

The complaint

Mrs H, through a representative, says NewDay Ltd (trading as Marbles) irresponsibly lent to her.

What happened

Mrs H took out a credit card from NewDay in September 2021. She was given a £300 credit limit. This was increased three times until it reached £3,000 in December 2022.

Mrs H says NewDay didn't ask her any questions to confirm that she would be able to repay the credit in a sustainable way. She had to take out additional lending to pay for the credit and she already had multiple other borrowings at the time. She is also unhappy with how NewDay handled her complaint.

NewDay says Mrs H passed its affordability and creditworthiness checks.

Our investigator upheld Mrs H's complaint. She said the checks at application were proportionate but NewDay did not make a fair lending decision based on the information it gathered. It follows she found all the limit increases were irresponsible.

NewDay disagreed so the complaint was passed to me to make a final decision. It re-iterated that Mrs H passed all its checks and added that she had managed her account well.

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 Mrs H was affordable and sustainable. Such checks need to be proportionate to things like the amount of credit it offered Mrs H, how much she had to repay (including interest and charges) each month, her borrowing history and what it knew about her 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 when it opened Mrs H's account and at the time of Mrs H's limit increases; 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 can see NewDay reviewed certain information before opening an account for Mrs H. It asked for her income and it carried out a credit check to understand her existing commitments and repayment history. It modelled her living costs and concluded she would have monthly disposable income of £108 after taking on this card. So it would be affordable for her.

I think these checks were proportionate given the stage in the lending relationship and the amount of credit offered (£300). However I do not think NewDay made a fair decision based on the information it gathered.

It learnt Mrs H had a relatively low monthly income of £1,433, she had missed a mortgage payment in the previous six months and defaulted on an account 22 months before. Its income and expenditure assessment showed she would have just over £100 disposable income to cover all discretionary spend, as well as any unexpected or seasonal costs. Mrs H was already spending 47% of her income on her existing credit commitments – a level which should have concerned NewDay in the context of all the other factors combined. I think it was clear there was a high risk Mrs H would struggle to repay the credit sustainably – so without borrowing to repay, or suffering some other adverse financial consequences. And NewDay was required to consider this, not just the pounds and pence affordability.

It follows I find NewDay was wrong to open the account for Mrs H and so all subsequent limit increases should also not have been given.

Mrs H was also unhappy with how NewDay responded to her complaint saying it did not provide an evidence-based, specific reply. 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. Mrs H's concerns about how NewDay responded to her 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.

Regarding the timeliness, as our investigator said NewDay Ltd responded just outside the set time frame, but Mrs H had the opportunity to bring her complaint to our service after the eight weeks had passed. I note that NewDay apologised for the delay in its final response letter. I find this to be an appropriate response and do not find financial compensation is appropriate for less than a week's delay.

Putting things right

As I don't think NewDay Ltd ought to have opened the account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I think Mrs H should pay back the amounts she's borrowed.

Therefore, NewDay Ltd should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied.
- If the rework results in a credit balance, this should be refunded to Mrs H 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 regarding this account from Mrs H's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mrs H for the remaining amount. Once Mrs H has cleared any capital balance, any adverse information in relation to the account should be removed from her credit file.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mrs H a certificate showing how much tax has been taken off if she 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 Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mrs H in the circumstances of her 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 Mrs H's complaint. 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 Mrs H to accept or reject my decision before 2 January 2025.

Rebecca Connelley
Ombudsman