DRN-5092362

Complaint

Mr L has complained about a ("Marbles") branded credit card and the subsequent credit limit increases on it which NewDay Ltd provided to him. He says he was provided with the credit card and credit limit increases without any concern for his financial difficulty.

Background

Mr L also initially complained about a loan which Marbles provided to him in March 2018. However, we've separately explained why we're not looking into that complaint and this decision is solely looking at matters related to Mr L's Marbles credit card and whether he was treated fairly and reasonably in relation to this.

Marbles provided Mr L with a credit card which had an initial credit limit of £450 in February 2017. Mr L's credit limit was firstly increased to £1,350.00 in July 2017, before it was increased to £2,350.00 in November 2017 and then finally increased to £3,250.00 in October 2018.

One of our investigators reviewed what Mr L and Marbles had told us. She thought that we couldn't look at Marbles' decision to initially provide Mr L with the credit card. However, she also thought Mr L should not have offered any of the credit limit increases that it did. So she didn't think that Marbles had treated Mr L fairly and reasonably in relation to any of the credit limit increases and partially upheld this complaint.

Mr L didn't disagree with any aspect of the investigator's assessment. However, while Marbles was in agreement with the investigator's findings in relation to its initial decision to provide the credit card, it disagreed with her findings that the credit limit increases should not have been provided. As Marbles didn't accept the investigator's conclusions, the complaint was passed to an ombudsman for review.

As the parties are in agreement with the assessment on whether Mr L should have been provided with the credit card in the first place, this decision is only looking at the decision to provide Mr L with credit limit increases in July 2017, November 2017 and October 2018.

My provisional decision of 3 October 2024

I issued a provisional decision – on 3 October 2024 - setting out why I was intending to partially uphold Mr L's complaint.

In summary, I was intending to partially uphold Mr L's complaint because I was satisfied that proportionate checks wouldn't have prevented Marbles from initially providing the credit card or the first two credit limit increases. However, I was satisfied that such checks would more likely that not have shown Marbles that it shouldn't have offered the final limit increase to Mr L.

Marbles' response to my provisional decision

Marbles didn't respond to my provisional decision or ask for any additional time to do so either.

Mr L's response to my provisional decision

Mr L responded to confirm his acceptance of my provisional decision and that he had nothing further to add.

My findings

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 Mr L's complaint.

Having carefully considered everything, including what has come back in response to my provisional decision, I'm still partially upholding Mr L's complaint. I'll explain why in a bit more detail.

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 Mr L 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.

Marbles says Mr L would have been provided with the credit limit increases based on how his credit card was being managed, credit searches, which showed his external debt, that it carried out with credit reference agencies and some information on his income and expenditure.

In its view, the information obtained indicated that Mr L's existing debts, as well as his Marbles credit card, were being reasonably managed and as such it wasn't unreasonable to have increased the credit limit on the card on the occasions that it did.

On the other hand Mr L says that the limit increases shouldn't have been provided to him.

I've considered what the parties have said.

What's important to note is that Mr L was provided with limit increases to a revolving credit facility rather than a loan. And this means that Marbles was required to understand whether credit limits of £1,350.00, £2,350.00 and £3,250.00 could be repaid within a reasonable period of time, rather than all in one go.

Credit limits of £1,350.00, £2,350.00 and £3,250.00 didn't require huge monthly payments in order to clear the full amount owed within a reasonable period of time. I say this particularly as a reasonable period of time, in these circumstances, is likely to equate to the term for equivalent loan amounts.

Nonetheless, Marbles has said that it estimated Mr L's disposable income based on information that it obtained from credit reference agencies. However, it is unable to provide the result of this assessment, or what it concluded Mr L was able to repay at the time that it agreed the first two credit limit increases at least.

As this is the case and I would have expected Marbles to demonstrate not only what it found out about Mr L's income and expenditure but what this showed about his ability to afford these credit limit increases, Marbles' inability to provide any of this information means that I'm not prepared to accept that the checks it carried out were reasonable and proportionate.

Why I'm currently minded not to uphold Mr L's complaint about the credit limit increases to £1,350.00 in July 2017 and £2,350.00 in November 2017.

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit or increasing the amount of credit available to a customer, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

However, Mr L says he is unable to provide us with all of the information we've asked him for in order to be able to assess what his circumstances were like at the time he was provided with these limit increases.

I appreciate that Mr L may believe that it is unfair to expect him to provide information about his circumstances which he doesn't have. But I also have to take into account that Marbles isn't necessarily required to have all of the information either and while this part of his complaint may have been made in time, I nonetheless have to decide the complaint on what I have before me.

Equally, even where a lender hasn't carried out sufficient checks it remains the case that it is only fair and reasonable for me to go on to uphold the complaint in circumstances where I can see that carrying out sufficient checks would have shown the additional credit was unaffordable. And I'm afraid that I've not been provided with sufficient information to show me that Mr L would not have been able to make the increased monthly payments required should he have owed the full amount of the new credit limits.

Our investigator's assessment relied heavily on the argument that Mr L's inability to make the payments to his Marbles loan in May 2018 was indicative of him not being able to repay the extra he would have access to in July 2017 and November 2017. However, I think that the investigator was being overzealous on this occasion for more than one reason.

Firstly, Mr L only began having returned payments on his loan in May 2018 and the loan itself wasn't taken out until March 2018. This was months after these limit increases had already been provided. I don't think that Mr L having returned payments on an additional commitment, which hadn't as yet been entered into at the time of the application, was indicative of him being unable to repay the extra that he could have owed as a result of the July 2017 and November 2017 increases.

Secondly, I also have to consider Mr L's repayment record at the time he was offered the first two credit limit increases too. Mr L had a low balance in relation to the amount he could owe at the time the first two credit limit increases were offered. He had also made monthly payments that were well in excess of what he would be required to repay the extra amount he could owe, within a reasonable period of time.

Our investigator has that Mr L's outstanding balance had doubled in July 2017. But this was after he'd already been provided with the credit limit increase and from what I can see he had a balance of only £1.47 in June 2017, which was the last statement prior to the lending decision. Furthermore, while Mr L's balance did increase in July 2017, I don't consider that a balance of £340.49 against a credit limit of £1,350.00, or even £450, is indicative of a borrower experiencing financial difficulty as the investigator as suggested.

In these circumstances, and in the absence of sufficient evidence to show me that the monthly payments required to the increased credit limits were as a matter of fact unaffordable either, I cannot reasonably conclude that reasonable and proportionate checks would have shown that the July 2017 and November 2017 credit limit increases were unaffordable and that Marbles shouldn't have offered them.

So overall and having carefully considered everything and while I appreciate that this will disappoint Mr L, I'm not to upholding Mr L's complaint about the credit limit increases he was provided with in July 2017 and November 2017.

Why I'm currently minded to uphold Mr L's complaint about the credit limit increase to £3,250.00 in October 2018.

The credit limit increase to £3,250.00 was provided to Mr L in October 2018. This was not only after he was provided with his Marbles loan but also after he began having returned direct debits for the monthly payments on that agreement. I think that this was a relevant consideration that Marbles ought to have taken into account before offering to increase Mr L's credit limit.

Furthermore, while Mr L may have had a decent repayment record prior to the first two limit increases, I don't think that it was necessarily the case in the period leading up to October 2018. Marbles appears to be relying heavily on Mr L's prior repayments having been significantly higher than what would have been required to repay £3,250.00 within a reasonable period of time. However, I think that it is making this argument as a result of heavily relying on a payment of £1,100.00 that was made on Mr L's July 2018 statement.

I do agree that if taken in isolation such a payment could be indicative of the fact that a borrower wouldn't have difficulty repaying £3,250.00 within a reasonable period of time. However, I'm mindful that this wasn't too long after Mr L was provided with his Marbles loan and, in my view, this in itself is evidence that Mr L may well have made this payment with borrowed funds. So I don't agree with Marbles' assertion that there is no evidence at all of Mr L having borrowed to make his payments.

Secondly, the £1,100.00 payment appeared to be a one-off and it's fair to say that Mr L's monthly payments after this payment and before the offer of the October 2018 credit limit increase, were substantially lower and were much closer to the minimum payment required. Indeed, in the month before the limit increase Mr L owed £2,310.03 against his existing credit limit of £2,350.00 and this was after he'd exceeded his credit limit the month previously.

This was also not only in the context of the behaviour score that Marbles was attributing to Mr L lowering, but him having returned direct debits on his Marbles loan, which Marbles not only ought to have been aware of, but taken into account as a relevant consideration as to whether to offer to increase Mr L's credit limit. I simply don't agree that Mr L's management of his account was good in this period, or more importantly that it demonstrated that he could repay a further £900 within a reasonable period of time.

Bearing all of this in mind, I'm satisfied that the available evidence demonstrates that reasonable and proportionate checks, in October 2018, would more likely than not only have shown that Mr L didn't have sufficient funds to repay £3,250.00 within a reasonable period of time. Furthermore, I'm also satisfied that the available evidence also demonstrates that Marbles offered Mr L further credit in circumstances where it ought to have realised that it was unsustainable, or otherwise harmful for him and it increased his overall indebtedness to a point where he'd struggle to repay what he was being lent.

As Marbles offered the credit limit increase to £3,250.00 in October 2018, in these circumstances, I'm upholding this aspect of Mr L's complaint.

Finally, I've thought about whether considering this complaint more broadly as being about an unfair relationship under s140A of the Consumer Credit Act 1974 ("CCA") would impact on my findings. Having done so, I don't think that it would.

To explain, the law relating to unfair relationships is described in s140 CCA. It says a court may make an order under s140B if it determines a relationship between the creditor and the debtor is unfair. The consumer is the debtor and s140 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, like it has been here, it follows that the debt purchaser is now the creditor for the purpose of the credit agreement. Therefore, I'm satisfied that a claim about an unfair relationship can't be brought by Mr L against Marbles as it is no longer the creditor in this instance.

Overall and having carefully considered everything, I'm satisfied that Marbles didn't act unfairly or unreasonably when it provided the first two credit limit increases to Mr L, but that it shouldn't have provided the third one in October 2018. This means that Mr L was provided with a credit limit increase that he could not afford to repay and he's been charged extra in interest, fees and charges as a result. So I'm satisfied that he has lost out because I think that Marbles did something wrong and it should now put things right.

I appreciate this will be very disappointing for Mr L – particularly as the investigator's assessment suggests that he shouldn't have been provided with any of the limit increases on his credit card. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

Fair compensation – what Marbles needs to do to put things right for Mr L

Having carefully considered everything, I'm satisfied that it would be fair and reasonable, in all the circumstances of Mr L's complaint, for Marbles to put things right in the following way:

- liaise with the third-party debt purchaser to rework Mr L's account to ensure that from October 2018 interest is only charged on the first £2,350.00 outstanding - to reflect the fact that the credit limit increase to £3,250.00 should not have been provided. All late payment and over limit fees should also be removed;

- in the unlikely event that the effect of these adjustments results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr L along with 8% simple interest† on the overpayments from the date they were made until the date of settlement. If no outstanding balance remains on Mr L account after all adjustments have been made, then Marbles should remove any adverse information it (not any third party) has recorded from Mr L's credit file.

† HM Revenue & Customs requires Marbles to take off tax from this interest. Marbles must give Mr L a certificate showing how much tax it has taken off if he asks for one.

Marbles sold an outstanding balance on Mr L's account to a third-party debt purchaser. So it will need to either pay an amount to the third-party (equivalent to what needs to be paid on Mr L's account so that it is reduced by the interest added as a result of the October 2018 credit limit increase) in order for it to make the necessary adjustments, or pay Mr L an amount (equivalent to the interest, fees and charges which need to be refunded) to ensure that it fully complies with this proposed direction.

My final decision

For the reasons I've explained above and in my provisional decision of 3 October 2024, I'm partially upholding Mr L's complaint. NewDay Ltd should put things right in the way that I've directed it to in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 18 November 2024.

Jeshen Narayanan
Ombudsman