

The complaint

Mrs B complains that NewDay Ltd (trading as Marbles Card) was irresponsible when it offered her credit.

What happened

NewDay opened a credit card account for Mrs B in early August 2022 with a credit limit of £900. This type of credit was an open-ended or running account facility. I understand that Mrs B transferred a cash balance shortly after opening the account, and that she hadn't been charged any late or overlimit fees as of June 2024.

Mrs B complained to NewDay in June 2024 that it had been irresponsible to open the account for her. She said that the credit was unaffordable and unsustainable, and that NewDay didn't carry out adequate affordability checks before lending to her. Mrs B said that she got into a cycle of borrowing to repay other debts when she took out the account.

NewDay didn't uphold Mrs B's complaint. It said it relied on information she'd provided along with information from her credit file, and there was nothing in the information it relied on to suggest that she was in financial difficulty. NewDay concluded that the account was provided responsibly after an appropriate affordability assessment.

Mrs B brought her complaint to us. Our investigator assessed the complaint and didn't recommend that it be upheld. They found that NewDay carried out proportionate checks before opening the account for Mrs B, that there wasn't anything in the checks which suggested that the credit would be unaffordable for her and that its lending decision wasn't unfair.

Mrs B disagreed with our investigator's recommendation and asked for her complaint to come to an ombudsman to decide.

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.

I've also had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as NewDay, need to abide by. NewDay will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement, NewDay needed to check that Mrs B could afford to repay the credit out of her usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit, for example the amount offered, and to Mrs B's particular circumstances. NewDay needed to treat Mrs B fairly and take full account of her interests when making its lending decision.

With this in mind, my considerations are did NewDay complete reasonable and proportionate checks when it opened the account for Mrs B to satisfy itself that she would be able to repay the credit offered within a reasonable period of time? If it didn't do this, what would reasonable and proportionate checks have shown and, ultimately, did NewDay treat Mrs B unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974?

NewDay recorded Mrs B's stated income as £32,000, equating to a net monthly figure of £2,213. NewDay said it checked this figure using a credit reference agency tool which considers bank account turnover, though it hasn't provided us with the results of this check. Mrs B provided us with her bank statements from the time which shows monthly deposits into her account amounting to more than £6,000 in both June and July 2022. Mrs B said that not all of these were income deposits, and that she had given an accurate income figure. I think it's likely that any further verification of Mrs B's income figure would have reassured NewDay that she was earning at least what she'd declared in her application, and so I don't think it was wrong to rely on this.

NewDay noted that Mrs B had a debt to income ratio of 33%, in other words that she had existing debts of around £10,500. It didn't record a breakdown of this debt. NewDay said that there was no negative information recorded on Mrs B's credit file. It provided us with a copy of the credit file information it relied on, which I've reviewed and it supports NewDay's analysis.

NewDay recorded Mrs B's monthly rent as £278 and estimated that she spent £235 a month repaying her existing debt plus an amount of £459 on her essential living costs based on national statistical datasets. NewDay estimated that Mrs B would have a disposable income of over £1,200 a month and concluded that the credit card repayments would be affordable for her.

Mrs B said that there was clear evidence from her credit file that she already had a considerable amount of borrowing, some of it recent. There was also evidence that she was not managing her debts as she was heavily utilising two overdrafts, one with a repayment plan, and had missed a recent payment on a loan. Mrs B said that NewDay would not have opened the account for her, had it taken this negative information into consideration.

I don't know why the information NewDay saw differed from that shown Mrs B's credit report, which I've reviewed. It may be that its information was provided by different credit reference agencies or that some of the lending Mrs B refers to was so recent it hadn't been included in the information, for example a £2,000 loan taken out in mid-July 2022 and two credit cards in August.

The regulations in place at the time said that NewDay could take into account statistical data when estimating Mrs B's non-discretionary expenditure unless it had reasonable cause to suspect that this might be significantly higher than that described in the data, or that the data are unlikely to be reasonably representative of her situation.

NewDay was offering a relatively modest credit limit of £900, which would require relatively low monthly payments in order to clear the full amount owed within a reasonable period of time. Given this, and that the credit file information NewDay relied on didn't contain any negative information, I've concluded that it was reasonable of NewDay to rely on statistical information for its expenditure estimate.

Altogether, I've concluded that the checks NewDay carried out on this occasion were reasonable and proportionate. And there wasn't anything shown in its checks that should

have prompted it either to decline to lend to Mrs B, or to carry out further checks before doing so. I can't say NewDay was irresponsible or unfair to have entered into the agreement with Mrs B.

Mrs B has shared with us that her circumstances at that time were very difficult and she was recently bereaved. I am very sorry to hear of Mrs B's loss and that things were so difficult for her. I don't doubt what she's told us about her finances and the bank statements and credit file information she's provided support what she's said. However, although this information was available, I don't think it this means that NewDay got something wrong in its assessment by not considering it, bearing in mind that the regulations say that it needed to make a proportionate assessment, which is what I've concluded happened here.

I have thought about whether NewDay treated Mrs B unfairly in any other way. However, for the reasons I've already given, I don't think NewDay lent irresponsibly to Mrs B or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here. I would remind NewDay of its obligations to treat Mrs B with forbearance and due consideration if she is struggling with her repayments, which may mean agreeing an affordable repayment plan for any outstanding balance.

My final decision

For the reasons I've given above, I am not upholding Mrs B's complaint about NewDay Ltd trading as Marbles Card and don't require it to take any action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 12 February 2025.

Michelle Boundy
Ombudsman