

## **The complaint**

Mrs T complains that NewDay Ltd trading as Marbles has irresponsibly lent to her.

## **What happened**

Mrs T applied for a branded NewDay credit card in March 2020 and was accepted for a £900 credit limit. Mrs T complained to NewDay that they had irresponsibly lent to her and they shouldn't have accepted her application as she was having financial difficulties at the time. She said at the time of the application she had five defaults and two County Court Judgements (CCJ's).

NewDay did not uphold Mrs T's complaint. They said at the time of the application, Mrs T had told them that she was employed, with a gross salary of £45,000 and had unsecured debt of £2,100. NewDay's external checks showed that Mrs T had four defaults which were registered 49 months prior to her application which totalled £2,300 and one CCJ which was for £800, also 49 months ago. NewDay said Mrs T had no payday loans, no arrears and no repayment plans at the time of her application.

NewDay said that as Mrs T had passed their criteria, she was accepted for a £900 credit limit which never increased. NewDay said that as she had reached a certain point in arrears due to the contractual minimum payment not being met, they had sold her debt to a third party debt management company.

Mrs T brought her complaint to our service. Our investigator upheld Mrs T's complaint. He said that NewDay's data showed that Mrs T had an additional mortgage from June 2020, however, this was not showing on NewDay's data, so instead of total mortgage balances totalling £232,322, NewDay's data showed total mortgage balances as £103,000.

Our investigator looked at Mrs T's credit file. Our investigator said that he couldn't agree that Mrs T wasn't in arrears at the time of the application as her credit file showed she had one month's arrears on a hire purchase agreement. She had built up five months of arrears with her energy supplier 18 months prior to her application. He said in December 2019, Mrs T had built up three months of arrears on another hire purchase agreement.

Our investigator said that this should have prompted NewDay to do further checks. He looked at Mrs T's bank statements for the months leading up to her acceptance for the credit card. Our investigator said that her bank statements showed she often had returned direct debits (and incurred charges for this) for essential outgoings such as gas, electricity, council tax and insurance.

Our investigator concluded that NewDay did not conduct proportionate checks and if they had of done then he believed NewDay would have rejected Mrs T's application. To put things right for Mrs T, our investigator said that NewDay should refund all charges, fees and interest which they charged Mrs T. He said NewDay should consider buying back the debt from the company they sold it to and NewDay should arrange an affordable repayment plan for Mrs T. He also said that NewDay should remove all adverse data of the account from Mrs T's credit file to reflect the lending shouldn't have been granted.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Before agreeing to approve the credit limit for Mrs T, NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable for her. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances.*

*I've looked at what checks NewDay said they did prior to accepting Mrs T's application. They said at the time of applying for the credit card, they considered the information that Mrs T had gave them, such as being employed, earning a salary of £45,000, being a council tenant and they looked at her credit file. NewDay said that Mrs T's credit file showed she had external unsecured outstanding debt of £2,100.*

*But that's not all the credit file showed. It showed that Mrs T had defaulted in the past and had CCJ's, but this was 49 months ago when these were applied. So NewDay would have been aware that Mrs T had previously not maintained her agreements. But the data also showed she had no accounts in arrears and no repayment plans.*

*So I've considered if the checks that NewDay carried out were proportionate to the level of credit that Mrs T was given. And despite the credit limit not being high in relation to Mrs T's salary, I'm persuaded there are other factors which should have persuaded NewDay to make further checks and I'll explain why below.*

*Mrs T's application appears to have a contradictory information. While on one hand it is documented she is a council tenant, on the other hand she is shown as having a mortgage. I'm persuaded that this should have prompted NewDay to make further checks to make sure the accommodation status was accurate. They then would have found out that despite their data showing she had one mortgage, she would have had two mortgages. This then should have prompted NewDay to see if any other information was incorrect and completed proportionate checks such as either contacting Mrs T to discuss her situation or by seeing evidence of income/outgoings.*

*I'm also persuaded that there was further information available to NewDay which should have prompted them to make further checks with Mrs T. I say this as Mrs T had a CCJ within 49 months of the application. Given that the amount of the CCJ wasn't high – but it was lower than the credit limit approved here (£800), this could indicate that Mrs T would struggle to pay back even a modest credit limit, such as the £900 credit limit which NewDay approved for Mrs T.*

*One of the other indicators of how Mrs T was managing her finances at the time is that she had recently (five months earlier) been accepted from a third party for a credit card with what appears to be a £1,000 credit limit. But Mrs T uses nearly all of this limit straight away. This could show that she was not managing her finances at the time or she may be suffering from financial difficulty. So for this reason, I'm persuaded that as part of a proportionate check, NewDay should have requested information from Mrs T to discuss her finances, for example, one of the things they could have requested were her recent bank statements to validate Mrs T's income and expenditure and living arrangements.*

*Mrs T has provided her bank statements so we could see how she managed her money at*

*the time. Mrs T's bank statements show that between 1 December 2019 and 1 March 2020, that she had 16 direct debits returned as she did not have enough money in her bank to pay these. The statements also appear to confirm what Mrs T has said about also needing to borrow money from other people, as she had previously told us. So her bank statements clearly indicate that she had to borrow money from one month to the next to meet her commitments and often this was still not enough to meet her commitments.*

*So I'm satisfied from the information I've seen here that Mrs T could not afford her commitments prior to NewDay accepting her for the credit card without her borrowing to do so. In my view, this was unaffordable for Mrs T. If NewDay had asked for details of her outgoings/bank statements as part of a proportionate check when considering her application, then I'm persuaded they would have seen the payments on the credit card would not have been sustainable or affordable and I'm satisfied they wouldn't have accepted her application for the NewDay credit card, based on someone who was clearly struggling to meet her commitments and borrowing from multiple sources just to do so.*

*So, I intend to ask NewDay to buy back the account from the third party debt management company and to arrange an affordable repayment plan with Mrs T, taking into full account her current circumstances. I also intend to ask them to remove all interest and charges applied to the account and recalculate what (if anything) Mrs T owes from the initial amount she borrowed (taking account of any payments she's made).*

*As I'm persuaded that had NewDay completed further checks which were proportionate to her individual circumstances, they wouldn't have lent to her. They should also remove any adverse information from Mrs T's credit file relating to the NewDay credit card and ask the third party company to do the same."*

I invited both parties to let me have any further submissions before I reached a final decision. Mrs T said she had nothing to add to the provisional decision. NewDay did not accept the provisional decision. In summary, they said the difference between a council tenant and someone who holds a mortgage wouldn't be significant enough to make further checks as there was no reason to think Mrs T's financial situation was worse than they had suggested, they said that her residential status is not relevant to the question of affordability. They said their information showed Mrs T having a mortgage balance of £103,000 and compared to her gross salary, the NewDay account with a credit limit of £900 was clearly affordable.

NewDay also said that if they had asked Mrs T about the residential discrepancy then Mrs T would've provided a reasonable explanation and it would be unlikely to have revealed she had a second mortgage. But even if it did, the application would likely to have been approved. NewDay said it was unreasonable to suggest a CCJ 49 months earlier should be held against her application and they didn't understand how a CCJ less than the credit limit they approved would indicate she may struggle to pay back a credit limit of £900. NewDay also said that to be aware of the fact she had taken a credit card with a third party provider and spent the £1,000 and used nearly all of the credit limit straight away then they would've needed to have requested detailed financial information from Mrs T, but they didn't think it would be reasonable to do so.

### **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.

NewDay have made a number of points to this service and I've considered and read everything they've said and sent us. But, in line with this service's role as a quick and

informal body I'll be focusing on the crux of the complaint in deciding what's fair and reasonable here.

I've considered what NewDay have said regarding the discrepancy in the residential status on the application and that this wouldn't have made a difference to Mrs T being accepted for the credit card. They've said that this wouldn't affect the affordability. But I'm not persuaded that this should be the case. I say this as typically a homeowner would have more additional outgoings related to the mortgage than a council tenant would have. For example, a homeowner may be paying for buildings insurance, which a council tenant wouldn't be required to do, or life and critical illness policies, protecting the outstanding mortgage balance, and other possible associated costs. So I'm not persuaded that the discrepancy shouldn't have been investigated.

In Mrs T's situation, as she held two mortgages, then not only would she have the extra mortgage payment to make, which NewDay hadn't accounted for, but also, potentially extra associated costs with this. I see no reason why Mrs T wouldn't have disclosed this information if she was asked about her residential status. Just because a customer earns £45,000 gross, this doesn't mean that they automatically have sufficient disposable income to afford any credit limit, regardless if NewDay approved a £900 credit limit for her.

The fact that Mrs T did have a CCJ registered against her for a lower amount than the credit limit granted is evidence that Mrs T may not be able to manage modest amounts of borrowing – even if this was four years prior to her being accepted for the NewDay credit card. She also had four defaults of which the total amount of defaults was £2,300 – so again, at least one or more of the defaults would have been for less than the credit limit that NewDay had approved for her.

I've considered what NewDay have said about not knowing that Mrs T had ran up nearly a £1,000 credit limit just five months prior to being accepted for the NewDay card. This is a fair point and I accept they wouldn't have known this without doing further detailed checks.

But in summary, I'm satisfied that the discrepancy in Mrs T's residency status should have prompted further investigation. And the fact that Mrs T had a CCJ and four defaults for relatively small amounts – even if this was four years ago. Then it would have come to light about the extra outgoings that NewDay hadn't accounted for at their underwriting stage. This should have prompted NewDay as part of proportionate check to request further information from Mrs T, for example her bank statements. Then it would have come to light that the payments on the credit card would not have been sustainable or affordable for her and I'm satisfied they wouldn't have accepted her application for the NewDay credit card, based on someone who was clearly struggling to meet her commitments and borrowing from multiple sources just to do so. So I'll be asking NewDay to put things right for Mrs T.

### **Putting things right**

In my provisional decision I said I intend to ask NewDay Ltd trading as Marbles to:

Buy back the debt from the debt management company they sold Mrs T's debt to and contact her to put in place an affordable repayment plan;

Refund all interest and charges applied to the account from the date the account was opened to the date of settlement;

If this results in a credit balance, refund that credit balance to Mrs T, and add 8% simple interest per year from the date the credit card would have first gone into a credit balance to the date of settlement;

Remove any adverse entries on Mrs T's credit file relating to her NewDay credit card and ask the third party debt management company to do the same.

I'm still satisfied this is a fair outcome for the reasons given previously.

### **My final decision**

I uphold the complaint. NewDay Ltd trading as Marbles should settle the complaint in line with the instructions in the *"putting things right"* section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 14 April 2022.

Gregory Sloanes  
**Ombudsman**