

The complaint

Mrs J complains that NewDay Ltd trading as Marbles (“NewDay”) was irresponsible when it offered her a credit facility and later increased her credit limit.

What happened

NewDay opened a credit card account for Mrs J in December 2020 with a credit limit of £900. This type of credit was an open-ended or running account facility. NewDay subsequently increased Mrs J’s credit limit to £1,650 in May 2021.

Mrs J complained to NewDay that the credit was unaffordable for her and it had been irresponsible to open the account for her and increase her credit limit. Mrs J said that she ended up getting further into debt over the years and had to keep borrowing from other companies, and friends and family.

NewDay said that Mrs J ceased spending on the account the month after the credit limit increase in May. It then closed Mrs J’s account to new purchases in July 2021 following what she’d said about the account being unaffordable.

NewDay said it acted correctly in providing Mrs J with her Marbles account. It said that it reviews a customer’s account alongside external credit reference agency (CRA) data and if it feels a credit limit increase is suitable, then one will be offered. In this instance a letter was sent to Mrs J prior to the increase providing her with the option to opt out, which she didn’t. NewDay didn’t uphold Mrs J’s complaint.

Mrs J brought her complaint to us. Our investigator assessed the complaint and found that NewDay wasn’t irresponsible to have opened the account for Mrs J but that it should have gone further in its affordability checks when it later increased her credit limit. Mrs J had exceeded her existing limit the month before the increase was offered. They concluded that, had proportionate checks been carried out at the time of the increase in May 2021, it was likely that NewDay would have learnt that Mrs J wasn’t in a position to repay further credit without difficulty and so it wouldn’t have increased her limit above £900. They recommended that NewDay pays Mrs J compensation for this.

NewDay disagreed with our investigator’s recommendation and the complaint came to me to decide. I issued a provisional decision in January 2023 explaining why I thought Mrs J’s complaint should be upheld in part but why NewDay didn’t have to take any further action. I allowed time for both parties to comment on what I’d said or provide any new information they wished me to consider before making my final decision. Mrs J didn’t reply to my provision decision. NewDay responded to say that it didn’t wholly agree with my findings.

This is my final decision on the matter and will be legally binding if Mrs J accepts it.

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 reviewed everything again, including what NewDay said in response to my provisional decision, I remain of the view that NewDay should have looked into Mrs J's circumstances in more detail before increasing her credit limit in May 2021. However, as before, I am not directing it to take any further action. I'll set out my reasoning again in this final decision and refer to NewDay's comments where appropriate.

When making this decision 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 Mrs J could afford to 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, for example the amount offered, and to Mrs J's particular circumstances.

With this in mind, my considerations are did NewDay complete reasonable and proportionate checks when it first opened the account for Mrs J and later when it increased her credit limit to satisfy itself that she would be able to repay the credit offered within a reasonable period of time? If it didn't do this, what would reasonable and proportionate checks have shown and, ultimately, did NewDay make fair lending decisions?

Mrs J told NewDay her salary was £20,000 when she applied for the Marbles account and that she had other household income of £30,000. NewDay recorded that she was a self-employed non-professional, her existing debt was £600 and she had no adverse information on her credit file, such as county court judgements, defaults or arrears. NewDay said it used a CRA tool to check what Mrs J said about her income and to estimate her expenses.

It seems Mrs J was managing her existing accounts with no obvious signs of difficulty and the amount of money she was borrowing was relatively low compared to what she'd said about her means. Altogether, considering what NewDay knew about Mrs J's circumstances alongside the amount of credit she'd applied for, I think NewDay's checks were reasonable and proportionate and it wasn't irresponsible to open an account for her with this level of credit.

When NewDay increased Mrs J's credit limit in May 2021 it said that it took into account how she'd been managing her account and any other debts she had. It provided some of the information it relied on, and I've reviewed this. I can see that within a month of opening the account Mrs J had taken out £100 in cash and spent £670. The following month the account balance was at £850 and went over the limit in April. Mrs J incurred an overlimit fee in May.

NewDay said that it increased Mrs J's limit in line with its internal policy on limit increases where a customer has incurred over-limit fees. It said it would be unreasonable to consider that this over limit fee and Mrs J's spending pattern were indicative of financial difficulty, especially when Mrs J ceased spending on the account a month after the limit increase. NewDay said Mrs J had been making regular repayments and the information it had about her other debts didn't show signs of arrears or financial difficulties.

NewDay said in response to my provisional decision that Mrs J's account management behaviours did not exclude it from considering her for a credit limit increase. Newday also said that in addition to how Mrs J had managed her account, it considered information from

her credit file and used a credit reference agency tool to check her account transactions and estimate her expenses before offering her a credit limit increase.

As I explained in my provisional decision, this might be a reasonable and proportionate response in some cases. However, in this case NewDay knew Mrs J was self-employed and it hadn't looked into her income beyond a sense-check on her bank account deposits, nor to my knowledge did it gather any information about her actual living costs or other expenses. NewDay has said that it presumed Mrs J's other household income was her partner's income but I don't think this could provide any reassurance of affordability without some further understanding or verification of her circumstances.

Mrs J told us that she wasn't working at the time and relied on her husband to pay all of the household bills including her personal finances. I still don't have any supporting information about Mrs J's circumstances from the time, such as financial accounts, benefit or bank statements so, in this case, I can't come to a view as to what proportionate checks might have revealed and how this information might have impacted on NewDay's lending decision.

Our usual approach where we find a credit limit has been irresponsibly agreed is to direct the lender to return any interest and charges that have been applied to spending on the account above this limit, in other words to consider these charges as overpayments. In this case, NewDay told us that Mrs J didn't make any transactions on her account after the credit limit increase and that it closed the account to new transactions in July 2021. So it seems to me that even if I were to find that NewDay had been irresponsible when it increased Mrs J's credit limit, there wouldn't be any refund owing.

NewDay told us that Mrs J has continued to pay more than the minimum payment each month so her account hasn't fallen into persistent debt and that it hasn't been able to contact her to discuss the outstanding balance. I'll remind NewDay about its ongoing obligation to monitor Mrs J's account and treat her fairly, with forbearance and due consideration regarding her debt. However, I am not directing it to pay her any compensation.

My final decision

As I've explained above, I am upholding Mrs J's complaint in part about NewDay Ltd trading as Marbles but don't require it to pay her compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 11 April 2023.

Michelle Boundy
Ombudsman