Financial Ombudsman Service

The complaint

Mr A, through a representative, says NewDay Ltd, trading as Marbles, irresponsibly lent to him.

What happened

Mr A applied for a credit card from NewDay in August 2017. It was approved with a limit of £900. This was decreased to £600 in November 2017. He was then given six credit limit increases as set out below, followed by another decrease to £7,600 in March 2022.

increase	date	limit
1	20/04/2018	£1,500
2	20/08/2018	£3,250
3	21/12/2018	£4,000
4	20/05/2019	£6,000
5	25/09/2020	£6,750
6	22/01/2021	£7,750

Mr A says he had to take out additional lending to pay for the credit. He says NewDay didn't ask him any questions to confirm that he would be able to repay the credit in a sustainable way. He says he already had multiple other borrowings at the time he applied for this credit and he struggled to pay essential bills because of his repayments. He states his income changed between taking out and repaying the credit, but the lender didn't check this.

NewDay says it carried out proportionate checks at each stage that showed the credit would be affordable for Mr A.

Our investigator upheld Mr A's complaint in part. She found that limit increases 5 and 6 ought not to have been given to him.

Mr A accepted this assessment but NewDay did not. It said whilst Mr A's unsecured balance had increased by September 2020, he declared an income of £50,000. Sustainable repayments on a credit card limit of £6,750 would be around £337 a month so it cannot agree that the increase was not sustainable. There have been no signs that the credit limit was not affordable. Mr A has not informed NewDay of any financial hardship and payments are being maintained in line with the agreement terms.

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.

Our approach to unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - is set out on our website and I have followed it here.

NewDay is required to lend responsibly. It needed to conduct checks to make sure that the credit it offered to Mr A was affordable and sustainable. Such checks need to be proportionate to things like the credit limits it offered Mr A, how much he had to repay (including interest and charges) each month, his borrowing history with it and what it knew about his circumstances. But there is no set list of checks it had to do.

This means to reach my decision I need to consider if NewDay carried out proportionate checks at the time of Mr A's application and each limit increase; if so, did it make fair lending decisions based on the results of its checks; and if not, what better checks would most likely have shown. I also need to think about, bearing in mind the circumstances at the time of each additional advance in credit, whether there was a point at which NewDay ought reasonably to have realised it was increasing Mr A's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit.

I can see as part of NewDay's checks when Mr A applied it considered his income, and total level of borrowing held elsewhere and repayment history. For the limit increases it looked at how he was managing both his Marbles account and his other debt elsewhere.

I think these checks were proportionate at application given the stage in the lending relationship and the among of credit offered, but I'm not satisfied they were for the limit increases. I think NewDay needed to check Mr A's income had not changed significantly as it extended his borrowings. And as the limit increased over the years substantially I think it also needed to understand his non-discretionary outgoings.

Application and initial limit of £900

As I've said, I find the checks were reasonable and I think NewDay made a fair lending decision based on the information it gathered. Mr A declared an annual income of £50,000 and its credit showed he had unsecured debts of £10,900. There was some adverse data on his file but the most recent significant entry was 61 months old. As it was historic I find it was reasonable for NewDay to conclude this was not representative of Mr A's current financial situation. All his active accounts were up to date.

In the round I find it was fair for NewDay to open the account for Mr A.

Credit limit increases 1 to 4

Here the checks were not proportionate. Mr A had recently missed a payment before increase 2 so I think NewDay needed better assurances that Mr A could sustainably afford more credit. And at the time of the third and fourth limit increases Mr A's indebtedness had increased significantly to over £31,000. Given the value of the limit increases I think NewDay ought to have checked Mr A's income and expenditure.

We asked Mr A for bank statements to allow us to understand what better checks would have shown but he did not provide them. So I do not have any evidence to rely on that shows the limit increases were unaffordable. I note Mr A has also accepted the investigator's finding that she could not conclude NewDay was wrong to give limit increases 1 to 4 to him.

Credit limit increases 5 and 6

I do not think the checks were proportionate on these two occasions either, but I won't comment further on that as even based on the information it did gather I think NewDay ought to have realise there was a high risk any further credit would most likely be unaffordable for Mr A.

By August 2020 Mr A’s external unsecured debt had reached £37,615 so I think NewDay ought to have realised Mr A was becoming increasingly reliant on credit. He would have most likely been spending over half on his income to repay his unsecured credit. At this level I think NewDay ought to have been concerned any additional credit may lead to financial difficulties. It argues as Mr A earned £50,000 he could afford the £337 a month to repay a limit of £6,750 but I cannot see it had checked his income for years, and nor does its argument consider his other credit commitments or essential outgoings. NewDay also defends these two increases saying Mr A has had no repayment issues, but it does not know how he was funding his repayments. And the data it does have suggests a substantial reliance on credit so I do not think it had the assurances it needed that Mr A would not have to borrow to repay.

I find NewDay was wrong to increase Mr A’s limit to £6,750. And logically the subsequent increase to £7,750 was irresponsible for the same reason as by this stage NewDay knew Mr A’s unsecured debt had grown to around £50,000.

Finally, when Mr A brought his complaint to this service he also said NewDay had not handled his complaint correctly. He did not explain why he thought this. But this is not something I can look at. There is a difference between a complaint about a financial service and a complaint about how a firm has handled a complaint. I can only look at the former. Mr A’s concerns about how NewDay responded to his complaint is not a complaint about its provision of or failure to provide a financial service – it’s distinctly about complaint handling. And under our rules I cannot consider complaint handling.

Putting things right

As I don’t think NewDay should have increased Mr A’s credit limit above £6,000 I don’t think it’s fair for it to charge any interest or charges on any balances which exceeded that limit. However, Mr A has had the benefit of all the money he spent on the account so I think he should pay this back.

Therefore, NewDay should:

• Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £6,000 after 25 September 2020.
• If the rework results in a credit balance, this should be refunded to Mr A along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information recorded after 25 September 2020 regarding this account from Mr A’s credit file.
• Or, if after the rework the outstanding balance still exceeds £6,000 NewDay should arrange an affordable repayment plan with Mr A for the remaining amount. Once Mr A has cleared the outstanding balance, any adverse information recorded after 25 September 2020 in relation to the account should be removed from his credit file.

If NewDay has sold the debt to a third party, they should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mr A a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

I’ve also considered whether the relationship might have been unfair under Section140A of the Consumer Credit Act 1974. However, I’m satisfied the redress I have directed above results in fair compensation for Mr A 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.

My final decision

I am upholding Mr A’s complaint in part. NewDay Ltd, trading as Marbles, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 12 November 2024.

Rebecca Connelley
Ombudsman