

complaint

Miss S is unhappy with the credit limit increases NewDay Ltd applied to her credit card accounts. She thinks this was irresponsible lending. Miss S wants a refund of the interest and charges caused by the credit limit increases. She also wants the defaults for these accounts to be removed from her credit file.

background

Miss S had credit card accounts with NewDay. These were branded as an Aqua credit card and a Marbles credit card. The Aqua card was taken out in July 2011. The Marbles account was opened in August 2015.

In July 2016 Miss S told NewDay she was having difficulty making the payments on these accounts. It put her accounts on hold and asked for details of her income and outgoings. Over the next few months, arrears built up on the accounts. By the end of the year, NewDay had issued default notices to Miss S and sold her accounts to a debt management company who I'll call L. Defaults were registered for the accounts in early 2017.

Miss S complained to NewDay about her credit limits being increased on her accounts. She was also unhappy with how long it had taken NewDay to deal with a data subject access request (DSAR) some months before. NewDay rejected her complaint. In short, it said it was confident it had raised the limits responsibly and there was no record of Miss S opting out of the increases. NewDay also told her that her DSAR had been sent within the relevant timescales.

Miss S didn't accept this. She brought her complaint to our service where it was looked at by one of our adjudicators. Briefly, he said the credit limit increases on the Aqua credit card in 2014 and 2015 were fairly applied. But he didn't think NewDay had carried out proportionate checks for the subsequent limit increases on each account. Our adjudicator thought NewDay should refund the interest and charges on these accounts from November 2015 to when the accounts were sold to L. He also thought the default amounts should reflect the account balances as at August 2015.

Our adjudicator could also see that Miss S's DSAR request hadn't been sent to the right department and this had caused a lengthy delay. He asked NewDay to pay her £50 for the trouble and inconvenience this had caused.

NewDay didn't agree with our adjudicator's opinion. In summary it said, the credit limit increases only increased Miss S's repayments by a small amount that was proportionate to her disposable income.

As this matter remains unresolved, it's been passed to me for a final decision.

my findings

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've decided to uphold it in part. I'll explain why.

In reaching my decision I've thought about the relevant regulations and industry best practices. When NewDay told Miss S it was increasing her credit limit, I would expect it to

give her at least 30 days notice of the increase. I would also expect NewDay to give her the option not to have the increase. I've looked at the letters NewDay sent to Miss S. I'm satisfied these all give her more than 30 days notice and the option not to have her limit increased. There's nothing to show Miss S wanted to opt out of the increases.

I've also thought about the checks NewDay should have done when offering to raise the credit limits. The regulations here required NewDay to carry out a creditworthiness assessment on Miss S before it significantly increased her credit limits. The assessment should have been appropriate and proportionate to her circumstances.

I can see from NewDay's records that Miss S took out the Aqua card in July 2011. The credit limit was £800. It remained at this level until July 2014 when it was increased to £1,550. It remained at this level until August the following year. At this point, the limit was raised to £2,300. That same month, the Marbles account was opened with a limit of £900.

I've looked at the available evidence for these lending decisions. This includes the details NewDay considered when increasing the Aqua limit and, the Marbles application details. Having done so, I'm satisfied there's nothing to show the credit worthiness checks carried out by NewDay weren't appropriate and proportionate to Miss S's circumstances at the relevant time. Similar to our adjudicator, I think these limit increases were applied fairly.

But the next limit increase – on the Marbles account – took place in November 2015. The limit was doubled by £900 to £1,800 – a significant increase. This was only a few months after the account opened and since the last increase on the Aqua account. During this period I can see that Miss S made numerous cash withdrawals on both accounts. She was also charged a late payment fee on the Aqua account.

One missed or late payment may have been indicative that the level of affordability risk for Miss S was high. When considered alongside the number of cash withdrawals since August 2015, I think the affordability risk level only increased. I also think it would have been appropriate and proportionate in the situation here for NewDay to have looked more closely into Miss S's income and outgoings.

Our adjudicator calculated that after the November 2015 limit increase on the Marbles account, Miss S's outstanding debt level represented over 50% of her gross annual income. NewDay said it would be unreasonable to view it in this way as the principle of credit is to spread the cost of purchases over a period of time. It accepted Miss S's total exposure was high but NewDay also said it didn't think Miss S's ability to clear the balance over time had been considered.

I would point out that another potential indicator that the level of affordability risk is high is where the total value of a customer's debts relative to their income is high. As I've just said, NewDay accepts this was the case here.

I've also thought about Miss S's ability to clear the outstanding balances on her accounts over time. Central to this would be the level of her disposable monthly income – that is the difference between her income and outgoings each month. The available evidence doesn't show NewDay assessed this when deciding to increase the Marbles credit limit in November 2015. Taking these potential risk indicators into account, I'm not satisfied that NewDay's creditworthiness check was appropriate and proportionate to Miss S's circumstances.

After November 2015 there were two more significant credit limit increases in quick succession. These were: an increase of £750 on the Aqua account in February 2016; and, a £600 increase to the Marbles account two months later.

I can see from Miss S's statements that she was still making regular cash withdrawals using both accounts. There were also further late payment fees on each account. So the risk indicators present in November 2015 were also present when these further limit increases were made. Once again, in this situation I'm not satisfied that NewDay's creditworthiness checks for these limit increases were appropriate and proportionate to Miss S's circumstances. So I don't think it was fair and reasonable to apply these increases.

So, I think NewDay should refund the interest and charges applied to both accounts from the date of the limit increase on the Marbles account in November 2015 to when the accounts were sold to L. As both accounts have been sold, the refunds should be used to reduce the balances that Miss S owes to L.

I'll now turn to Miss S's DSAR request. NewDay told her it had dealt with this within the relevant timescales. But that's not quite right. I can see NewDay received her request on 5 February 2018. But it didn't pass it on to the correct department. NewDay didn't supply Miss S with the required information until August 2018. That is a long way outside the relevant timescales. NewDay should pay Miss £50 for the trouble and upset this caused her. I think this is proportionate to the situation here.

For completeness, once Miss S told NewDay Ltd about her financial difficulties in July 2016 I can see that it treated her positively and sympathetically. It placed an immediate hold on her account while it asked her for details of her income and outgoings. NewDay then went on to accept payments of £1a month on the accounts. As Miss S's financial difficulties didn't look to be short term, I think NewDay correctly defaulted the accounts when the arrears built up. I'm satisfied this was fair and reasonable.

Finally, our adjudicator thought the default amounts on Miss S's accounts should reflect the balances as at August 2015. I don't agree. The defaults should be an accurate reflection of how Miss S maintained her accounts. It's very difficult to assess whether these accounts would have gone into default if NewDay hadn't increased the credit limits from November 2015 onwards.

But, from the available evidence provided by both NewDay and Miss S, including details of her employment status, I think that on balance, it's more likely than not that the accounts would have defaulted. This means there's no basis to tell NewDay to amend the default details with the credit reference agencies. I've explained this to Miss S via one of our investigators. I'm please to see she accepts this.

my final decision

My final decision is that I uphold this complaint in part.

NewDay Ltd should arrange to refund the interest and charges on Miss S's Aqua and Marbles accounts as outlined above. It should also pay her £50 for the trouble and upset she's experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 15 June 2020.

John Miles
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