

## **The complaint**

Miss T complains that NewDay Ltd trading as Marbles (“NewDay”) was irresponsible when it provided her with a credit card.

## **What happened**

NewDay opened a credit card account for Miss T in May 2018 with a credit limit of £900. This type of credit was an open-ended or running account facility. Within six months of taking out the card Miss T had almost reached her credit limit and went over her limit for six months in 2020.

Miss T said that NewDay shouldn’t have offered her an account due to her high level of existing debt. She said that if NewDay had properly checked her credit record before accepting her application it would have seen that she was struggling with her finances and wouldn’t be able to repay more credit within a reasonable period of time. Miss T also said that being granted this credit made her financial position worse.

NewDay says that it is an instant credit provider and most of its applications are completed online. This means that it doesn’t require evidence of income and expenditure by way of bank statements, for example, but instead it uses data submitted by the applicant and information from their credit file. NewDay said that it had provided the account correctly to Miss T based on its checks before agreeing to lend her and didn’t uphold her complaint.

Our investigator assessed the complaint and found that there wasn’t anything in the information NewDay had seen to suggest that the credit would be unaffordable for Miss T or that she would not have been able to meet her repayments sustainably. They didn’t recommend that her complaint be upheld.

Miss T disagreed with our investigator’s recommendation. The complaint came to me, as an ombudsman, to review and resolve. I issued a provisional decision on the 11 October 2022 explaining why I planned to uphold Miss T’s complaint. Neither party has provided me with any further comment or new information to consider in this final 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.

Having considered everything again and having no further comment or new information from either Miss T or NewDay, I remain of the view that Miss T’s complaint should be upheld. I appreciate this will be very disappointing for NewDay and I hope my explanation below makes it clear why I have come to this final conclusion.

As I’d said in my provisional decision, when considering this complaint I’ve had regard to the regulator’s rules and guidance on responsible lending (set out in its consumer credit

handbook – CONC) which lenders, such as NewDay, need to abide by. NewDay will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement, NewDay needed to check that Miss T could afford to meet her repayments sustainably. In other words, it needed to check she could repay the credit out of her usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit and Miss T's circumstances.

NewDay said it asked Miss T about her income, estimated her expenses and included information from her credit file about her existing debt repayments before agreeing to lend to her. NewDay said Miss T was self-employed with an income of £24,000 (about £1,650 a month net) and existing debts of £8,800. NewDay said that Miss T's credit file showed she had four defaults (a total of £5,500) the most recent of which occurred 23 months previously. She had no county court judgements and no accounts in arrears. It says that approving her application with a credit limit of £900 was appropriate.

The regulations stated that if a lender took income or expenditure into account it needed to take account of actual current income or expenditure and that it was generally not sufficient to rely solely on a statement of those matters made by the customer. I appreciate that NewDay took steps to sense-check the income figure Miss T had given and to estimate her expenditure but, given the amount of debt she had, it doesn't seem to me that its usual estimates would be appropriate in this case.

I think it would have been appropriate in these circumstances to consider the amount Miss T was paying towards her existing debts each month along with information about Miss T's living costs. I have reviewed Miss T's bank statements from the time, which I think are a reasonable proxy for what NewDay might have found out, had it looked into her circumstances in greater depth.

Miss T's current account statements show that her income was approximately £2,450 on average a month made up of state benefits, including disability living allowance, work and child tax credits, child benefit and statutory maternity payments. She was paying about £575 a month on repaying existing debt. This included payments to a debt collector, other credit cards, daily overdraft fees and short term loans. The most recent short term loan was for £1,000 taken out the month before. I've also noted that Miss T didn't earn enough to take her out of her (approximately) £800 overdraft in the three months before taking out this credit card. It's likely Miss T would need to use her overdraft to meet repayments on any further credit she took out.

It seems to me that Miss T had ongoing money problems. I think it's likely NewDay would have learnt this through a proportionate check and wouldn't have agreed a credit card facility for her at that time. I haven't seen any evidence that Miss T's financial situation improved over the time she held the account. As mentioned, she used most of her credit within six months and went over her limit after two years. I've concluded that NewDay was irresponsible to have agreed a credit card for Miss T on this occasion and it needs to put things right for her.

### **Putting things right**

Where we find credit to have been agreed irresponsibly, our approach to putting things right is to refund any interest, fees or charges associated with the credit that were paid by the borrower. In addition, we usually direct the lender to pay a refund of 8% per annum

simple interest on these payments where the borrower was unfairly deprived of their money. We'd expect the borrower to repay the credit borrowed as they have had the use of this money.

I've concluded that NewDay was irresponsible when it offered Miss T the account in the first place. In order to put Miss T back into the position she would have been in had this not happened means she shouldn't have to pay any interest or charges on the account from the outset.

- Rework Miss T's account to ensure that from the opening of the account no interest is charged. Any late payment or over limit fees should also be removed; and
- Apply Miss T's repayments to this adjusted balance; and
  - If the effect of this reworking results in there no longer being an outstanding balance to pay, then any remaining amounts paid by Miss T should be treated as overpayments and refunded to her along with 8% simple interest\* on the overpayments from the date they were made until the date of settlement. NewDay should also remove any adverse information about the account from Miss T's credit file.
  - If an outstanding balance remains on the account once these adjustments have been made NewDay needs to ensure that Miss T only owes this adjusted balance. NewDay should remove any adverse information about this account from Miss T's credit file once any balance has been repaid.
- Refund to Miss T any payments she's made toward insurance premiums associated with this account, along with 8% simple interest\* from the date they were made to the date of settlement.

\* HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must provide a certificate showing how much tax it's taken off if asked.

### **My final decision**

As I've explained above, I'm upholding Miss T's complaint about NewDay Ltd trading as Marbles and it now needs to take the above steps to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 29 November 2022.

Michelle Boundy  
**Ombudsman**