DRN-3371735

Financial Ombudsman Service

The complaint

Miss F is unhappy that NewDay Ltd, trading as Marbles, provided her with increasing amounts of credit, which she feels was unaffordable for her at those times.

What happened

Miss F applied for a NewDay credit account in September 2016. Her application was successful, and NewDay provided Miss F with a credit card account with an initial credit limit of £900. New Day offered and implemented several credit limit increases on the account, and also approved Miss F for other NewDay branded credit accounts on three other occasions, such that by January 2020 the total amount of credit being provided to Miss F by NewDay was £8,450.

In December 2020, Miss F raised a complaint with NewDay on the basis that, in all instances, the credit that NewDay had provided to her had been unaffordable for her at those times. NewDay looked at Miss F's complaint, but they noted that they'd undertaken checks into Miss 's financial position before offering any credit or further credit to her, and they felt that on all occasions there'd been nothing resulting from these checks that should have given them cause to suspect that Miss F might not be able to afford the credit being offered. So, they didn't uphold Miss F's complaint.

Miss F wasn't satisfied with NewDay's response, so she referred her complaint to this service. One of our investigators looked at this complaint. They felt that there'd been nothing in the creditworthiness information that NewDay had assessed for the earlier provisions of credit that should have given NewDay cause to suspect that Miss F might not be able to afford that credit. However, they felt that the information that NewDay assessed about Miss F's financial position for some of the later provisions of credit – when Miss F had an increasing amount of existing credit debt – was such that NewDay should have reasonably concluded that Miss F might not be able to afford that credit, and therefore shouldn't have provided that further credit to her.

NewDay didn't agree with the view put forward by our investigator on this complaint and continued to feel that all provisions of credit had been provided fairly and reasonably. 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 14 February 2022 as follows:

> *It's for a business to decide whether it will offer credit to a customer, and if so, how much and on what terms. What this service would expect would be, that before approving a customer for a new line of credit, or before increasing the amount of credit available to a customer on an existing line of credit, the business would*

undertake reasonable and proportionate borrower focussed checks to ensure that any credit being offered to a customer is affordable for that customer at that time.

In this instance, Miss F applied for four different NewDay branded credit accounts (which I'll refer to as Accounts 1, 2, 3, and 4 respectively). And at each point of application, NewDay took information from Miss F about her income and expenditure, as well as obtained information about Miss F from a credit reference agency, so as to get a better understanding of Miss F's wider financial position at that time. Furthermore, before NewDay increased the credit limit on a credit account (which took place a total of five times) they reviewed how Miss F had managed that credit account to that time, as well as obtained updated information from a credit reference agency to refresh their understanding of Miss F's wider financial position.

It's notable that at all four points of account application, which took place in September 2016, October 2017, February 2018, and January 2020 respectively, Miss F's declared personal income didn't change significantly, being £21,000 per annum in 2016 and rising to £22,000 at the time of the 2018 and 2020 account applications.

This is in contrast to the amount of existing credit that Miss F held, which increased consistently and significantly throughout the period under consideration, being approximately £3,000 at the time of the first account application in 2016, rising to approximately £8,600 at application two in 2017, £12,500 in 2018, and £19,400 at the time of the final account application in January 2020.

Conversely, having reviewed the various account statements, it's evident that Miss F didn't appear to be struggling to maintain the credit accounts within the agreed credit limits. And I say this because there are very few instances of Miss F going over the credit limit on an account and incurring over-limit fees as a result. And this picture of Miss F being able to maintain her credit accounts appears to be supported by the information that NewDay frequently obtained about Miss F's credit file, which continued to show that Miss F wasn't in arrears on any of her other credit accounts or was using short-term 'payday' loans, which might have been indicators that Miss F was in financial difficulty such that the provision of further credit likely shouldn't have taken place.

All of which paints the picture that Miss F, during the time that NewDay approved her for initial and further credit, had a stable but relatively low annual income and was able to manage and maintain her credit commitments without significant incident. However, it's also notable that Miss F's total amount of existing credit was increasing steadily and significantly, to the point where the total amount of credit debt that Miss F held was approaching Miss F's annual income amount.

This doesn't feel sustainable to me, and I find it difficult to conclude that, by continuing to provide Miss F with increasing amounts of credit, NewDay were providing credit to Miss F responsibly here.

This begs the question of at what point did Miss F's amount of existing credit become such that the provision of further credit to Miss F shouldn't fairly and reasonably have taken place. This is a difficult question, but it's notable that in their correspondence with this service, NewDay have stated that they consider a debt-to-annual-income percentage of 60% and above to be too high.

It's also notable that, at the time of the third credit account application in February 2018, Miss F's annual income was £22,000, her total amount of existing credit was £12,500, and NewDay approved Miss F for a further £1,500 credit, taking the total amount of Miss F's credit to £14,000 – which equates to over 63% of Miss F's annual income at that time.

Accordingly, given that NewDay appear to have not adhered to their own standards by providing this credit, and given also that I feel that this provision of credit marks the 'tipping point' from when the provision of further credit by NewDay to Miss F no longer feels fair and responsible, my provisional decision here will be that NewDay should have concluded that all the credit provisions after and including the third account application in February 2018 – which also include a credit limit increase on the first credit account in October 2018 (from £4,000 to £5,200) and the fourth credit account application in January 2020 – most likely wouldn't be affordable for Miss F and therefore shouldn't have been provided to her. And I will be provisionally upholding this complaint in Miss F's favour on that basis.

As such, my provisional instructions are that NewDay must reimburse to Miss F's accounts all interest, fees, and charges that have accrued or been incurred on the two most recently applied for credit accounts (accounts 3 and 4) and also for any portion of the balance of credit account 1 above £4,000 from the point of the credit limit increase to £5,200 onwards.

If these reimbursements result in an account having a credit balance in Miss F's favour, this balance must be paid by NewDay to Miss F along with 8% interest calculated to the date of payment.

NewDay must also remove all adverse credit reporting relating to any and all of Miss F's credit accounts from February 2018 onwards.

Finally, NewDay must make a payment of £250 to Miss F to compensate her for any trouble and upset this matter may have caused. This payment may not take the form of a credit to one of Miss F's NewDay accounts unless Miss F gives her permission for it to do so.

In my provisional decision letter, I gave both Miss F and NewDay the opportunity to provide any comments or new information they might wish me to consider before I moved to a final decision.

Neither Miss F or NewDay provided any comments or new information, and so I see no reason not to issue my final decision on the same basis as outlined above.

Putting things right

NewDay must reimburse to Miss F's accounts all interest, fees, and charges that have accrued or been incurred on the two most recently applied for credit accounts (accounts 3 and 4) from inception, and also for any portion of the balance of credit account 1 above £4,000 from the point of the credit limit increase to £5,200 onwards.

If these reimbursements result in an account having a credit balance in Miss F's favour, this balance must be paid by NewDay to Miss F along with 8% simple interest calculated to the date of payment.

NewDay must also remove all adverse credit reporting relating to all four of Miss F's credit accounts from February 2018 onwards.

Finally, NewDay must make a payment of £250 to Miss F to compensate her for any trouble and upset this matter may have caused. This payment may not take the form of a credit to one of Miss F's NewDay accounts unless Miss F gives her permission for it to do so.

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 Miss F to accept or reject my decision before 12 April 2022.

Paul Cooper
Ombudsman