

The complaint

Mr M complains that NewDay Ltd acted irresponsibly in lending him two credit cards.

What happened

Mr M took out a credit card with NewDay under its Aqua brand in June 2021, with a credit limit of £600. In November 2022, Mr M took out a further credit card with NewDay under its Marbles brand, with a credit limit of £600.

In 2023, Mr M complained to NewDay that the credit cards had been unaffordable for him. He explained he'd been struggling with an addiction to gambling. He thought NewDay should have considered his bank statements before agreeing to lend, in which case it would have seen he was struggling to manage his finances.

NewDay didn't issue its final response letter in the time scale set by the regulator, so Mr M referred the complaint to our service.

NewDay said that as Mr M had a county court judgment registered against him in July , so in retrospect it thought there was evidence Mr M had been experiencing financial difficulties. NewDay upheld Mr M's complaint about the Aqua card. To resolve the complaint, NewDay offered to refund the interest and charges applied to the Aqua card, along with 8% simple interest where there was a resulting credit balance.

NewDay thought it had acted reasonably in offering Mr M the Marbles card.

Our Investigator thought NewDay's offer was a fair way to put Mr M's complaint right. He thought NewDay had conducted proportionate checks before offering Mr M the Marbles card, and hadn't found indications of recent financial stress. So he didn't think NewDay should have considered any further information – such as Mr M's bank statements – which meant he didn't think it would have seen any evidence of gambling.

Mr M disagreed. In summary, he said he had been overlimit on the Aqua card in the months prior to applying for the Marbles card, and had only been making the minimum payment. He thought that this, as well as the level of borrowing he had at the time – including a recent payday loan – should have prompted NewDay to verify his income and expenditure with his payslips and bank statements. He said this would have led NewDay to realise he wasn't living within his means and was borrowing from friends and family.

I issued a provisional decision. In summary, I said that as NewDay had made an offer to resolve the complaint about the Aqua card, which Mr M had accepted, I didn't consider NewDay's decision to lend on that account. I said I thought that NewDay should have conducted further checks before offering the Marbles card, and if it had done so it would have found that the account wasn't sustainably affordable. I therefore upheld Mr M's complaint about the Marbles card.

Mr M accepted the provisional decision. NewDay said it had no further comments or evidence. So the case returns to me 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.

In my provisional decision, I said:

“Firstly, I'd like to say how sorry I am to hear about the difficult time Mr M has had over the last few years. I don't doubt how stressful things have been for him.

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 accounts it needed to complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the debt in a sustainable way, without borrowing further elsewhere. As these were open ended accounts, NewDay also needed to consider whether Mr M would be able to repay the debt within a reasonable period.

NewDay has already made an offer to resolve Mr M's complaint about the Aqua card, which Mr M has accepted. So I haven't considered NewDay's decision to offer the Aqua card to Mr M in this decision.

I've focused on NewDay's decision to offer the Marbles card in November 2022. NewDay has explained that in considering the application, it relied on the information Mr M provided, the information it held about the conduct of his accounts with it, and information from external data sources – such as credit reference agencies.

When Mr M applied for the Marbles card, NewDay found that he had two defaulted accounts, the most recent of which had occurred 42 months prior, and one public record (such as a CCJ) against his name from 17 months prior. It found the defaulted accounts had a balance of £700, and the public record had a balance of £800.

NewDay had also gathered further information from credit reference agencies during its operation of Mr M's Aqua card, which I would expect it to take into account in considering the application for the Marbles card. This showed that Mr M had around a balance of around £2,100 on his revolving credit accounts (such as credit cards) elsewhere – close to his limit of £2,250. It showed a non-revolving credit balance (such as personal loans) of just under £5,000. The information from credit reference agencies that NewDay saw showed that all Mr M's current credit commitments were up to date.

Mr M says he took out a payday loan shortly before taking out the Marbles card, but the information from credit reference agencies NewDay saw at the time doesn't show record of any payday loans in Mr M's name. It may be that the loan had not yet been reported to the relevant credit reference agency by the lender.

Mr M declared his annual income as £68,000, or around £4,000 a month. NewDay says it considered information from credit reference agencies about his current account turnover to corroborate this. Mr M hasn't disputed his income was £68,000 a year, but says that he wasn't living within his means and was borrowing from friends and family.

Mr M has said he thinks he was showing signs of financial stress, such as that his Aqua card had been used up to (or over) its limit in the six months prior to his application for the Marbles card. I can see that the Aqua card was close to, or slightly over, the limit on the statement date for the four months prior to Mr M's application for the Marbles card.

NewDay offered Mr M a credit limit of £600 on the Marbles card, meaning the total credit available to him on all his NewDay accounts was £1,200. Sustainable repayments of around 5% of the total credit limit – allowing Mr M to repay the interest charged and part of the capital if the accounts were utilised to their limit – would be around £60.

I think that NewDay should have been prompted to conduct further checks before offering the Marbles card to Mr M, for several reasons. Mr M declared a relatively high income, yet had unsatisfied defaulted accounts and CCJs. He had gone over the limit on his Aqua card on more than one occasion, and was very close to his overall credit limit. I think these were signs that Mr M was experiencing financial stress.

So I think NewDay should have asked for Mr M's bank statements before offering him the Marbles card, to verify his outgoings. Mr M has supplied copies of his bank statements, which show his salaried income was just under £4,900 per month. They showed that Mr M's existing credit commitments and essential living expenses were relatively low. But they also showed that Mr M was gambling significantly – an average of over £5,000 a month to betting shops and websites – as well as taking out significant cash withdrawals.

I think that, had NewDay conducted proportionate checks, it should have had cause for concern that payments towards the Marbles would be sustainable for Mr M – and I think it wouldn't have gone on to offer it

For these reasons, I am upholding Mr M's complaint about the Marbles card."

I've read the full file again. As neither party provided any comments nor objections, I see no reason to depart from my provisional findings.

Putting things right

To put things right, NewDay Ltd should:

- Rework the Marbles credit card account, removing all interest and charges.
- If the reworks result in a credit balance, this should be refunded to Mr M along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay Ltd should also remove all adverse information regarding the credit cards from Mr M's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay Ltd should arrange an affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the outstanding balance, any adverse information recorded in relation to the accounts should be removed from his credit file.

My final decision

My final decision is that I uphold this complaint. To put things right, NewDay Ltd should:

- Rework the Marbles credit card account, removing all interest and charges.
- If the reworks result in a credit balance, this should be refunded to Mr M along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay Ltd should also remove all adverse information regarding the credit cards from Mr M's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay Ltd should arrange an affordable repayment plan with Mr M for the remaining amount. Once

Mr M has cleared the outstanding balance, any adverse information recorded in relation to the accounts should be removed from his credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 July 2024.

*HM Revenue & Customs requires HSBC to deduct tax from any award of interest. It should give Mr M a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

Frances Young
Ombudsman