

The complaint

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

Mrs M is represented by her husband in bringing this complaint. But for ease of reading, I'll refer to any submission and comments he has made as being made by Mrs M herself.

What happened

Mrs M was approved for a branded NewDay credit card in December 2016 with an initial £600 credit limit. NewDay increased the credit limit on multiple occasions which I have detailed below.

May 2017	£600 to £1,600
September 2017	£1,600 to £3,200
January 2018	£3,200 to £4,000
February 2019	£4,000 to £6,000
April 2020	£6,000 to £7,250

Mrs M complained that NewDay had irresponsibly lent to her. NewDay did not uphold her complaint for irresponsible lending, but because of how Mrs M's complaint was handled they paid Mrs M £90 compensation. They said that when Mrs M applied for the credit card, Mrs M had declared an income of £10,000, access to other household income of £60,000, she was employed, and she had total unsecured debt of £1,500. They said there was one default showing on her credit file, which was 14 months prior to her application and the value of the default was £4,500. But there were no active accounts in arrears, no payday loans showing and no CCJ's. Mrs M brought her complaint to our service.

Our investigator upheld Mrs M's complaint. She said there were signs Mrs M was in financial difficulty as she had £1,500 outstanding in unsecured credit and £4,500 outstanding for a default that Mrs M had incurred 14 months prior to the credit card being granted. She said that the checks NewDay carried out demonstrated that Mrs M would have been unlikely to make her repayments sustainably over a reasonable period given the credit limit. She also said that the subsequent credit limit increases – which only risked and actually increased

Mrs M's indebtedness, when she was already struggling financially – was likely to have been not sustainable and affordable for Mrs M.

Our investigator said that NewDay should refund all the interest and charges Mrs M has paid to date, if the borrowing is still in place, they should reduce the outstanding capital balance by the amount calculated by refunding the interest and charges. If there remained an outstanding capital balance, NewDay should ensure that it isn't subject to any historic or future interest and/or charges. But if refunding the interest and charges leads to a positive balance, the amount in question should be given back to Mrs M and 8% simple interest should be added to the surplus. Our investigator also said that NewDay should remove any adverse information recorded on Mrs M's credit file as a result of the interest and charges.

NewDay asked for an Ombudsman to review the complaint. They said they believed that

sufficient checks had been done, there were no indication of any financial strain and there is nothing which indicated that Mrs M would struggle from the credit card or the credit increases. NewDay said that Mrs M had access to sufficient income which totalled £70,000 which she declared at the time of her application, which would be sufficient to accept her application. They said their checks for the credit increases indicated that she was maintaining her payments, there were no late payment fees, no overdraft fees and Mrs M did not indicate to them she was struggling financially with the credit card or credit limit increases.

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:

"Before agreeing to approve or increase the credit available to Mrs M, 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 listed below what checks NewDay have done and whether I'm persuaded these checks were proportionate.

Acceptance for the account - initial credit limit:

I've looked at what checks NewDay said they did when initially approving Mrs M's application. I'll address the credit limit increases later on. NewDay said they looked at information provided by credit reference agencies and information that Mrs M had provided before approving her application.

But I'm not persuaded that the account opening checks were proportionate. I say this as the information showed that Mrs M had total unsecured borrowings of £6,000 (including the £4,500 defaulted account which she would still be expected to repay this amount, even though the account had defaulted) when she was approved for the account, but she had declared a gross annual income of £10,000. So prior to Mrs M being accepted for the account, her unsecured debt was 60% of her gross income. This might indicate that Mrs M may be hungry for credit and not be able to manage her finances well, if she has a high proportion of unsecured debt compared to her declared earned income.

There are a couple of other factors I've considered here. £4,500 of the debt had defaulted. So NewDay would be aware that Mrs M had previously had problems maintaining a credit agreement. And this was only 14 months prior. Although the account had defaulted, Mrs M would still be expected to pay off an outstanding balance that she owed.

Another thing I've considered is that there is other household income of £60,000. But I don't think it would be proportionate to take this into account when approving Mrs M's application here and I'll explain why. Mrs M would be the sole/main card holder. So she alone would be responsible for making the repayments on the account. There would be no legal obligation on her husband to contribute to her repayments. And the fact that Mrs M defaulted on another account proves that she wouldn't always have access to a large amount of money from her husband to help towards repaying debts, or the defaulted account wouldn't have defaulted.

So for these reasons, I'm persuaded that as part of a proportionate check, NewDay should have requested information from Mrs M to discuss her finances, for example, one of the things they could have asked Mrs M to provide is her recent bank statements to ensure the credit would be affordable and sustainable for Mrs M.

Mrs M has provided her bank statements so we could see how she managed her money at the time her account was accepted, which I'm persuaded is one of the things NewDay could have looked at to ensure that the repayments would be affordable and sustainable for Mrs M as part of a proportionate check given her individual circumstances which I've already detailed.

Mrs M's bank statements show that she was struggling financially. In the five months leading up to the NewDay card being approved, she had entered an unauthorised overdraft nine times (including seven times in the three months leading up to the acceptance of the card).

Mrs M often needed to receive transfers from her husband (five occasions) to bring her back into a positive balance. But that's not all Mrs M's bank statements showed. They showed that Mrs M had made an arrangement to repay her defaulted debt by £10 a month. So I'm persuaded that this further evidences that Mrs M could not afford to make reasonable payments towards debt, without having to further borrow.

So I'm persuaded that Mrs M was unable to afford her outgoings based on the information shown on her bank statements as she was overdrawn several times even though she was receiving money into her account from family. So, if NewDay would have looked at Mrs M's bank statements, as part of a proportionate check due to how much debt she already had compared to her declared gross annual salary, then I'm persuaded they would have realised that Mrs M would struggle to afford any more credit and that any credit they approved for her would be unlikely to be sustainable based on her actual salary alone (and without help from her husband on occasion) and therefore they shouldn't have approved her application for the NewDay credit card.

May 2017 (£600 to £1,600), September 2017 (£1,600 to £3,200), January 2018 (£3,200 to £4,000), February 2019 (£4,000 to £6,000) and April 2020 credit limit increases – (£6,000 to £7,250)

If Mrs M's application was not accepted, then none of the credit increases would have happened on this credit card either. I think there is an argument for saying that Mrs M's complaint about the subsequent lending decisions should be upheld without making a finding on reasonable and proportionate checks.

After all, if matters had played out as the evidence suggests they should have done in December 2016, I'm not persuaded Mrs M would've been able to add to the credit (given that I'm persuaded the application for the credit card shouldn't have been approved), and NewDay's data after acceptance of the card shows that Mrs M's total unsecured debt was mostly rising month by month. The first credit limit increase was more than twice the original credit limit, then this was doubled only four months after. By the time her credit limit was increased to £4,000, NewDay's data showed that she had as much debt as her net income would have been.

When NewDay increased Mrs M's credit limit to £6,000, just over two years after she opened her account, this was ten times the amount of her original credit limit. And Mrs M had already defaulted on a much lower amount of credit previously. At the last credit limit increase, Mrs M's outstanding unsecured borrowings, based on NewDay's data was £14,567 – 145% of her declared annual income. So despite Mrs M sometimes paying more than the minimum payment, due to her husband helping her out as evidenced on her bank statements, Mrs M did not have the means by herself to sustainably repay even a modest credit limit, for the reasons I've already given. So it follows I intend to ask NewDay to put things right for Mrs M."

I invited both parties to let me have any further submissions before I reached a final decision. Mrs M said she was pleased with the provisional decision and she had nothing to add. NewDay said they had no further information to add to the provisional 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.

As neither party have provided me with any further information to consider, then my final decision and reasoning remains the same as in my provisional decision.

Putting things right

In my provisional decision, I said I intend to uphold the complaint and I intend to require NewDay Ltd trading as Marbles Card to do the following:

NewDay should arrange to transfer any debt back to themselves if it has been passed to a debt recovery agent;

Rework the account removing all interest and charges that have been applied;

If the rework results in a credit balance, this should be refunded to Mrs M along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding this account from Mrs M's credit file;

Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mrs M for the remaining amount. Once Mrs M has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

**If NewDay considers that it's required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mrs M how much they've taken off. They should also give Mrs M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

My final decision

I uphold this complaint. NewDay Ltd trading as Marbles Card 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 M to accept or reject my decision before 16 September 2022.

Gregory Sloanes
Ombudsman