

The complaint

Mr M complains that NewDay Ltd trading as Marbles irresponsibly lent to him.

Mr M is represented by a claims management company in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Mr M himself.

What happened

Mr M was approved for a Marbles credit card in September 2018 with an initial £600 credit limit. Marbles approved an increase to this credit limit in March 2020 to £1,850. Mr M says that Marbles irresponsibly lent to him. Mr M made a complaint to Marbles.

Marbles did not uphold Mr M's complaint. They said Mr M told them he was employed with a gross annual income of £34,800, he had unsecured debt of £6,600, he had no active accounts in arrears, he had no payday loans, and he had no adverse public records such as a County Court Judgement (CCJ). They said their checks showed he had a default eight months prior to his application for £400, but he passed their account opening checks and the checks they made for the credit limit increase. Mr M brought his complaint to our service.

Our investigator upheld Mr M's complaint. He said if Mr M couldn't meet his repayments on a credit facility of £400 then he wasn't satisfied that Marbles could have seen this information and decided that Mr M would be able to manage a new credit card with a credit limit of £600. Our investigator said that Marbles should not have provided the credit card to Mr M given his recent adverse history. He said as the credit limit increase followed on from this, this should also be upheld.

Marbles asked for an ombudsman to review the complaint. They said their checks showed that Mr M had an estimated disposable income (EDI) of £722.08 at the time of the application so they were satisfied that the credit limit of £600 was affordable to Mr M despite his recent default.

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.

Before agreeing to approve or increase the credit available to Mr M, Marbles needed to make proportionate checks to determine whether the credit was affordable and sustainable for him. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances. I've listed below what checks Marbles have done and whether I'm persuaded these checks were proportionate.

Acceptance for the Marbles credit card - initial credit limit (£600)

I've looked at what checks Marbles said they did when initially approving Mr M's application. I'll address the credit limit increase later on. Marbles said they looked at information provided by Credit Reference Agencies (CRA's) and information that Mr M had provided before approving his application.

The information showed that Mr M had declared a gross salary of £34,800 and he was employed. But that's not all Marbles' data showed. The data showed that Mr M had active outstanding unsecured balances of £6,600. And he also had a default showing that was registered just eight months prior to his application for only £400.

Marbles also used EDI by looking at Mr M's current account turnover data, credit report data from CRA's, customer declared costs and affordability models, including a buffer to respond to cost of living and housing costs. Based on this, Marbles deemed that Mr M had an EDI of £722.04 a month.

But although Marbles estimated the EDI at £722.04, I'm persuaded that based on the recent default, only months earlier for nearly half of the EDI, that this should have prompted Marbles to complete further checks to ensure the £600 credit limit was sustainable and affordable for Mr M. As if he genuinely had over £700 of disposable income, it would be unusual for somebody to need to default on an account for much less than this.

There's no set way of how Marbles should have made further proportionate checks. One of the things they could have done was to contact Mr M to get an understanding of why he recently defaulted on an account if the EDI they estimated for him was so large compared to the recent defaulted amount. Or they could have asked for his bank statements as part of a proportionate check to ensure the lending was sustainable and affordable for him.

So I asked Mr M to provide his bank statements for the three months leading up to the September 2018 acceptance of the Marbles account, which Marbles could have requested as part of a proportionate check

The three months bank statements show that Mr M was having financial difficulties throughout these three months. On each statement, he entered an unarranged overdraft frequently. On each statement it shows returned direct debits where one of the direct debits was only for £47.71. Mr M also had a returned direct debit payment for his phone bill.

So if Marbles had asked Mr M for his bank statements based on the recent default being lower than the proposed credit limit (and being much lower than the EDI), as part of a proportionate check, they would have realised that any credit would have not been sustainable or affordable for Mr M. So I can't conclude that Marbles checks were proportionate, and therefore I'm not persuaded that Marbles made a fair lending decision to approve Mr M's Marbles application.

May 2019 credit limit increase - £1,200 to £2,950

If Mr M's Marbles account was not opened, I think there is an argument for saying that Mr M's complaint about the subsequent lending decision should be upheld without making a finding on reasonable and proportionate checks. After all, if matters had played out as the evidence suggests they should have done in September 2018, I'm not persuaded Mr M would've been able to add to the credit.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed at the end of this decision results in fair compensation for Mr M in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this

case.

Putting things right

Our investigator has suggested that Marbles takes the actions detailed below, which I think is reasonable in the circumstances.

My final decision

I uphold this complaint. NewDay Ltd trading as Marbles should take the following actions:

Marbles should arrange to transfer any debt back to themselves if it has been passed to a debt recovery agent or liaise with them to ensure the redress set out below is carried out promptly;

Rework the account removing all interest, fees, and charges, that have been applied;

If the rework results in a credit balance, this should be refunded to Mr M along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. Marbles should also remove all adverse information regarding this account from his credit file;

Or, if after the rework there is still an outstanding balance, Marbles should arrange an affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

*If Marbles consider that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr M how much they've taken off. They should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 October 2024.

Gregory Sloanes
Ombudsman