

The complaint

Miss C complains that NewDay Ltd, trading as Marbles Card, should not have agreed her credit card application or increased her credit limit, as the lending was both unaffordable and irresponsible.

What happened

Miss C applied and was accepted for a Marbles credit card with NewDay in February 2016, with a credit limit of £600. Over the next two years she was offered two credit limit increases. NewDay's lending decisions in summary:

	Date	Limit
Marbles account opening	February 2016	£600
1 st Marbles increase	November 2016	£1,500
2 nd Marbles increase	April 2018	£2,500

In September 2021 Miss C complained to NewDay. She said when NewDay offered her the credit card it failed to check her level of income or disposable income and her financial circumstances.

In its final response NewDay said Miss C met its acceptance criteria for the credit card and she was offered a credit limit of £600. It said Miss C was provided with the account correctly. With regards to the credit limit increases it said each limit was provided to Miss C correctly and adequate checks were completed to ensure these were affordable.

Miss C didn't agree and brought her complaint to this service. She said at the time she was given the card she was on a very low level of income and was a single parent on benefits. She said she was struggling to pay her bills and was using a credit card to buy food. Miss C said she was suffering from anxiety and stress.

Our investigator concluded that the checks NewDay carried out prior to the lending decisions in February and November 2016 didn't show any signs that Miss C was likely to find the lending unsustainable and unaffordable. But with regards to the credit increase in March 2018 he said NewDay ought to have known that Miss C wasn't in a position to repay this credit and shouldn't have lent further to Miss C on that basis.

Miss C accepted this view. NewDay disagreed with the investigator and asked for a decision from an ombudsman. It said it didn't believe the information available to it in February and March 2018 showed any evidence that Miss C wasn't able to sustainably manage her repayments.

I issued a provisional decision on 19 January 2023. I said:

Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website. I've had this approach in mind when I've considered Miss C's complaint.

Before granting credit, NewDay was required to carry out a reasonable and proportionate assessment of Miss C's ability to sustainably repay the debt. This is often referred to as an 'affordability check'. This check had to be borrower-focussed. This means it needed to be concerned with whether Miss C could sustainably afford the borrowing - considering her specific circumstances - rather than how statistically likely she was to repay. The latter is the risk posed to NewDay as the lender, or their 'credit risk' but this is not necessarily the same as an assessment of affordability.

What's considered reasonable and proportionate will vary depending on several factors and there isn't a one-size-fits-all approach to what is considered proportionate.

It's important to note that the checks must be proportionate to the amount being lent – so the higher the amount, the greater the checks likely should be, and the lower the amount, then fewer checks can possibly be made.

If I think Miss C has been disadvantaged in any way by NewDay's actions, I'll go on to consider what I think is a fair way to put things right.

Account opening

	<i>Date</i>	<i>Limit</i>
<i>Marbles account opening</i>	<i>February 2016</i>	<i>£600</i>

NewDay said it's an instant credit provider, and most of its applications are completed online. It said this means it doesn't require evidence of income and expenditure, but instead it uses data submitted by the applicant and that supplied by the credit reference agencies (CRAs). NewDay said at the end of the application process, the applicant is asked to agree that the information they have supplied is true to the best of their knowledge.

I've seen a copy of the application data provided by Miss C. She declared she had an annual income of £20,770 (equating to an average of £1,731 per month) and a total unsecured credit of £400. Miss C did have two defaults recorded with the CRAs but almost two years had passed since the most recent default.

The checks that NewDay did prior to the account opening don't appear to have indicated that the lending would be unaffordable. Miss C provided her bank statements to this service for the period covering this account opening. I can't see anything in these statements that suggest Miss C was in financial difficulty at the time. So I can't say that NewDay acted unfairly by accepting her credit card application with the credit limit of £600.

First credit limit increase

	<i>Date</i>	<i>Limit</i>
<i>1st Marbles increase</i>	<i>November 2016</i>	<i>£1,500</i>

I've looked at the affordability data provided by NewDay. This data shows how Miss

C was conducting her account and what information CRA's were reporting at the time. I can see that between February and November 2016 Miss C was mostly only utilising approximately 50% of her credit. She made two payments late in this period but there were no significant increases in additional credit reported by the CRA's. It doesn't appear the checks NewDay did uncovered any sign that Miss C was struggling financially. And again I've looked at the bank statements Miss C provided for months prior to the credit limit increase and I can't see anything that suggests Miss C was in financial difficulty up to November 2016. So I can't say that NewDay acted unfairly by increasing her credit limit at this time.

Second credit limit increase

	<i>Date</i>	<i>Limit</i>
<i>2nd Marbles increase</i>	<i>April 2018</i>	<i>£2,500</i>

NewDay responded to our investigator's view with some further comments. It said Miss C's credit limit was increased twice – in November 2016 and March 2018. It said there was only one late fee in the nine-month period between the card opening and her first credit increase – and no other adverse data. When she received this increase of £900, NewDay said Miss C did not use all the available credit. It said she made one retail spend of £262.93 in the following month and there is no further card use for some time. NewDay went on to say that in the 17 months between the first increase in November 2016 and the second credit limit increase in March 2018, there were two instances of cash spend (£90 and £30), no late fees and no over-limit fees. It said Miss C's card use remained relatively modest and that she made regular repayments including one high-value repayment of £516.96 in January 2017.

NewDay concluded that in the period relevant to the complaint, Miss C did not make use of the available credit – the percentage of available credit used between the card opening and the second increase is 21%. It said her card was well-managed and NewDay was satisfied that the credit increases were offered and provided responsibly.

As I mentioned above checks must be proportionate to the amount being lent. I've looked at the data showing how Miss C used her account. And I agree with NewDay that Miss C was managing her account and not utilising most of the credit she had. But I can see that Miss C was mostly only making minimum payments. Data provided to NewDay by the CRAs shows that between the first credit limit increase and the second, Miss C's level of revolving credit (for example credit cards) was sharply increasing. Miss C's revolving credit balance went from approximately £1,700 in February 2017 to £5,300 in March 2018. In March 2018 Miss C also had an additional non-revolving credit balance (for example a loan) of £1,600, so her total credit balance was approximately £7,000. And at this point Miss C had a revolving credit limit of over £11,000. So while I accept that Miss C was managing her Marbles credit card account adequately by making minimum payments I can see that in the months leading up to the second credit limit increase Miss C was relying on borrowing which had increased significantly since the first Marbles credit limit increase and was only continuing to rise. While this credit balance of £7,000 doesn't necessarily mean that it was irresponsible of NewDay to increase her Marbles credit limit up to £2,500, I am persuaded that her significant increase in borrowing since November 2016 was enough to warrant additional affordability checks prior to this Marbles credit limit increase.

I can't say what those checks might have been, but NewDay could have asked Miss

C to verify her income and assess her income versus expenditure. This would've enabled NewDay to see if payments would be affordable, not only with her existing borrowing but in the event she utilised all the credit already available to her as well as that provided by NewDay increasing the Marbles credit limit to £2,500.

Miss C provided bank statements to this service.

Miss C's net income from employment over the time period of the credit limits appears to be approximately £1,000 per month rising to £1,400 by March 2018. She also had income in the form of child maintenance payments. Had NewDay verified her income it would have seen that it was relatively low and unlikely to support sustainable repayments on her increasing borrowing which by March 2018 was significant. I think had NewDay known this at the time, as I think it should have, it probably wouldn't have needed to consider Miss C's expenditure. It would've seen Miss C would have been unlikely to support sustainable repayments on her existing borrowing plus any increased repayments in the event she utilised all the revolving credit she already had available to her. And in that circumstance, it likely shouldn't have increased her credit limit further.

I think NewDay would have known on verification of Miss C's income that it would be unlikely she would have been able to support sustainable repayments on her borrowing. But had it gone further and looked at her expenditure this would have been further evidence that she wouldn't be able to afford additional borrowing especially as Miss C wasn't utilising all of the credit available to her at that time.

Looking at Miss C's bank statements I can see that in the months leading up to November 2016 Miss C's bank account was always in credit. And her income appeared to cover her expenditure obligations. She had an overdraft arrangement of £1,000 which she was rarely utilising. In November 2017 Miss C's arranged overdraft was now £2,120. And she was regularly utilising her overdraft up to £1,500. I can also see that some direct debit payments were failing to go through and payments to other finance providers were increasing. By March 2018 Miss C's bank account balance was almost always negative, consistently utilising her overdraft up to £1,800. It appears to me that at this point Miss C was struggling financially. And I think had NewDay looked at this it would've seen Miss C's income wasn't sufficient to cover her expenses or lift her out of her overdraft. So I'm persuaded had NewDay verified her income, and also possibly carrying out further checks on her income versus expenditure, as I believe it should have, I think it unlikely it would have increased Ms C's credit limit further.

I've concluded that NewDay was irresponsible when it increased Miss C's credit limit in April 2018 from £1,500 to £2,500. In order to put Miss C back into the position she would have been had this not happened means she shouldn't have to pay any interest or charges on credit granted over her existing limit of £1,500.

Our investigator recommended that all interest and charges that Miss C has paid since the limit increase in April 2018 should be refunded. But as I consider the first two lending decisions (the account opening with £600 limit and the limit increase to £1,500) by NewDay to be fair it follows that it wouldn't be fair for it to have to refund the interest and charges on the lending up to £1,500.

Both NewDay and Miss C responded to my provisional decision but added no further comment.

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 both parties accepted my provisional decision I see no reason to depart from its conclusions.

Putting things right

In order to put things right NewDay, trading as Marbles Card must:

- Rework Miss C's account to remove all interest and charges that have been applied to balances above £1,500; and
 - If the effect of this reworking results in a credit balance, then this should be refunded to Miss C along with 8% simple interest* on the overpayments from the date they were made to the date of settlement. In this case, NewDay should remove any adverse information reported to Miss C's credit file after April 2018;
 - If an outstanding balance remains on the account once these adjustments have been made NewDay needs to ensure that Miss C is only liable for this adjusted balance and arrange an affordable repayment plan with her. Once Miss C has cleared the outstanding balance, any adverse information recorded after April 2018 in relation to the account should be removed from her credit file.

* HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Miss C a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold this complaint and NewDay, trading as Marbles Card, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 14 March 2023.

Maxine Sutton
Ombudsman