

## **The complaint**

Mr S complains that NewDay Ltd trading as Marbles (“NewDay”) was irresponsible when it increased his credit limit.

## **What happened**

NewDay opened a credit card account for Mr S in April 2020 with a credit limit of £450. This type of credit was an open-ended or running account facility. NewDay subsequently increased Mr S’s credit limit to £950 in August 2020; £1,950 in December 2020, and £3,200 in April 2021.

Mr S said that NewDay increased his credit limit to unsustainable levels despite him not having a good credit record. Mr S also said that he has been seriously impacted by this and doesn’t know how he’s going to repay what he now owes.

NewDay didn’t uphold Mr S’s complaint. It said that it is an instant credit provider and most of its applications are completed online. This means that it doesn’t require evidence of income and expenditure by way of bank statements, for example, but instead it uses data submitted by the applicant and information from their credit file. NewDay says that it therefore based its assessment on what Mr S said about his income, its estimate of his expenditure and what it could see on his credit file. It said that Mr S met its acceptance criteria. It opened his account with a £450 balance and offered him ‘opt-outs’ when it increased his balance on subsequent occasions.

Mr S brought his complaint to us. Our investigator assessed the complaint and found that NewDay should have gone further in its affordability checks when it increased Mr S’s credit limit. They concluded that, had proportionate checks been carried out on these occasions, NewDay would have learnt by December 2020 that Mr S wasn’t likely to be able to repay further credit without difficulty. They concluded that NewDay shouldn’t have carried out the December 2020 increase or the increase in April 2021 and recommended that it pay Mr S compensation.

NewDay disagreed with our investigator’s recommendation. It said that there wasn’t anything in the way Mr S was managing his account, or his other accounts, that caused it concern and the credit offered was affordable for him. The complaint came to me, as an ombudsman, to review and resolve.

I issued a provisional decision on 4 November 2022 upholding Mr S’s complaint in part. I’d provisionally concluded that NewDay was irresponsible when it increased the credit limit on Mr S’s account for the third time (in April 2021). I set out my proposals for putting things right for Mr S and allowed time for both parties to comment on what I’d said or provide any new information they wished me to consider when making my final decision.

Mr S accepted my provisional decision and NewDay hadn’t responded.

## 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.

Having done so, and having no new information to consider, I see no reason to depart from my provisional conclusions. I'll set out again my reasons for partly upholding Mr S's complaint in this final decision on the matter.

As I'd said in my provisional decision, I've had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as NewDay, need to abide by. NewDay will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before increasing the limit on Mr S's credit card, NewDay needed to check that he could afford to meet his repayments out of his usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit and Mr S's circumstances.

The overarching requirement was that NewDay needed to pay due regard to Mr S's interests and treat him fairly. CONC 2.2.2G(1) gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

NewDay said that it asked Mr S about his income, estimated his expenses and included information from his credit file about his existing debt repayments when he applied for his credit card account. It recorded Mr S's monthly income as £1,567 and his existing debt as £1,500. It also noted he had £1,900 of defaulted debt with the latest default being 21 months ago. The application information records that Mr S was living with his parents. In August 2020, NewDay increased Mr S's limit from £450 to £950.

NewDay said it conducted in-depth assessments of Mr S's credit performance before each credit limit increase. The assessments considered how Mr S was managing his account and it said the checks were in-line with the regulations. NewDay also said that Mr S used his card mainly for retail spending, with a lower proportion of cash spending. It said that many of the payments he made were over and above the contractual minimum payment required.

I've reviewed the account history and customer contact notes NewDay provided. I can see that Mr S paid more than the minimum payment of £5 each month prior to this increase, paying at least £100. His balance was less than half the credit limit though he was generally spending more than he repaid. The customer notes show that Mr S enquired about a credit limit increase in July 2020 and was told that he'd be offered an increase after six months. Mr S then requested a credit limit increase to £600 in early August but was declined. He was offered the increase to £950 a few weeks after this.

NewDay also gathered information from Mr S's credit file. It seems his balances on other accounts was decreasing, and he had no adverse information recorded.

Altogether, I agree with NewDay that there wasn't anything in the information it had which indicated that Mr S was having problems managing his money. And the amount of credit offered wasn't so great relative to his declared salary that there was an obvious risk to Mr S of having difficulty repaying it within a reasonable period of time. So I don't think NewDay was irresponsible here when it offered Mr S this increase.

In December 2020, NewDay increased Mr S's limit from £950 to £1,950. I appreciate that Mr S had been making more than the minimum payment required prior to this but his balance had nevertheless increased. It seems from the account records that Mr S had been declined for credit increases in September (of £1,400), October and November (of £1,100). In December Mr S called to ask about an offer to increase his credit limit early. The notes say that Mr S was accepted for an increase after confirming his financial situation wasn't expected to change.

I don't know how NewDay verified what Mr S said about his financial situation. Given the amount of credit NewDay was now agreeing for Mr S and the fact that he'd asked repeatedly for credit limit increases, I think it would have been proportionate for it to understand what Mr S's actual means were, to assess whether he would be able to meet his repayments without difficulty within a reasonable period of time.

NewDay said it checked its figures using a credit reference agency tool which considers current account turnover. I appreciate that it sense-checked what Mr S had said about his income and expenditure, but I can't see that NewDay verified his income or asked Mr S about his expenses.

Mr S has provided his bank statements for his current account and I've reviewed these to get an understanding of what NewDay might have found out had it carried out a proportionate check. To be clear, I'm not suggesting this is what NewDay ought to have done but, in the absence of any other evidence such as payslips, benefit letters or rent or mortgage statements for example, I think this information is a reasonable proxy.

The bank statements show that Mr S was earning about £1,640 a month around that time and didn't have many financial commitments. I can identify bill payments of around £170 and a regular transfer to a person referenced 'bills' of £200. He also transferred several hundred pounds regularly to a person referenced 'savings'. Mr S explained to us that he was saving for a holiday.

The remaining spend includes travel and food, and entertainment including gambling. For example, in November 2020 Mr S spent about £250 on takeaways and eating out and about £370 on gambling. I don't think NewDay would have considered that Mr S was spending so much on any particular activity that there was a risk that he would be unable to meet his repayments for this level of credit without difficulty. I think it's likely it would have offered Mr S this increase even if it had looked further into his circumstances before lending to him. Altogether, I don't think NewDay acted irresponsibly here.

Mr S continued to ask for credit increases – he was declined for a limit of £2,500 in February 2021 and the same in March. The account history shows that Mr S transferred £100 from his Marbles account to his current account in April, and that he continued to pay significantly more than the minimum payment each month.

In April 2021, NewDay offered Mr S an increased credit limit of £3,200 which he accepted. As before, I think it would have been reasonable and proportionate of NewDay to have asked Mr S for evidence of his means, given the amount of credit it was now offering and Mr S's continued requests for limit increases.

I've reviewed Mr S's bank statements from around this time, which show that while his identifiable financial commitments remained relatively low, he was spending significant amounts on gambling, for example Mr S spent more than £1,000 on gambling in March 2021 and over £1,200 in April. I can see from the statements that Mr S immediately spent his £100 money transfer from his Marbles account on gambling.

NewDay said in response to our investigator's conclusions that had it seen this type of spend it would not have caused it to act any differently than it did, given Mr S's impeccable account management internally and externally. It also said that Mr S was meeting his commitments and it was up to Mr S how he spent his disposable income.

I can agree with this perspective up to a point. However, as NewDay will know, it was obliged to assess whether there was a risk to Mr S having difficulty meeting his payments out of his usual means. I think that risk would have been evident to NewDay by April 2021, had it carried out a proportionate check, given the amount Mr S was now spending on gambling relative to his income. Furthermore, I don't think providing Mr S with credit in such circumstances would amount to treating him fairly and with due regard to his interests. Altogether, I've concluded that NewDay was irresponsible to have increased Mr S's limit on this occasion, and it needs to take steps to put things right for him.

### **Putting things right**

I've concluded that NewDay was irresponsible when increased Mr S's limit in April 2021 from £1,950 to £3,200. In order to put Mr S back into the position he would have been in had this not happened means he shouldn't have to pay any interest or charges on credit granted over his existing limit of £1,950.

In summary, NewDay should:

- Rework Mr S's account to remove all interest and charges that have been applied to balances above £1,950; and
  - If the effect of this reworking results in a credit balance, then this should be refunded to Mr S along with 8% simple interest\* on the overpayments from the date they were made to the date of settlement. In this case, NewDay should remove any adverse information reported to Mr S's credit file after April 2021; or
  - If an outstanding balance remains on the account once these adjustments have been made NewDay needs to ensure that Mr S is only liable for this adjusted balance and arrange an affordable repayment plan with him. Once Mr S has cleared the outstanding balance, any adverse information recorded after April 2021 in relation to the account should be removed from his credit file.

\* HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Mr S a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

For the reasons set out above, I'm partly upholding Mr S's complaint about NewDay Ltd trading as Marbles and it should now take the steps I've outlined to put things right for him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 January 2023.

Michelle Boundy  
**Ombudsman**