DRN-3801438

The complaint

Mr B says NewDay Ltd irresponsibly lent to him.

What happened

This complaint is about two credit cards provided by NewDay Ltd to Mr B. It seems the Aqua account opened in January 2013 with a credit limit of £250. This account had a number of credit increases over time. The Marbles account was opened in October 2019 with a credit limit of £300. This account had one credit increase in March 2020.

Our adjudicator partially upheld Mr B's complaint and thought that NewDay Ltd ought to have realised that Mr B wasn't in a position to sustainably repay any further credit on the accounts by October 2019. NewDay Ltd has disagreed. So, the complaint has therefore been passed to me.

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.

After reviewing all of the information provided in this complaint, I have reached the same findings as our adjudicator and for the same reasons. As such I am partially upholding Mr B's complaint. I explain why below.

NewDay Ltd 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 B 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 Ltd 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.

And so, I've looked at the overall pattern of Next's lending history with Mr B, with a view to seeing if there was a point at which NewDay Ltd should reasonably have seen that further lending was likely unsustainable, or otherwise harmful. If so, that would mean NewDay Ltd should have realised that it shouldn't have further increased Mr B's credit limits. Having done so, I think there was such a point in October 2019 when NewDay Ltd raised the credit limit on the Aqua card to £2,250 from £1,250 and opened the Marbles credit card. I think there was a pattern of lending that ought to have put NewDay Ltd on notice that further lending was unsustainable as Mr B would not have been able afford to repay what he was being lent in a sustainable manner, most likely. I explain why I say that.

The early borrowing history on the Aqua card displayed poor management from Mr B of a very modest credit limit. Between October 2015 and October 2017 there were only two months in which Mr B had neither a late fee nor an over credit limit fee charged to his account. Between October 2017 and June 2018 there was a period of nine months in which Mr B incurred not a single fee. But Mr B's balance was close to his credit ceiling throughout.

In the ten months before May 2019, when Mr B's credit limit was increased from £500 to £1,250, Mr B had four fees attached to his account and he largely lived at his credit limit. Once the credit increase was applied Mr B sprinted to his new credit limit in a month and went overlimit immediately. In two of the next four months Mr B incurred fees for being overlimit.

So, I believe that Mr B's pattern of usage of his Aqua credit card account showed that Mr B lived on maximised credit and often failed to stay within those credit limits. And that made this borrowing all the more expensive for Mr B as the fees were a regular part of his credit history. And when Mr B's credit limit was increased, Mr B took full advantage of the new credit limit immediately and largely kept his credit maximised there. And Mr B had no real of history of paying the credit down.

I think it's fair to characterise Mr B's management of his new credit limits as poor. It seems that the pattern of lending shows from this that with a lower credit limit Mr B showed some aptitude to manage his account less poorly. But raising Mr B's credit limit caused him to raise his balance to a level where he couldn't manage his credit and stay within his credit limits. And, in Mr B's recent credit history he had not reduced his balance by a significant amount and the balance had stayed close to the credit limit almost entirely. Again, NewDay Ltd had seen some evidence that with a higher credit limit Mr B was likely to allow the balance to grow and that he seemed unable to make much progress in reducing the balance when it had grown.

So, the evidence of Mr B's account was that he managed his account poorly throughout, but that he had more success in manging himself to a credit limit when that credit limit was modest. It is my view that NewDay Ltd should reasonably have seen that further lending was likely unsustainable, or otherwise harmful, and it shouldn't have further increased Mr B's credit limits.

But, knowing Mr B's pattern of usage, NewDay Ltd chose to increase Mr B's credit limit further, from £1,250 to £2,250 in October 2019 and opened a second credit card for Mr B with a credit limit of £300.

So, given the particular circumstances of Mr B's case, based on the information Mr B and NewDay Ltd have given, I think that a point was reached by October 2019, which ought to have prompted NewDay Ltd to realise further credit would most likely be unaffordable or otherwise harmful to Mr B. I say this because the way Mr B had managed his account until that point would have shown NewDay Ltd that Mr B would not find it easy to repay a balance that rose anywhere near the new credit limit, whilst at the same time having to meet his daily living expenses. I also think there was a significant risk that further increases to his credit could have led to his indebtedness increasing unsustainably, such that he had no funds available to meet his regular outgoings.

It follows that I think that Mr B lost out because NewDay Ltd provided him with further credit from October 2019 onwards. In my view, NewDay's actions unfairly prolonged Mr B'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 Ltd should put things right.

Putting things right

- Rework Mr B's accounts to ensure that from October 2019 onwards interest is only charged on balances up to the total credit limit of £1,250, (being the credit limit in place before that date) to reflect the fact that no further credit limit increases should have been provided. And Mr B should not have been given the Marbles card at all. All late payment and over limit fees should also be removed; and

- If an outstanding balance remains on the accounts once these adjustments have been made NewDay Ltd should contact Mr B to arrange an affordable repayment plan for these accounts. Once Mr B has repaid the outstanding balance, it should remove any adverse information recorded on Mr B's credit file from October 2019 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 B, 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 Ltd should also remove any adverse information from Mr B's credit file from October 2019 onwards.†

†HM Revenue & Customs requires NewDay Ltd to take off tax from this interest. NewDay Ltd must give Mr B 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 currently minded to partially uphold Mr B'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 B to accept or reject my decision before 11 January 2023.

Douglas Sayers
Ombudsman