

Complaint

Mr K has complained about a credit card and subsequent limit increases which NewDay Ltd (trading as “Marbles”) provided to him. He says that the credit card and limit increases were unaffordable for him and so should never have been provided.

Background

NewDay provided Mr K with two accounts which were provided under two of its different brands. Mr K’s borrowing history with NewDay is as follows:

“Aqua” branded credit card:

April 2013 – card provided with an initial limit of £250
September 2013 – limit increased to £1,050.00
January 2014 – limit increased to £2,100.00
January 2015 - limit increased to £3,150.00
July 2015 – limit increased to £4,100.00

Mr K ran into difficulty repaying this credit card. After Mr K did not clear the arrears on the account, Aqua terminated Mr K’s agreement and sold the outstanding balance on to a third-party debt purchaser in November 2016.

“Marbles” branded credit card:

May 2015 – card provided with an initial limit of £900
January 2016 – limit increased to £1,500.00
January 2020 – limit increased to £3,500.00
September 2020 - limit increased to £4,500.00
July 2023 - limit increased to £6,000.00
February 2024 - limit increased to £8,000.00

As I understand it, the Marbles account remained open at the time of Mr K’s complaint.

In March 2024, Mr K complained both credit cards and the associated credit limit increases were unaffordable and so were irresponsibly provided to him. NewDay didn’t uphold Mr K’s complaint. It believed that Mr K had complained about the Aqua card too late and that it hadn’t done anything wrong when agreeing to provide Mr K with the Marbles card or the credit limit increases. Mr K remained dissatisfied and referred his complaint to our service.

Mr K’s complaint was initially reviewed by one of our investigators. She thought that Mr K’s complaint about the Aqua card was made too late. Mr K accepted that assessment and therefore I won’t be determining whether NewDay acted fairly and reasonably when providing that card or the limit increases.

For ease of reference and the sake of clarity any references I make to credit card and/or limit increases as the card provider from this point forward will be made in relation to Marbles.

In relation to this Marbles card, the investigator reviewed what Mr K and Marbles had told us. She thought that Marbles hadn't done anything wrong when initially providing the credit card or the first limit increase to Mr K to £1,500.00 in January 2016. However, the investigator also thought Marbles ought to have realised that it shouldn't have provided the credit limit to £3,500.00 in January 2020 (as well as all of the subsequent ones) to Mr K. So she recommended that Mr K's complaint be partially upheld.

Mr K accepted the investigator's assessment. However, Marbles did not. As Marbles didn't agree with the investigator's conclusions the case was passed to an ombudsman for review as per the next stage of our process.

As the parties are in agreement over the outcome on the decision to initially provide the Marbles credit card as well as the first limit increase, this decision is only looking at whether Marbles acted fairly and reasonably towards Mr K when providing him with the credit limit increases on this card from January 2020 onwards.

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. I've considered all of this when deciding Mr K's complaint.

Having carefully considered everything, I'm upholding Mr K's complaint. I'd like to explain the reasons for my conclusion.

Marbles needed to make sure that 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 K could afford to repay before advancing any credit.

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.

I've kept this in mind when considering Mr K's complaint.

Were the checks that Marbles carried out before providing Mr K with the credit limit increases from January 2020 reasonable and proportionate?

Marbles says that it provided Mr K with the credit limit increases from January 2020 onwards after it carried out credit searches and it made some assumptions on Mr K's income. The information suggested that Mr K had some existing debts. But, in its view, Mr K's active credit was well managed and reasonable in comparison to what it believed his income to be.

In Marbles' view, the information that it obtained indicated that Mr K would be able to make the monthly repayments that could be due as a result of all of these credit limit increases. On the other hand, Mr K says that these credit limit increases were unaffordable for him and that they shouldn't have been provided. I've considered what the parties have said.

Mr K's credit card was a revolving credit facility. This means that Marbles was required to understand whether Mr K could repay amounts of £3,500.00, £4,500.00, £6,000.00 and then £8,000.00 within a reasonable period of time, at the respective times that these credit limit increases were granted. I've thought about whether it did do that.

In the first instance I find it somewhat strange that Marbles appears to be saying that it didn't and know that Mr K was made redundant in December 2019. And so if there was a change in Mr K's circumstances, it cannot be held responsible for this. My surprise at Marbles' argument stems from the fact that this isn't a case where Mr K made an inaccurate declaration of his income.

What happened here is that Marbles doesn't appear to have taken any steps to ask Mr K about his employment situation or his income when it offered this limit increase. It appears to have relied on a combination of declarations made at the time of the initial application for the card some five years earlier in May 2015, the fact that Mr K had recently cleared his balance, which I understand was done using some of the proceeds of his redundancy, and other information from credit reference agencies.

However, it is unclear what a credit reference agency would have been able to check or validate about Mr K's income when Marbles didn't have a declaration of this or Mr K's employment. I consider this especially important as while I accept that Mr K had managed to clear the outstanding balance on this NewDay card not too long before the increase was offered, Mr K had nonetheless previously defaulted on his Aqua credit card and after he failed to clear the outstanding balance, NewDay sold it to a third party. The information I've seen shows that he was still making payments on this balance to the third party at the time the limit increase was offered. Marbles will have known this from its credit checks.

I'm not saying that these events in themselves meant that Marbles shouldn't have offered to increase Mr K's credit limit in any circumstances. That said, I do think it's fair, reasonable and proportionate to expect Marbles to have at least asked Mr K about his employment situation and income, in order to at least cross check any information from credit reference agencies, before offering to more than double his credit limit and increase it close to an amount which had previously proved problematic on the Aqua card.

After all how could it, with any degree of confidence, safely say that Mr K wouldn't run into trouble with a balance of an amount similar to that he defaulted on, without properly understanding how much he earned at this stage.

As I can't see that Marbles did this in January 2020 or at the time of any of the later increases, I'm satisfied that the checks it carried out before providing any of the credit limit increases from January 2020 onwards weren't reasonable and proportionate.

Would reasonable and proportionate checks have indicated to Marbles that Mr K would have been unable to the limit increases granted?

As reasonable and proportionate checks weren't carried out before the credit limit increases from January 2020 onwards were provided, I can't say for sure what they would've shown. So I now need to decide whether it is more likely than not that proportionate checks, at the respective times, would have told Marbles that Mr K would have been unable to sustainably repay what he could owe as a result of these limit increases.

As I've previously explained, Marbles was required to establish whether Mr K could make his credit card repayments without experiencing significant adverse consequences – not just whether these repayments payments were technically affordable on a strict pounds and

pence calculation, or whether it might have been confident that it would get its money back from Mr K.

Our investigator explained that she thought that at the very least proportionate checks in February 2020 would have shown Marbles that Mr K had recently lost his job and that he wouldn't have been able to make the increased payments required to the credit limit increase at this point. In response to our investigator's assessment, Marbles said it couldn't be expected to know that Mr K had lost his job at this point.

I've already explained why I think that Marbles needed to get an understanding of Mr K's actual income before opting to more than double his credit limit in February 2020. By not doing so and instead relying on an historic declaration as well as credit reference agency checks and not asking Mr K whether any of this information was accurate, it was taking a risk that it was proceeding with a limit increase on the basis of incorrect information.

From what I've seen, this risk materialised as the information Mr K has provided not only shows that the monthly income Marbles says it believes he was receiving was incorrect, Mr K was not employed at all in January 2020. So I'm satisfied that Mr K wasn't in a position where he could sustainably have repaid £3,500.00 at the time he was offered a limit increase to this amount either. I'm satisfied that Marbles ought to have realised this as reasonable and proportionate checks would have shown this to be the case.

I'm also concerned at what a proportion of the funds Mr K received from his redundancy payment were used for. The way Mr K used these funds together with a large number of the transactions on the statements he has provided, both before and after all of the credit limit increases he was provided with, also lead me to question his ability to repay amounts of up to £8,000.00 within a reasonable period of time. This is even when Mr K did subsequently find employment.

I think that it is also important to consider in the context that Mr K didn't have a balance on his Marbles credit card at the time he was offered the limit increase to £3,500.00 in February 2020. By the time Mr K was offered the limit increase to £8,000.00 he was almost at his existing limit of £6,000.00. So, I'm satisfied that Mr K's repayment record and pattern of borrowing itself isn't in itself sufficient to suggest that the credit limit increases were likely to be sustainably affordable for him. Indeed, Mr K was ending up increasing his indebtedness and his repayment record didn't show him repaying what he already owed within a reasonable period of time, let alone additional credit.

Furthermore, I'm also satisfied that the evidence I've been provided with on Mr K's circumstances suggests that it is more likely that not that Mr K did not have the funds to be repay what could be owed as a result of the credit limit increases from January 2020 onwards without difficulty or experiencing adverse consequences.

Taking all of this into account, I'm satisfied that Marbles shouldn't have provided Mr K with any of the credit limit increases it offered on this card from January 2020 onwards. Mr K ended up paying interest, fees and charges as a result of Marbles providing him with credit limit increases it shouldn't have provided him with. I'm therefore satisfied that Mr K lost out because of what Marbles did wrong and that it should put things right.

In reaching my conclusions, I've also considered whether the lending relationship between Marbles and Mr K might have been unfair to Mr K under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct Marbles to do below results in fair compensation for Mr K given the overall circumstances of his complaint. I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

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

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Mr K's complaint for Marbles to put things right by:

- reworking Mr K's account to ensure that from January 2020 onwards interest is only charged on the first £1,500.00 outstanding - to reflect the fact that none of the credit limit increases should have been provided. All late payment and over limit fees should also be removed;
- if an outstanding balance remains on Mr K's account once all adjustments have been made Marbles should contact Mr K to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr K's credit file, it should backdate this to when it shouldn't have provided the additional credit in question in the first place;
- if the effect of all adjustments results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr K 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 K account after all adjustments have been made, then Marbles should remove any adverse information it may have recorded from Mr K's credit file.

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

My final decision

For the reasons I've explained, I'm upholding Mr K's complaint. NewDay Ltd (trading as "Marbles") should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 29 July 2025.

Jeshen Narayanan
Ombudsman