March 2017: total increase = £3,050

When a credit limit is increased by the lender, unsolicited, the guidelines say that the lender must write to its customer to tell him, and to give him the opportunity to decline. This was done in March 2016 and February 2017. I have seen the letters and they comply with the guidelines. Mr G did not decline the increases. That does not necessarily get NewDay off the hook, because there are other guidelines to comply with too, but it does mean that Mr G wanted those increases and must bear some responsibility for them.

The guidelines say that a credit limit must not be increased "where the balance currently exceeds the credit limit." However that was not the case at the time of any of the credit limit increases on the Marbles card.

When increasing a credit limit, whether solicited or unsolicited, a lender must carry out creditworthiness checks, including checking the customer's credit file. NewDay did this when it opened the account, and found that Mr G had no bankruptcies or county court judgements against him. It also found that he had no recent defaults, but this was actually incorrect. Mr G had had three defaults, as follows:

- In September 2012, a default balance of £787, satisfied in October 2015.
- In May 2013, £324, satisfied in October 2015.
- In September 2013, £3,611, satisfied in January 2016.

I don't know why these were missed at the time. NewDay was aware of them later on, when it did credit checks again with each credit limit increase. However, as the defaults were all satisfied before the first credit limit increase in March 2016, this may explain why they did not prevent Mr G from receiving an increase. They were all over two years old, and paying them off could indicate that Mr G had got his finances back under control.

In March Mr G had three other credit cards: the Aqua card with NewDay, and two cards with other lenders. NewDay took into account the total balance for these cards in the previous

month (because information reported to credit reference agencies takes about a month to show up on a credit file). That came to £5,337, or less than two months' income. I don't think that's excessive.

In May 2016 Mr G's circumstances changed, as he got a mortgage and began making payments of £705 a month. However he had declared an income of £40,000 a year, or £3,333 a month, so this should still have been affordable. I can see that NewDay took this into account when it gave him the subsequent limit increases.

The UKCA guidelines include a list of indicators that a customer may be in financial difficulty. The ones I think are relevant to this complaint are:

- Regular late or missed payments,
- Paying the minimum payment over an extended period,
- A significant increase in overall outstanding balances over time,
- Instances of exceeding credit limits,
- Frequently using cash advances.

On the Aqua account between July 2014 and July 2015, Mr G was charged a £12 fee three times for being over the limit, and two fees for late or missed payments. In the next year, he was charged one missed payment fee, one returned payment fee, and one over-limit fee. No fees were charged in the two years after that (ending in July 2017 and July 2018). I can't see that he was charged any such fees on the Marbles account. Overall, I don't think that shows a history of *regular* late or missed payments.

Each time Mr G exceeded the Aqua credit limit, he brought his balance back within the limit again. That is still a risk indicator. But three of those four occasions were more than six months before he opened the Marbles account. So taken on its own, I don't think this factor should have prevented any of the Marbles credit limit increases.

Mr G made minimum payments in some months, but that was not his usual habit until 2018. Before 2018, he made minimum payments, or payments close to the minimum, four times on the Marbles card, and seven times on the Aqua card (the Aqua account was opened in July 2014). These were as follows:

Aqua	Marbles
September 2014	
December 2014	
February 2015	
May 2016	
July 2016	
	October 2016
November 2016	November 2016
	May 2017
	July 2017
December 2017	

I don't think that amounts to paying the minimum payment "over an extended period," because until 2018 (which was after the last of the credit limit increases on the NewDay cards) he was making more than the minimum payments most of the time.

Mr G made some cash advances, but not many, and I think not enough to be considered frequent.

However, I do think that there was “a significant increase in overall outstanding balances over time.” I will not include his mortgage here. But not counting his mortgage, his total balance on all loans (including the Marbles card) at the time of the five Marbles credit limit increases were (according to NewDay’s records) as follows:

Date	Total balance
March 2016	£5,337
July 2016	£4,251
November 2016	£12,526
February 2017	£15,651
November 2017	£15,278

So Mr G’s borrowing had increased significantly – tripled, in fact – between July and November 2016. He had acquired two new credit cards with other lenders in July and August 2016, which NewDay knew about. In November 2016, as I’ve said already, he made minimum payments on both his NewDay cards. In October that year, he had requested a credit limit increase of £1,000 on his Aqua card. Then in November he requested a £1,000 increase on his Marbles card (his third on that card) when he was only about £60 short of his old credit limit.

I think that all of these factors, taken together, should have alerted NewDay to the risk that in November 2016 Mr G may have been in financial difficulties.

Further evidence that he was continuing to experience financial difficulties is the fact that only three months later, he accepted another increase in February, followed by another one on his Aqua card in March.

The guidelines do not explicitly say what should happen if a customer appears to be in financial difficulties. But regulations made by the Financial Conduct Authority (FCA), the *Consumer Credit Sourcebook*, usually abbreviated to “CONC,” prohibit a lender increasing a credit card limit or increasing the interest rate where a customer is at risk of financial difficulties (paragraphs CONC 6.7.7 R and 6.7.10 R).¹

However, “financial difficulties” has a specific meaning in this context. It is defined in rule CONC 6.7.11 R as follows:

“For the purposes of CONC 6.7.7 R and CONC 6.7.10 R a customer is at risk of financial difficulties if the customer:

- (1) is two or more payments in arrears; or
- (2) has agreed a repayment plan with the firm in question; or
- (3) is in serious discussion with a firm which carries on debt counselling with a view to entering into a debt management plan and the firm has been notified of this fact.”

¹ In these rules, the letter R indicates a rule and G indicates a guideline. I am referring to the version of the rules which was in force at the relevant time (before they were changed in 2018).

None of these criteria were met in relation to the NewDay cards. So NewDay was not expressly prohibited from increasing the Marbles credit limit on the third or subsequent occasions.

However, lending must be sustainable. CONC 5.3.1 G (6)(b) says that “sustainable” means that a customer can make payments “without undue difficulties” and “within a reasonable period.” Sub-paragraph (7) goes on to say that a credit card provider must:

“(a) make a reasonable assessment of whether the customer is able to meet the repayments in a sustainable manner; and

(b) make the assessment based on reasonable assumptions about *the likely duration of the credit*.” [Emphasis added.]

Strictly speaking, CONC 5.3.1 G does not apply directly to the increase of a credit limit – it’s only about making a credit agreement (*i.e.* opening a credit card account). But I still consider it to be relevant to the increase of a credit limit.²

So I think that CONC does require a credit limit increase to be sustainable (as defined by CONC 5.3.1 G (7)).

CONC 5.3.5 R says:

“A firm must not advise or encourage a customer to [get] an amount of credit higher than the customer initially requested if the creditworthiness assessment ... indicates that repayment of the higher amount would not be sustainable or the firm ought reasonably to suspect that that is the case.”

That rule doesn’t strictly apply to an increase which is requested by a customer. It only applies where the firm offers an increase to a customer. But having regard to CONC 5.3.1 G, I think it would be fair and reasonable to apply the same principle to a request by Mr G for an increase – that is, it should only be granted where this is sustainable, taking into account how long it will take to repay the balance (assuming that the full credit limit is going to be used).

In October 2018 Mr G provided a screenshot from the Marbles website which at first glance appears to show that – given his balance at the time and his typical monthly payments – it would take until October 2051, or 33 years, to repay his balance.

I don’t accept that evidence, because it refers to a representative APR of 39.94%, when Mr G’s credit card statement for the same month shows an interest rate of 34.08%. And a letter NewDay sent to him in the same month says that if he only made minimum payments it would take him 21 years to repay the balance.

² I take that view because CONC 6.2.1 R says a creditworthiness assessment must be done each time a credit limit is increased, and CONC 6.2.2 R says this assessment must comply with CONC 5.3.5 R (as well as four other paragraphs of CONC 5.3, all of which are rules, not guidelines). So I think that the five rules listed in CONC 6.2.2 R should still be interpreted in the light of the guidelines in CONC 5.3.1 G. (The only reason the guidelines are not specifically listed in CONC 6.2.2 R is because that rule says a lender “must comply” with the five rules listed there, and that would be unsuitable language for referring to guidelines.) Taking the contrary view would imply that CONC 5.3.5 R means something different depending on whether it applies by virtue of CONC 5.1 or CONC 6.1, and if that is what the FCA intended then I would expect it to have said so explicitly, and not just to have left it to inference by omitting to list CONC 5.3.1 G in CONC 6.2.2 R.

That is still an excessively long time, but in 2016 and 2017 Mr G generally wasn't only making minimum payments. So when he was given the third and fourth credit limit increases on the Marbles card, NewDay would have expected him to be able to repay his balance in a considerably shorter time.

Nevertheless, starting in January 2018 Mr G only made minimum payments, or payments close to the minimum, on his Marbles account. From February 2018 he only made minimum or nearly minimum payments on his Aqua account.

I think that change in Mr G's usual behaviour is likely to be the result of being over-stretched on his borrowing, leading him into financial difficulties. This coming so soon after the last Marbles limit increase in November 2017 leads me to conclude that it was a direct result of that increase. I must therefore decide whether that was foreseeable by NewDay, and also whether Mr G's difficulties were caused (at least in part) by any of the earlier limit increases by NewDay – that is, the third and fourth increases on the Marbles card (together with the almost contemporaneous increases on the Aqua card).

Although I had reservations about NewDay's decisions to allow Mr G to increase his borrowing in late 2016 and early 2017, Mr G was still able to make significant repayments for some time after that. In the 13 months following November 2016 (from December to the end of 2017), he only made minimum or near-minimum payments on his NewDay cards three times, and then only on one card but not the other at the same time – or on three out of 26 occasions. That suggests to me that his borrowing up until November 2017 was still affordable.

Mr G's credit files suggest the same thing about his payment history on his other cards. He appears to have had four credit cards with third parties during this period, and he was generally making more than the minimum payments on them. The exceptions are in October 2017, when he failed to make any payment on one card (when its balance was £300), and in December 2017 when he made a small payment (£21 towards a balance of £483) which I infer was a minimum payment, or close to the minimum.

However, just because Mr G's borrowing had been affordable up to this point does not necessarily mean that it was safe for NewDay to conclude that he could afford to borrow still more in November 2017. The more commitments a customer has, the more an application for further lending should be scrutinised. Mr G's total borrowing was nearly £3,000 higher than it had been twelve months earlier. He had spent considerably more on purchases than in previous months. He had used his first cash advance in over a year.

So on balance, given Mr G's history, I think that NewDay ought reasonably to have suspected that repayment of the higher amount would not be sustainable.

I therefore propose to uphold this complaint, but only in relation to the last of the limit increases on the Marbles card.

I am currently minded to order NewDay to refund to Mr G all of the interest and charges it has charged him on the Marbles card since 21 November 2017, being the date of the last limit increase on that card, and to pay interest on those refunds.

Although I am dealing with the complaint about the Aqua card separately (and I am currently not minded to uphold it), I think that Mr G's inability to maintain his usual level of payments

on that card was the result of the credit limit increase on the Marbles card. So I think it would be fair for the compensation in this (Marbles) complaint to include a similar refund, with interest, of the charges and interest on the Aqua card as well.

So my provisional decision is that I am currently minded to uphold this complaint in part. Subject to any submissions I receive from the parties by the date below, I intend to order NewDay Ltd (trading as Marbles) to:

- refund to Mr G all of the interest and charges it has charged him on both the Marbles card and the Aqua card since 21 November 2017, and
- pay him interest on the refunds at eight per cent a year from that date to the date of settlement.

responses to my provisional findings

Mr G accepted my decision.

NewDay did not. It provided further evidence about how it carries out its affordability checks.

NewDay also argued that increased spending after a customer takes out a mortgage is normal, because a person who has bought a new house will have increased expenditure for a while afterwards, from buying new furniture and so on. A new mortgage is therefore not an indicator of increased risk. NewDay also argued that Mr G is not in arrears on either of his accounts. Finally, NewDay reminded me of some new rules the FCA has made about persistent debt, which it said should alleviate my concerns about sustainability.

my findings

I regret that it will come as a disappointment to Mr G that NewDay's new evidence has changed my mind. I also regret that because this evidence is commercially sensitive, I cannot share it with him, or describe it in as much detail as I would like to. All I can really say is that how NewDay calculated what it thought Mr G could afford to pay took into account the risk of unexpected further outgoings, and suggested that Mr G could still afford another limit increase. I now think its checks were adequate, and that I can no longer safely conclude that NewDay was irresponsible.

I do not accept NewDay's other arguments. In my provisional decision I did not say that a mortgage was an increased indicator of risk; rather I said that NewDay had properly taken it into account. I had proposed to uphold this complaint based on a limit increase in November 2017, which is a year and a half after Mr G got his mortgage in May 2016, so purchases of furniture and other expenses associated with buying a new home were unlikely to still be relevant. The fact that Mr G is not in arrears doesn't necessarily mean, by itself, that he is not struggling or that the limit increases were responsible. And the new FCA rules were not yet in force in 2017.

Nevertheless, as I now agree that proper creditworthiness checks were carried out, I no longer think that the limit increase in November 2017 was improper.

my final decision

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 25 August 2019.

Richard Wood
ombudsman