DRN-5213950

The complaint

Mr H is complaining that NewDay Limited trading as Marbles lent to him irresponsibly by providing him with, and then increasing the credit limit on, a credit card account. Mr H is represented in his complaint, but for ease I've written as if we've dealt directly with him.

What happened

In February 2021, NewDay approved Mr H's application for credit, giving him a credit limit of £900. They increased the limit to £1,900 in July 2021, and to £3,150 in January 2022. Mr H contacted NewDay when he was struggling with his finances in July 2023 and took a three-month payment holiday but then got back on track with his payments.

Mr H complained to NewDay in May 2024, saying they'd failed to check the lending would be affordable for him. In their response, NewDay said they'd carried out a credit check with a Credit Reference Agency (CRA) before lending to Mr H and before each credit limit increase (CLI). And they said they'd looked at Mr H's account behaviour before each CLI. They were confident they'd lent responsibly to Mr H.

Mr H remained unhappy and brought his complaint to our service where one of our investigators looked into it. He said he thought NewDay had carried out reasonable and proportionate checks before lending to Mr H and had made fair decisions to approve Mr H's application and to increase his credit limit on each occasion.

Mr H disputed our investigator's view. He provided some bank statements and said they showed the lending was irresponsible. Our investigator explained that NewDay wouldn't have needed to review Mr H's bank statements in order to make a fair lending decision. Mr H remained unhappy and asked for an ombudsman's decision – and the matter's come to me.

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.

Having done so, I'm not upholding Mr H's complaint for broadly the same reasons as our investigator. I'll explain below:

<u>What's required of lenders?</u>

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer, or when increasing the amount they lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did NewDay carry out proportionate checks before deciding to lend to Mr H?

Before deciding to lend to Mr H, NewDay asked him for his gross salary and then verified the amount he received each month using Current Account Turnover data (CATO).

NewDay also reviewed Mr H's credit file. They've not shared the report they looked at but their summary says Mr H had one adverse public record but no defaults or recent missed payments. The adverse public record was dated four years before Mr H's application to NewDay, so I'm satisfied it was reasonable for NewDay to treat this information as historic and not indicative of Mr H's circumstances at the time of his application. NewDay's summary suggests Mr H's existing credit commitments at the time were minimal, and said he needed to pay just £10 per month to existing creditors.

NewDay then estimated Mr H's disposable income using the income they'd verified, of around £1,370 per month, the credit commitments figure they took from Mr H's credit file, and statistical data from both internal and external sources to account for Mr H's non-discretionary expenditure. CONC allows a business to use statistical data to estimate a customer's non-discretionary expenditure unless it has reasonable cause to suspect the data may not be representative of the customer's situation. In Mr H's case, there was no indication from his application or his credit file that statistical data may not be representative. So I'm satisfied it was reasonable for NewDay to use this data in assessing affordability for Mr H.

In summary, then, before lending to Mr H, NewDay verified his income, carried out a credit check, and estimated his disposable income using statistical data. I'm satisfied these checks were reasonable and proportionate. I appreciate Mr H has sent his bank statements to us and said they show the lending was unaffordable. But, as I've explained, I'm satisfied NewDay's checks were reasonable and proportionate - so I can't say NewDay should have looked at Mr H's bank statements or done any other additional checks.

Did NewDay make a fair decision to lend to Mr H?

NewDay were approving a credit limit of £900. As it was revolving credit, there's no set amount that needed to be repaid each month, but CONC 5.2A.27 R requires a firm to assume when carrying out its assessment that the entire credit limit is drawn down at the earliest opportunity and repaid in equal instalments over a reasonable period. I think NewDay could have reasonably assumed Mr H would need to pay them around £50 per month. NewDay estimated Mr H's disposable income was over £700 and saw no sign of financial distress in his credit file. So I'm satisfied they made a fair decision to lend – it was reasonable for them to assume the credit would be sustainably affordable for Mr H.

What about the credit limit increases?

CLI 1 – to £1,900

NewDay increased Mr H's credit limit to £1,900 around five months after approving the card. Before doing so, they checked Mr H's credit report, and they reviewed his management of the account over the few months he'd had it.

NewDay didn't verify Mr H's income at this point, but they did use statistical data to assess the likelihood of the increased credit limit being affordable.

Looking at the credit file data NewDay reviewed, I can see Mr H's external credit had increased significantly since he'd taken out the credit card, and he now needed to spend around £360 each month on paying his creditors. But he was managing these payments well – there was no indicator of any missed payments or other adverse information.

Mr H's account history with NewDay showed he was making cash withdrawals on his credit card. These totalled nearly £500 in the four months since Mr H had taken out the credit card. This is a significant figure but in isolation, I'm satisfied it's not enough to say NewDay should have done more checks – particularly because Mr H was paying back significantly more than the total of his cash withdrawals and minimum payments.

I'm satisfied NewDay's checks were reasonable and proportionate in the circumstances, and that they made a fair lending decision – although NewDay didn't verify Mr H's income, there was nothing to suggest it had changed in the five months since his original application. His credit commitments had increased significantly but the disposable income NewDay had estimated just a few months prior allowed for this. And the fact that Mr H was managing both this and his external credit well suggests the increased limit was affordable.

CLI 2 – to £3,150

Before increasing Mr H's limit in January 2022, NewDay verified Mr H's income again, using CATO. They also reviewed his management of his account and his credit report again and estimated his disposable income would be around £250.

The credit file data showed Mr H's external credit had decreased slightly since July 2021. And it showed Mr H continued to manage his external credit well. Mr H's account history showed a similar pattern to that at the previous CLI – his cash withdrawals over the preceding six months totalled around £750, but his payments over the same period totalled nearly £2,000 – well over the total of his cash withdrawals and minimum payments.

On that basis, I'm satisfied NewDay's checks were reasonable and proportionate in the circumstances. I think they could have assumed Mr H would need to pay them around £50 to £100 more each month in order to repay the credit within a reasonable timeframe. Their estimated disposable income suggested this was affordable, and they saw no sign of financial distress in Mr H's credit file or account management. So I'm satisfied they made a fair decision to increase Mr H's credit limit.

<u>Did NewDay act unfairly in any other way?</u>

NewDay said Mr H contacted them in July 2023 to tell them he was struggling with his finances. I can see NewDay allowed Mr H a three-month payment holiday, and charged him no interest during this period. So I'm satisfied NewDay treated Mr H with forbearance at this point. Mr H got back on track with his payments to NewDay and I haven't seen any other indicators that he struggled further with his finances.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think NewDay lent irresponsibly to Mr H or otherwise treated him 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.

My final decision

As I've explained above, I'm not upholding Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 February 2025.

Clare King
Ombudsman