

Complaint

Ms C has complained that NewDay Ltd (trading as “Marbles”) irresponsibly provided her with an unaffordable credit card and loan. She’s said she’d already had difficulty repaying what she owed and shouldn’t have been lent to.

Background

Ms C was provided with a Marbles branded credit card, which had an initial credit limit of £600, in January 2017. This limit was increased on two occasions until it reached £2,000.00 in October 2017.

Marbles then provided Ms C with a loan in March 2018. This loan had an APR of 15.9% and the total amount to be repaid of £7,103.13, which included interest, fees and charges of £2,103.13, was due to be repaid in 60 monthly instalments of just over £118.

One of our investigators reviewed what Ms C and Marbles had told us. And he thought that Marbles shouldn’t have provided the final credit limit increase on the credit card or the loan. So he partially upheld Ms C’s complaint. Marbles disagreed so the case was passed to an ombudsman for review.

My findings

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

We’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And I’ve used this approach to help me decide Ms C’s complaint.

Having carefully considered everything provided, I’m partially upholding Ms C’s complaint. I’ll explain why in a bit more detail.

Marbles needed to make sure that it didn’t lend irresponsibly. In practice, what this means is Marbles needed to carry out proportionate checks to be able to understand whether Ms C could afford to repay before providing Ms C with her credit card, any limit increases and her loan.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we’d expect a lender to be able to show that it didn’t continue to lend to a customer irresponsibly.

Ms C’s credit card

The Marbles credit card Ms C was initially provided with had a credit limit of around £600. And as this was a credit card Marbles was required to understand whether Ms C could repay around £250 within a reasonable period of time.

I understand that Ms C was asked to provide a declaration of her income and that she stated it was £18,000.00 a year. She was also asked about other household income and confirmed that this was also £18,000.00 a year. I can also see that a credit check was carried out which showed that Ms C had 4 historic defaults recorded against her. So it's fair to say that Marbles would have been aware that Ms C had had previous difficulties repaying credit. And I would have expected it to have done more to establish that Ms C was now in a better position to be able to repay any further funds she might have been advanced.

However, having looked at the information I've been provided with, I'm satisfied that Ms C did have sufficient funds to be able to repay a credit limit of £600 within a reasonable period of time. As this is the case, I'm satisfied that further checks wouldn't have made a difference and so wouldn't have prevented Marbles from approving this credit card for Ms C.

The first credit limit increase increased Ms C's credit limit by £200 from £600 to £800. It took effect in June 2017. I accept that as the limit was only increased by £200, there is an argument for saying that this wasn't a significant increase to the credit limit and so there wasn't a need for a further affordability assessment. But £200 was a third of the previous £600 limit. So I'm not necessarily persuaded by this argument. I don't know what checks, if any at all, Marbles carried out before deciding to offer the credit limit increase to £800.

But, in any event, the information I have leads me to think that it's more likely than not that reasonable and proportionate checks would not have shown that Ms C wouldn't have been able to sustainably repay the additional £200 within a reasonable period of time. So I don't think that it was wholly unreasonable for Marbles to have offered and then provided this credit limit increase to Ms C. So I find that Marbles didn't treat Ms C unfairly when it initially provided her with a credit card and increased her credit limit to £800.00.

That said, in November 2017 Marbles increased Ms C's limit by a further £1,200.00 taking it to £2,000.00. Equally by this stage it was clear that Ms C's balance hadn't really been reducing and that she'd pretty much used up the entire amount of the additional funds available on the card and close to her limit.

Indeed, Ms C's payment record showed she'd only ever really made a rounded-up minimum payment, or a little bit more, each month. So I certainly wouldn't go as far as saying that Ms C was in good financial standing. At best, what Marbles saw indicated that she was paying just above the minimum necessary to service a debt of £800. And, in my view, this, in itself, didn't clearly demonstrate that Ms C could sustainably repay an additional £1,200.00 within a reasonable period of time.

I'm also disappointed to see Marbles relying on the balance on the credit card being cleared in March 2018 as evidence of this limit increase being affordable. I say this because it's clear Ms C used the funds from the Marbles loan she was provided with in order to repay her balance. Given Ms C had to borrow further to repay her credit card, I don't think that this is indicative of her having been able to sustainably repay what she owed within a reasonable period of time, in November 2017, or clearly demonstrates that the checks Marbles carried out before providing this credit limit increase were reasonable and proportionate.

As I'm satisfied that reasonable and proportionate checks weren't carried out before Ms C's credit limit was increased to £2,000.00, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that proportionate checks would have told

Marbles that Ms C would have been unable to sustainably repay £2,000.00 within a reasonable period of time.

Ms C has now provided us with evidence of her financial circumstances at the time Marbles lent to her. Of course, I accept different checks might show different things. And just because something shows up in the information Ms C has provided, it doesn't mean it would've shown up in any checks Marbles might've carried out. Indeed, I've noted that Marbles has said it wouldn't have obtained payslips or bank statements from Ms C.

But given I think that Marbles needed to get a better understanding of Ms C's income and expenditure before increasing her credit limit to £2,000.00, in the absence of anything else from Marbles showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate for me to now place considerable weight on it as an indication of what Ms C's financial circumstances were more likely than not to have been at the time. To be clear I'm not saying that Marbles had to obtain bank statements at the time. I'm reviewing this information now as it's the best way for me to recreate a proportionate check a number of years after.

I've carefully considered the information provided. Having done so, it's clear that Ms C was struggling to manage her finances. Ms C's income was inconsistent and sporadic and most of what she was being paid was taken up by her existing living costs and repayments to her existing commitments. Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Ms C would not have been able to repay £2,000.00 within a reasonable period of time and certainly without borrowing further.

In these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Marbles to the fact that Ms C couldn't afford the credit limit increase in November 2017. And so Marbles didn't act fairly and reasonably when it increased Ms C's credit limit to £2,000.00 in November 2017.

Ms C's loan

As Ms C couldn't afford an extra £1,200.00 in November 2017, it ought to be clear why it logically follows that she couldn't afford a further £5,000.00 a mere three months later.

Nonetheless, I have looked at the checks Marbles says it carried out before providing this loan. Marbles' final response says that Ms C declared she was employed with a monthly household income of £3,500.00 and also had a monthly disposable income of £3,500.00. I'm not sure how Marbles ascertained that Ms C had access to all of the income in her household. After all - just because her total household income might have been £3,500.00 each month, this doesn't necessarily mean all, or even any, of it was available to repay this loan.

However, what I'm most concerned about is that Marbles appears to be saying that all of Ms C's household income was disposable, despite nonetheless recording she had monthly expenditure of well over £1,000.00. Bearing in mind the ludicrous nature of the information provided, I'm not prepared to accept that the checks Marbles carried out before providing this loan in March 2018, were fair, reasonable or proportionate.

I've already explained what information Ms C has provided showed and why it's fair and reasonable to rely on it in the absence of Marbles having carried out reasonable and proportionate checks. As this is the case, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Ms C would not have been able

to make the repayments to this loan without borrowing further and/or suffering undue difficulty.

So, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Marbles to the fact that it shouldn't have provided Ms C with this loan. So I'm upholding Ms C's complaint about her loan.

Ms C went on to and is being expected to pay interest and charges on credit that she shouldn't have been provided with in the first place. So I'm satisfied that she has lost out as a result of what Marbles did wrong. And I'm satisfied that Marbles now needs to put things right.

Fair compensation – what Marbles needs to do to put things right for Ms C

Having carefully considered everything, I think that it would be fair and reasonable, in all the circumstances of Ms C's complaint, for Marbles to put things right in the following way:

- rework Ms C's credit card account to ensure that from November 2017 interest is only charged on the first £800 outstanding - to reflect the fact that the credit limit increase to £2,000.00 shouldn't have been provided. All late payment and over limit fees should also be removed. Any extra Ms C paid should be treated as overpayments and then factored in to what I think Marbles needs to do in relation to Ms C's loan;
- removing any adverse information recorded on Ms C's credit file as a result of the credit card;
- removing all interest, fees and charges applied to Ms C's loan from the outset. The payments Ms C made, whether to Marbles or any third-party debt purchaser, should be deducted from the new starting balance – the £5,000 originally lent. Any refund due as a result of Ms C's credit card being reworked should then be deducted from any remaining balance on the loan after the first part of this calculation has been done.

If all of this results in Ms C having already repaid more than £5,000.00 then Marbles should treat any extra as overpayments. And any overpayments should be refunded to Ms C along with 8% simple interest† on the overpayments from the date they were made until the date of settlement.

- If no outstanding balance remains on Ms C's loan after all adjustments have been made, then Marbles should also remove any adverse information it has recorded about the loan from Ms C's credit file;

† HM Revenue & Customs requires Marbles to take off tax from this interest. Marbles must give Ms C a certificate showing how much tax it has taken off if she asks for one.

It appears as though Marbles sold an outstanding balance on Ms C's loan to a third-party debt purchaser. So it will need to either buy the account back from the third-party and make the necessary adjustments, pay an amount to the third party in order for it to make the necessary adjustments, or pay Ms C an amount to ensure that it fully complies with this direction.

My final decision

For the reasons I've explained, I'm upholding Ms C's complaint. NewDay Ltd should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 26 August 2022.

Jeshen Narayanan
Ombudsman