

## **The complaint**

Ms W is unhappy that NewDay Ltd, trading as Marbles, provided her with a credit account which she feels was unaffordable for her at that time.

Ms W is also unhappy that NewDay Ltd, trading as Marbles, subsequently increased the credit limit on her account, which again was unaffordable for her at that time.

## **What happened**

Ms W applied for a NewDay credit account in June 2015. Ms W's application was approved, and her credit account was opened with an initial credit limit of £300.

In September 2015, the credit limit on Mr W's account was increased to £950. A further credit limit increase, from £950 to £1,200, was proposed by NewDay in February 2016, but this credit limit increase subsequently didn't take place.

Ms W encountered difficulties maintaining her credit account and the account fell into arrears. This resulted in Ms W's account being defaulted for non-payment of outstanding arrears in December 2016, and the account was subsequently sold by NewDay to a debt purchasing company, with whom the account currently resides.

In November 2019, Ms W raised a complaint on the basis that she felt that she shouldn't have been approved for the credit account, or the later credit limit increase, because of her personal and financial circumstances at those times.

NewDay looked at Ms W's complaint, but they explained that they had undertaken checks into Mr W's financial position, both at the time of the initial account application and the subsequent credit limit increase, and that there was nothing within those checks that gave them cause to consider that the credit being offered was unaffordable for Ms W at those times. So, they didn't uphold Ms W's complaint.

Ms W wasn't satisfied with NewDay response, so she referred her complaint to this service. One of our investigators looked at this complaint. They also felt that the checks that NewDay had undertaken into Ms W's financial situation at the time of the initial account application hadn't highlighted anything that should have given NewDay reason to suspect that the credit account with the initial credit limit of £300 should have been unaffordable for Ms W. So, they didn't recommend that this aspect of Ms W's complaint be upheld.

However, our investigator did feel that the information that was available to NewDay at the time of the credit limit increase to £950 in September 2015 should have given NewDay cause to consider that the credit limit increase might not be affordable for Ms W at that time, such that it shouldn't have been offered. So, our investigator recommended that this complaint be upheld in Ms W's favour on that basis, and they recommended that NewDay undertake corrective action accordingly.

NewDay accepted the spirit of our investigators' decision, but they noted that there had been some confusion surrounding a linked complaint Ms W had raised, whereby NewDay had

worked on the basis that Ms W's complaint here – against NewDay Ltd, trading as Marbles – was included in that linked case and had taken corrective action on that case accordingly. As such, NewDay felt that they were being asked in this instance to duplicate corrective action already undertaken by them in relation to Ms W's Marbles account.

Our investigator noted the confusion and amended their recommendation to take account of this. Ms W wasn't satisfied with the final recommendation made by our investigator, so the matter was escalated to an ombudsman for a final decision.

### **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.

I issued a provisional decision on this complaint on 28 May 2021 as follows:

*Given the confusion surrounding this complaint, I feel it's important to structure this provisional decision letter to clarify all aspects of this complaint under consideration. As such, I'll deal first with the complaint, and then with what I feel NewDay need to do resulting from the complaint.*

#### *The complaint*

*It's for a business to decide whether they will offer credit to a customer, and if so, how much and on what terms. What this service would expect would be that the business would conduct reasonable and proportionate checks to ensure that any credit being offered to a customer is affordable for that customer at that time.*

*With regard Ms W's initial account application, NewDay say that they did that there. They took details of Ms W's income and expenditure to ensure that she had sufficient disposable monthly income to be able to afford the potential repayments, and they checked Ms W's credit file to get a wider understanding of her financial position at that time. And NewDay contend that there was nothing resulting from these checks that gave them cause to suspect that the credit being offered to Ms W was unaffordable for her at that time.*

*I've reviewed the information that NewDay took into account when considering Ms W's account application and having done so I'm satisfied that it was reasonable for NewDay to conclude that the credit account with the initial credit limit of £300 would be affordable for Ms W at that time. Ms W's annual income was recorded as being in excess of £26,000, and while there were historical defaults present on Ms W's credit file, these were all older than three years at the time of the account application, and I feel that it was reasonable for NewDay to conclude from Ms W's credit file at that time that Ms W had been managing her existing credit responsibly and without significant incident in the more recent past.*

*It follows that I'm satisfied that it wasn't unfair or unreasonable for NewDay to conclude that a credit account with a credit limit of £300 would be affordable for Ms W at the time of the application, and I can't therefore conclude that NewDay shouldn't have offered this credit account to Ms W following her applying for the account in June 2015.*

*However, I'm not convinced that it was fair or reasonable for NewDay to draw the same conclusions with regard the later credit limit increase, from £300 to £950, in September 2015. And I say this because Ms W's credit file at that time demonstrated*

*a deterioration in her financial position including that she was in arrears with another credit provider at that time. And I note that NewDay, in their correspondence with this service, have accepted that this credit limit increase shouldn't have been offered to Ms W for this reason.*

*It follows from this that I'll be provisionally upholding this account in Ms W's favour, on the basis of the credit limit increase from £300 to £950 in September 2015 only.*

*Putting things right*

*I'd like to clarify the action that NewDay must undertake as follows:*

- 1. NewDay must reimburse all interest incurred on Ms W's account for the balance over £300 from 16 September 2015 onwards.*
- 2. NewDay must also reimburse all fees and charges incurred on Ms W's account after that same date.*
- 3. If these reimbursements result in a credit balance on the account in Ms W's favour, NewDay must pay this balance to Ms W along with 8% simple interest, calculated from the date of the interest, fee, or charge being reimbursed to the date of payment to Ms W.*
- 4. Finally, NewDay must remove all adverse reporting from Ms W's credit file from September 2015 onwards.*

*With regard point three above: In their initial view of this complaint, our investigator recommended that NewDay should reimburse all interest, charges and fees (points one and two above) along with 8% simple interest. NewDay correctly pointed out that an award of 8% interest is usually only made when a customer is deemed 'out of pocket' or to have incurred a financial loss, and so our investigator removed the requirement to include 8% interest from their amended view.*

*However, if it's the case that the reimbursements made to Ms W's account as a result of points one and two above leave Ms W's account with a credit balance in her favour, then I consider that she can be considered as being 'out of pocket' for that credit amount, and so I have included point three so as to instruct NewDay to pay 8% simple interest on that credit balance – if such a credit balance comes to exist.*

*Finally, in their initial view of this complaint, our investigator also recommended that NewDay should make a payment of £200 to Ms W to compensate her for the trouble and upset that she had incurred as a result of her account being sold to a debt purchasing company, which, given that NewDay were aware of Ms W's health problems at that time, it was felt shouldn't have taken place.*

*NewDay accepted the spirit of our investigator's decision here, but they explained that there had been some confusion with regard a linked complaint for another NewDay account that Ms W had raised. Essentially, NewDay explained that they hadn't correctly registered that the complaint had been split such that each NewDay account was being treated separately and had believed that there was only one complaint incorporating both NewDay accounts. And it's notable that NewDay's submissions to this service appear to corroborate that there was a misunderstanding at NewDay with regard how the complaints had been structured by this service.*

*NewDay then explained that they had already made a payment to Ms W of £300 in relation to the linked complaint on the basis of their selling Ms W's accounts to the debt purchasing company, and that NewDay felt that this amount was fair and reasonable compensation for both accounts being transferred, and had been agreed by them as such on that understanding.*

*This seems reasonable to me, and I can confirm that considering the £300 payment made to Ms W as being £150 per account is commensurate with what this service would expect, given the circumstances here. And I don't feel that it would be reasonable or proportionate to instruct NewDay to make further payment regarding this point. I can appreciate from Ms W's correspondence that Ms W doesn't share my opinion on this matter, but my provisional decision here won't include any requirement for NewDay to make any further payment in this regard.*

*I hope that this provisional decision provides a clear explanation of my current position on this matter, and I welcome any comments of further information either party might wish to provide.*

In my provisional decision letter, I gave both Ms W and NewDay the opportunity to provide any comments or additional information they wished me to consider before I moved to a final decision.

NewDay confirmed that they had nothing further to add and that they accepted the provisional decision. Whereas Ms W asked me to reconsider my not instructing NewDay to pay compensation for distress and inconvenience in this instance on the basis that there had been some confusion regarding the separating of this complaint from a related complaint and the payment of compensation that has already taken place on that related complaint - as described above.

Ms W feels that compensation should be warranted on both complaints, given that they are being considered separately, and that therefore the £200 compensation amount initially recommended by our investigator should be reinstated here.

I can appreciate Ms W's point here – to a degree. But given that there has been some confusion over the separation of this complaint from the related complaint. And, given that a payment of £300 compensation has already been paid on that related complaint, I don't feel that a further payment of compensation is warranted on this complaint in this instance.

The reason I say this is that I don't feel that a total compensation amount of £500 across both complaints is reasonable and proportionate in this instance, and I note that it goes beyond what this service would consider as commensurate, given the circumstances here.

Instead, I feel that the £300 already paid by NewDay, who at the time were under the incorrect impression that the payment related to both complaints and so didn't challenge the amount, does represent a fair and reasonable compensation amount across both complaints, and I note that considering that payment as £150 per complaint is commensurate with what this service would expect here.

As such, while I understand that Ms W may not agree with my position here, and while I apologise for any confusion that this matter may have caused, I see no reason not to uphold this complaint on the basis outlined in my provisional decision, and my final decision will therefore be a confirmation of the provisional decision previously issued.

**Putting things right**

NewDay must reimburse all interest incurred on Ms W's account for the balance over £300 from 16 September 2015 onwards.

NewDay must also reimburse all fees and charges incurred on Ms W's account after that same date.

If these reimbursements result in a credit balance on the account in Ms W's favour, NewDay must pay this balance to Ms W along with 8% simple interest, calculated from the date of the interest, fee, or charge being reimbursed to the date of payment to Ms W.

Finally, NewDay must remove all adverse reporting from Ms W's credit file from September 2015 onwards.

### **My final decision**

My final decision is that I uphold this complaint against NewDay Ltd, trading as Marbles, on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 28 July 2021.

Paul Cooper  
**Ombudsman**