DRN-4574987

The complaint

Ms S has complained about a credit card and subsequent credit limit increases NewDay Ltd trading as Marbles ("Marbles") provided to her. She says the credit card and credit limit increases were not affordable for her due to her having a lot of other credit.

What happened

Marbles provided Ms S with a credit card with an initial limit of £300 in August 2015. Ms S's credit limit was increased to £1,300.00 in November 2015, £1,600 in March 2016, £2,850 in August 2016, £3,850 in March 2017; and finally £4,850 in November 2017.

Ms S had some problems repaying her balance and the account was sold by Marbles to a third party in December 2018. This was only a couple of months after Ms S entered a protected Trust Deed.

One of our investigator's explained that we could only look at Ms S' complaint about Marbles increasing her credit limit to £4,850 in November 2017. He then explained why he didn't think the complaint should be upheld.

Ms S disagreed saying in summary that at the time she owed a home credit provider £150 per week and she provided copies of her repayment passbook. As no agreement could be reached the complaint has been passed to me to decide.

I want to be clear that this decision will only focus on Marble's decision to increase Ms S's credit limit in November 2017 – it won't be considering anything that occurred before that date including the decision to provide the credit card.

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 explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Ms S's complaint.

Marbles needed to make sure it didn't lend irresponsibly. In practice, what this means is Marbles needed to carry out proportionate checks to be able to understand whether Ms S could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So, we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

The November 2017 credit limit increase

The investigator tried to obtain further information from Marbles about the checks that it carried out in 2017 before it increased Ms S's credit limit. The investigator rightly pointed out that this was a new lending decision and so Marbles needed to take steps to understand whether Ms S could take on and then service a larger credit limit.

However, Marbles has explained that it has no other information or evidence beyond what it had already provided. This isn't surprising given the card was approved over nine years ago and it had been nearly six years since Marbles sold the account to a third party. But it has said that this credit limit increase occurred because Ms S had requested it.

Ms S had held the credit card for over two years by this point and her credit limit had increased from £300 to the now proposed limit increase of £4,850 – and Marbles was intending to increase the limit by a £1,000 compared to the one she had in October 2017. In any event, as Marbles was providing Ms S with a credit limit of £4,850 on a credit card, which was a revolving credit facility, Marbles needed to consider whether Ms S could repay the new limit within a reasonable period of time.

Marbles has said that before it agreed to this credit limit increase it reviewed how Ms S had managed her account as well as conducted a credit search and it has provided a summary of the results it received.

The results of the credit search showed that Ms S had 6 active accounts with no adverse payment information or other signs of insolvency. In total Ms S owed just over £14,200 to all of her creditors. From the credit file data provided there wasn't anything that ought to led Marbles to think that Ms S might have been struggling with her repayments or was likely having financial difficulties.

That said, I do think there is a reasonable argument for saying that it would have been proportionate for Marbles to have found out a bit more about Ms S's income and regular living costs before offering the credit limit increase especially because it had been over two years since it appears to have made enquires with Ms S about her income.

As Marbles didn't obtain this information, I've considered the information Ms S has provided with a view to deciding what it might have found out about Ms S's income and regular living costs had it asked her about this. To be clear this isn't the same as asking Ms S for her bank statements, as given the amounts involved here, I don't think that asking for this information would have been proportionate in the circumstances.

In saying that, I have used bank statements as this was the most convenient way of working out Ms S's income and her living costs at the time. Having carefully thought about matters, I don't think that Marbles would have made a different decision, when offering the credit limit increase, even if it had asked Ms S for more information.

Ms S's income seems to have increased from October 2017 and so with this new income plus the tax credits and another benefit her total income was around £1,800 per month and this is what I think Marbles would've likely discovered had it made further enquires with Ms S.

I say this because the information Ms S has provided about her finances at the time appears to show that when her committed regular living expenses and existing credit commitments were taken into account, she did have the funds, at the time at least, to sustainably repay £4,850 within a reasonable period of time.

It's possible that Ms S's position might have been worse than what it looks like in the statements – for example Ms S has provided photos of her repayment passbook showing the payments she was making to a home credit provider. The statements provided only go up to June and July 2017 – so some months before the credit limit increase.

But I can see from the statements that in November 2017 she was withdrawing around £70 per week which she says went towards repaying these accounts. Ms S says she had reduced what she was paying to this creditor, but that information wasn't reflected in either the bank statements or in the credit file data Marbles received when it increased her credit limit. So, I don't think Marbles would've likely discovered that the cash withdrawals were being used to pay down other debt.

And I know that around a year later Ms S entered a protected trust deed – and this Marbles account was included in it. But it wouldn't be fair and reasonable for me to use hindsight here, or say that Marbles should have known Ms S was already having difficulties – as she has explained. This is especially as the available information indicated proportionate checks (rather than a forensic analysis of Ms S's bank statements) would more likely than not have shown that Ms S could repay what she could owed at the time the lending decision was made.

As well as taking a look at what proportionate checks would more likely than not have shown Marbles, I've also taken a look at the way Ms S had used the credit card, with a view to determining whether her management of the account ought reasonably to have shown Marbles that it might have been increasing her credit limit in circumstances where it ought to have realised that doing so was unsustainable or otherwise harmful.

Having done so, I can see that there was very little use of the card from its inception until around December 2016. From then until the credit limit increase, I'm considering, Ms S seems to have been making payments beyond the minimum amount set by Marbles and along the lines of what Ms S could be expected to pay to clear £4,850 within a reasonable period of time. In these circumstances, I'm satisfied that Marbles did not increase Miss M credit limit in circumstances where it ought to have realised that doing so would be unsustainable or otherwise harmful for her.

Finally, I've thought about whether considering this complaint more broadly as a complaint about an unfair relationship could lead to a different outcome. Having done so, I don't think I can.

In the context of this complaint, the law relating to unfair relationships is described in Section 140 of the Consumer Credit Act 1974 (Section 140). It says a court may make an order under Section 140 if it determines a relationship between the creditor and the debtor is unfair. The consumer is the debtor and Section 140 defines the creditor as *"the person to whom his rights and duties under the agreement have passed by assignment or operation of law."*

So, where a debt has been sold, as it has been here, it follows that the debt purchaser is now the creditor for the purpose of the credit agreement. I'm therefore satisfied that a claim about an unfair relationship can't be brought by Ms S against the original lender as they are no longer the creditor.

Overall and having considered everything, I don’t think that Marbles treated Ms S unfairly or unreasonably when increasing her credit limit in November 2017 and I’m therefore not upholding this complaint.

My final decision

For the reasons I’ve explained above I am not upholding Ms S’s complaint about NewDay Ltd trading as Marbles’ decision to increase her credit limit in November 2017.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms S to accept or reject my decision before 6 November 2024.

Robert Walker
Ombudsman