DRN-3479382

The complaint

Mr R says NewDay Ltd ("NewDay") irresponsibly lent to him. He has requested that the interest and late payment charges he paid on the account be refunded.

What happened

This complaint is about a credit card account, trading as Marbles, provided by NewDay to Mr R. The account was opened in April 2019 with Mr R being given an initial credit limit of £450. This limit was increased twice; in May 2021 it rose to £1450 and it reached £2450 in September 2021.

Mr R says he's unhappy that NewDay continued to increase his credit limit on the account when he was in financial difficulties.

Our adjudicator partially upheld Mr R's complaint and thought that NewDay ought to have realised that Mr R wasn't in a position to sustainably repay any further credit on the account by the time it offered Mr R the increased credit limit in May 2021, when it increased Mr R's credit limit to £1450. NewDay asked to see some of the evidence the adjudicator relied on. That was supplied and NewDay has not made any further submission on the case. So, the complaint has been passed to me for a 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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website.

NewDay needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr R could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that NewDay should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);

- the *greater* the frequency of borrowing, and the longer the period of time during which a customer has been indebted (reflecting the risk that prolonged indebtedness may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Our adjudicator set out in some detail why he thought NewDay was reasonable in providing credit initially in April 2019 of £450. I agree. I say that because the initial lending was modest and so would have been the monthly payments for it. Mr R told NewDay he had a regular employed income. And whilst there was a default in Mr R's credit history, it had occurred over 2 years before the lending decision in 2019.

Our adjudicator explained why NewDay shouldn't have provided Mr R with any additional credit in May 2021 when the credit limit was increased to £1450. I agree with the adjudicator's findings.

Mr R has been able to provide us with copies of his bank statements covering the period he had the account. But given the particular circumstances of Mr R's case, based on the information Mr R and NewDay has given, I think that a point was reached by May 2021, when NewDay increased Mr R's total credit limit to £1450, which ought to have prompted NewDay to realise further credit as likely to be unaffordable or otherwise harmful to Mr R.

I say this because proportionate affordability checks would have likely shown NewDay that Mr R was by that time having difficulty managing his money. Although Mr R hasn't provided his credit report, he has provided bank statements for much of 2021, and these have been shared with NewDay. These statements show repayments to several short-term lenders in the months leading up to the increase of the credit limit in May 2021. Mr R was regularly borrowing money from high cost lenders, this ought to have indicated it was likely he was overly reliant on borrowing and that further borrowing may not have been sustainable. That means he was likely unable to reduce the increasing debt on the account whilst at the same time having to meet his daily living expenses and other credit commitments.

So, I think that proportionate checks would likely have shown NewDay that Mr R was in difficulty with managing his account alongside his other debts and day-to-day living expenses. I also think there was a significant risk that further increases to his credit limits could have led to his indebtedness increasing unsustainably, such that he had no funds available to meet his debts and regular outgoings.

It follows that I think that Mr R lost out because NewDay provided him with further credit from 1 January 2019 onwards. In my view, NewDay's actions unfairly prolonged Mr R's indebtedness by allowing him to use credit he couldn't afford over an extended period of time and the interest being added would only have the effect of putting him into further debt.

It follows that NewDay should put things right.

Putting things right

As I don't think NewDay should have increased Mr R's credit limit to £1,450 on 1 May 2021, I don't think it's fair for it to charge any interest or charges on any balances which exceeded the previous limit of £450. However, Mr R has had the benefit of all the money he spent on the account, so I think he should pay this back. NewDay should:

- Rework Mr R’s account to ensure that from 1 May 2021 onwards interest is only charged on balances up to the total credit limit of £450, including any buy now pay later interest, (being the credit limit in place before that date) to reflect the fact that no further credit limit increases should have been provided. All late payment and over limit fees should also be removed; and

- If an outstanding balance remains on the account once these adjustments have been made NewDay should contact Mr R to arrange an affordable repayment plan for these accounts. Once Mr R has repaid the outstanding balance, it should remove any adverse information recorded on Mr R’s credit file from 1 May 2021 onwards for each account.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr R, along with 8% simple interest per year on the overpayments from the date they were made (if they were) until the date of settlement. NewDay should also remove any adverse information from Mr R’s credit file from 1 May 2021 onwards.†

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

My final decision

For the reasons set out, I’m partially upholding Mr R’s complaint. NewDay Ltd should put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 27 July 2022.

Douglas Sayers
Ombudsman