DRN-3501907

The complaint

Mr C has complained that NewDay Ltd irresponsibly lent to him. He says he was provided with credit that he couldn't afford and he lost out as a result.

What happened

Mr C opened a credit card account with NewDay in March 2019. His credit limit was initially £250. In January 2020 his credit limit was increased to £1000. Over the following 17 months NewDay provided Mr C with four more credit cards and several credit limit increases on four out of the five cards he now held. By June 2021 it seems he had an overall credit limit of £8,750 combined across all five cards. The cards were branded as Marbles, Pulse, Amazon, Aqua and AO.

Mr C says that NewDay shouldn't have allowed him to open an account and it shouldn't have increased his credit limit once it had. Mr C says he was struggling to meet his repayments and had a lot of credit elsewhere, too. He says if NewDay had done adequate checks on his situation it would have seen that he wouldn't be able to repay his balance in a reasonable length of time.

NewDay says it didn't lend irresponsibly to Mr C and that it did all the necessary checks before it lent to Mr C – and when it increased his credit limit.

Our investigator thought that Mr C's complaint should be partially upheld. They thought that the initial lending decision was reasonable, but that at the point of the first credit limit increase on the first card (and before the other credit cards were given to Mr C) that NewDay should have looked more carefully at whether Mr C could afford to borrow more.

Our investigator said that NewDay should remove any interest and charges applied after 9 January 2020 and that it should write off the remaining balances on all of his accounts. If this resulted in a credit balance our investigator said this should be repaid to Mr C along with compensatory interest.

NewDay disagreed. It said it had done sufficient checks and there were no indications of any financial strain.

As NewDay disagreed the case has been passed to me to make 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 and I've taken that into account when I have considered Mr C's complaint.

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 C 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, the amount of time Mr C had been indebted and Mr C's income and expenditure.

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

With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

When Mr C opened his account NewDay conducted a credit check. NewDay told us there were no signs of financial difficulties based on the checks it did. Having reviewed the results of the checks, I don't think there is anything to suggest that it would have been unreasonable for NewDay to have approved the account. They showed that Mr C owed about £1,500 elsewhere and that he didn't have any payday loans or county court judgements. It did show that he had two defaulted accounts for a value of about £1,000 from about three years before the application. It did show that he was relatively highly indebted elsewhere but that he was managing his finances appropriately – there were no recent defaults or arrears and he wasn't in any payment or debt arrangements.

I think this suggests that the decision to lend the initial £250 was reasonable. There were no obvious signs of financial distress and he had relatively low levels of debt. So, I don't think NewDay did anything wrong with its original lending decision.

However, I think that when NewDay made the decision to increase Mr C's credit limit at his request to £1,000 in January 2020 – a four-fold increase in his credit limit – NewDay should have been more assiduous in its checks. While its standard checks didn't seemingly cause significant concern in isolation, I think the knowledge NewDay had about the way Mr C was managing his credit with NewDay and elsewhere should have been a reason it didn't solely rely on those. I say this because Mr C had been using a high proportion of his credit limit for a considerable period of time. He had been using the credit card for cash advances, which incurs fees and may indicate that Mr C had difficulty accessing funds from less expensive sources. Mr C's debt elsewhere had increased substantially – doubling in the nine months he had held the credit card to over £3,000. It also knew that Mr C described himself as a homemaker on his original application which indicated that he was unlikely to have a salary which could support such an increase in credit use.

I think these indicators should have caused NewDay to look at Mr C's request more closely. I think it ought to have asked Mr C more about his financial circumstances including his income sources and his outgoings and it should have verified the information it already had about Mr C. I think the checks that it did complete were not reasonable or proportionate.

In the absence of such information from NewDay I have looked at the information Mr C has provided about his finances. These include his bank statements and his credit file from November 2021 which covers several years before then. From these I can see that Mr C's only income is from Universal Credit and Carer's Allowance. His regular income was under £500 a month. And the bank statements show that Mr C was gambling a lot. For example, in October 2019 Mr C spent around £1,250 on betting. The transactions are the most frequent activity on his account along with payments to other revolving credit accounts.

The pattern and volume of gambling transactions strongly suggests to me that Mr C was gambling compulsively. I think he was using his credit card to help pay off other debts and to support his betting. I think that increasing Mr C's credit limit in these circumstances was irresponsible as the lending was unaffordable for Mr C.

I've looked at Mr C's circumstances over the following 18 months, too. I agree with our investigator that they do not change significantly. This means that the additional credit offered, both by a further credit limit increase on his first credit card account and the subsequent provision of further credit cards and credit limit increases on those, were similarly unaffordable. It follows that I consider none of this additional credit should have been provided to Mr C by a responsible lender and that Mr C lost out as a result.

Putting things right

When this service upholds a complaint of this type we normally direct businesses to put the consumer in the position they would be in now if the mistakes it made hadn't happened. In Mr C's case this would ordinarily mean directing that NewDay refund any interest and charges and remove adverse information from Mr C's credit file. However, I agree with our investigator that on this occasion NewDay needs to go further. I think NewDay should do as I have described above but when this has happened if there is any outstanding balance that this should be written off too. I don't think it is appropriate to remove adverse information from Mr C's credit file where any balance is written off as this may not be in Mr C's best interests (nor that of potential future lenders). However, if, after the fees and charges have been removed and Mr C's payments accounted for, Mr C is due a refund then any adverse information should be removed from these accounts as usual.

To be clear, I direct NewDay should:

- Remove any interest, fees and charges accrued on any balance over £250 from 9 January 2020 on Mr C's first (Marbles) account, and any interest, fees and charges incurred at any time on any other account. Any repayments Mr C has made should be deducted from the remaining balances.

- Write off any remaining balance on the accounts and release Mr C from any ongoing obligations under the agreement. If removing the interest and charges from any account results in a positive balance, NewDay can set this off against other accounts to be written off.

- If this process results in Mr C having repaid more than he borrowed, any overpayment should be refunded with 8% compensatory interest* calculated from the date of overpayment to the date of settlement.

- Record any accounts that have been written off on Mr C's credit file to reflect this and ask the third party to remove any information they may have recorded about the accounts on Mr C's credit file. If, after the fees, charges and interest have been removed, and Mr C's payments accounted for, Mr C is due any refund, any adverse information should be removed from these accounts.

- If any accounts are being collected by any third party NewDay should re-acquire the debt. It is isn't possible or practical to do so, NewDay will need to liaise with the third party to achieve the same outcome for Mr C.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mr C 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 tax.

My final decision

I uphold Mr C's complaint in part and direct NewDay Ltd to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 October 2022.

Sally Allbeury
Ombudsman