

The complaint

Mrs H complains that NewDay Ltd trading as Marbles irresponsibly lent to her.

Mrs H is represented by a claims management company in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Mrs H herself.

What happened

Mrs H was approved for a Marbles credit card in February 2020 with a £1,200 credit limit. I have detailed the credit limit changes below:

January 2021	£1,200 to £2,450
April 2021	£2,450 to £3,700
August 2021	£3,700 to £4,950
February 2022	£4,950 to £6,450
June 2022	£6,450 to £7,950
February 2023	£7,950 to £400
July 2023	£400 to £1,150
December 2023	£1,150 to £2,050

Mrs H says that Marbles irresponsibly lent to her. Mrs H made a complaint to Marbles, who did not uphold her complaint. Mrs H brought her complaint to our service.

Our investigator partially upheld Mrs H's complaint. He said that Marbles should not have increased Mrs H's credit limit above £3,700. Marbles asked for an ombudsman to review the complaint. They said that Mrs H showed sufficient estimated disposable income to be able to afford repayments for a higher credit limit, she managed her account well, and they said she managed her external accounts well.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Before agreeing to approve or increase the credit available to Mrs H, Marbles needed to make proportionate checks to determine whether the credit was affordable and sustainable for her. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances. I've listed below what checks Marbles have done and whether I'm persuaded these checks were proportionate.

Acceptance for the Marbles credit card

I've looked at what checks Marbles said they did when initially approving Mrs H's application. I'll address the credit limit increases later on. Marbles said they looked at information provided by Credit Reference Agencies (CRA's) and information that Mrs H had provided before approving her application.

Mrs H declared a gross annual income of £20,000. But the information from a CRA did show defaults and a public record such as a County Court Judgement (CCJ) being registered on her credit file. The checks showed the last default was registered 14 months prior to the application checks, and the last CCJ was showing as being registered 47 months prior to the initial lending checks.

It may help to explain here that, while information like a default or a CCJ on someone's credit file may often mean they're not granted further credit – they don't automatically mean that a lender won't offer borrowing. So I've looked at what Marbles other checks showed to see if they made a fair lending decision here.

The information showed that Mrs H had missed a payment on her mortgage account in the six months prior to the lending checks. However, it would appear to Marbles that this was an oversight based on the account being brought up to date by the time Marbles completed their checks.

None of Mrs H's other accounts were in arrears at the time of the checks, and none of her other accounts had been in arrears in the previous six months. The information showed Mrs H had a debt to annual income ratio of 42.33%, which would equate to her having unsecured debt of around £8,466.

Marbles used a mixture of information from the CRA and modelling to assess Mrs H's outgoings, and they concluded that she would have a sufficient disposable income in order to make repayments sustainably for a credit limit of £1,200.

I'm persuaded that Marbles' checks were proportionate here, and they made a fair lending decision to approve Mrs H's application, and to provide her with a £1,200 credit limit.

January 2021 credit limit increase - £1,200 to £2,450

I've looked at what checks Marbles did when they increased Mrs H's credit limit to see if they made a fair lending decision here. The CRA reported that Mrs H's active unsecured debt had reduced since her application was approved, as it was showing as £8,036 at the time of the checks. She had no active accounts in arrears at the time of these checks, and she hadn't had any active accounts in arrears in the nine months prior to these checks.

Marbles will have also been able to see how Mrs H managed her account since it was opened, and they would have seen she incurred no late or overlimit fees. At times Mrs H made repayments which were a lot higher than her minimum repayment which could suggest she could sustainably afford repayments for a higher credit limit.

So I'm persuaded that Marbles' checks were proportionate here, and they made a fair lending decision to approve the credit limit increase.

April 2021 credit limit increase - £2,450 to £3,700

The CRA showed that Mrs H's unsecured borrowings had increased since her last credit limit increase to £10,425 but her credit limit had increased at the last lending decision by £1,250, so I don't think this fact alone should give rise to the lending being irresponsible.

Mrs H had no accounts in arrears, and she didn't incur any late or overlimit fees again since the last lending decision. Mrs H made higher repayments at times which were more than her minimum repayment due.

Marbles also completed an affordability calculation. They used a mixture of modelling and information from a CRA to estimate Mrs H's outgoings. And Marbles were able to verify Mrs H's income via Current Account Turnover (CATO) information from a CRA. The affordability assessment showed that Mrs H would be able to sustainably afford repayments for the £3,700 credit limit.

So I'm persuaded that the checks that Marbles completed prior to this lending decision were proportionate, and they made a fair lending decision to increase Mrs H's credit limit to £3,700.

August 2021 credit limit increase - £3,700 to £4,950

I've looked at what checks Marbles did when they increased Mrs H's credit limit to see if they made a fair lending decision here. Mrs H had no accounts in arrears, and she didn't incur any late fees. But Mrs H did incur two overlimit fees, which could suggest she was experiencing financial difficulty. But it also could have been an oversight on Mrs H's behalf.

It does appear that these overpayments were an oversight. I say this because Mrs H made repayments in the same months she incurred the overlimit fees. And one of the repayments totalled £246.93 when her previous statement showed she was required to pay at least £115.51. So if Mrs H would have been in financial difficulty, I wouldn't expect her to be able to pay more than double the required minimum repayment.

Mrs H's active total unsecured debt at the time of the checks was showing as being £10,869, which was not too dissimilar to the outstanding active balances at the last lending decision despite the credit limit on her Marbles account increasing.

So I'm persuaded that Marbles' checks were proportionate as part of this lending decision, and they made a fair lending decision to increase the credit limit here.

February 2022 credit limit increase - £4,950 to £6,450

I've looked at what checks Marbles did when they increased Mrs H's credit limit to see if they made a fair lending decision here. Mrs H had no accounts in arrears, and she didn't incur any late fees since the last lending decision.

But Mrs H's unsecured debt had risen by a substantial amount since the last lending decision as it was showing as £15,406 at the time the credit limit increase was offered to her (and again it rose again to £17,404 in the month prior to the credit limit increasing). I do note that Mrs H had made repayments higher than her minimum repayments at times, but one of the total monthly repayments was for £4,125.20, which wouldn't look like Mrs H could afford based on the CATO data Marbles received from the CRA. It could appear that Mrs H was using debt to pay debt.

So based on this, I'm persuaded that Marbles should have made further checks to ensure Mrs H could sustainably afford repayments for a £6,450 credit limit. One of the things Marbles could have done was to contact Mrs H to get an understanding of why her unsecured debt had risen by a lot in a relatively short period of time, and to ensure she could sustainably afford repayments to a higher credit limit. Or they could have asked for her bank statements as part of a proportionate check to ensure the lending was sustainable and affordable for her.

Mrs H has provided her bank statements leading up to this lending decision. Mrs H has a £200 overdraft, and she exceeds the overdraft limit on several occasions across the three month period I've reviewed. It does appear that Mrs H needs to borrow off family members during this time also. So I can't fairly say that the statements showed that Mrs H would be able to sustainably afford an increase to her credit limit here.

So if Marbles had requested Mrs H's bank statements as part of a proportionate check, based on the reasons I've already given, I'm not persuaded that they would have increased the credit limit here. I'm not persuaded that a fair lending decision was made to increase Mrs H's credit limit to £6,450.

Further lending decisions

If Mrs H's credit limit was not increased to £6,450, I think there is an argument for saying that Mrs H's complaint about the subsequent lending decisions on the account should be upheld without making a finding on reasonable and proportionate checks. After all, if matters had played out as the evidence suggests they should have done in February 2022, I'm not persuaded Mrs H would've been able to add to the credit.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed at the end of this decision 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."

I invited both parties to let me have any further submissions before I reached a final decision. Mrs H accepted the provisional decision. Marbles did not respond to the provisional decision.

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.

As neither party have provided me with any further information to consider, then my decision and reasoning remains the same as in my provisional decision.

Putting things right

In the provisional decision I said I intend to uphold this complaint in part. I said I intend to ask NewDay Ltd trading as Marbles to take the following actions:

Marbles should arrange to transfer any debt back to themselves if it has been passed to a debt recovery agent or liaise with them to ensure the redress set out below is carried out promptly;

End the agreement and rework the account removing all interest, fees, charges, and insurances (not already refunded) that have been applied to balances above £4,950 after 8 February 2022;

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. Marbles should also remove all adverse information regarding this account from Mrs H's credit file recorded after 8 February 2022;

Or, if after the rework the outstanding balance still exceeds £4,950, Marbles should arrange an affordable repayment plan with Mrs H for the remaining amount. Once Mrs H has cleared the balance, any adverse information recorded after 8 February 2022 in relation to the account should be removed from her credit file.

I'm still satisfied this is a fair outcome for the reasons given previously.

**If Marbles considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mrs H how much they've taken off. They should also give Mrs H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

My final decision

I uphold this complaint in part. NewDay Ltd trading as Marbles should settle the complaint in line with the instructions in the *"Putting things right"* section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 5 May 2025.

Gregory Sloanes
Ombudsman