DRN-3454718

The complaint

Mr S has complained that NewDay Ltd trading as Marbles irresponsibly lent to him.

What happened

Mr S opened a credit card account with Marbles in July 2017. His credit limit was initially £450. In January 2018 his credit limit was increased to £1,200.

Mr S, through his representative, says that Marbles shouldn't have allowed him to open an account and it shouldn't have increased his credit limit once it had. Mr S says he was struggling to meet his repayments and had a lot of credit elsewhere, too. He says if Marbles had done adequate checks on his situation it would have seen that he wouldn't be able to repay his balance in a reasonable length of time.

Marbles says it didn't lend irresponsibly to Mr S and that it did all the necessary checks before it lent to Mr S – and when it increased his credit limit.

Our adjudicator thought that Mr S's complaint should be partially upheld. They thought that the credit given to Mr S was acceptable, but that by January 2018 when Marbles increased Mr S's credit limit, that reasonable and proportionate checks would have shown that Mr S's finances were overextended and that he couldn't afford to sustainably meet the repayments on more credit.

Our adjudicator said that Marbles should not have allowed Mr S further credit and thought that any interest and charges applied over his original £450 limit should be removed and his account re-worked.

Marbles disagreed. It said it had done sufficient checks and there were no indications of any financial strain.

As Marbles disagreed the case has been passed to me to make a 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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I've taken that into account when I have considered Mr S's complaint.

Marbles needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr S could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mr S's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

Certain factors might point to the fact that Marbles should fairly and reasonably have done more to establish that any lending was sustainable for Mr S. These factors include things like understanding Mr S's income, the total amount Mr S borrowed, and the length of time Mr S had been indebted.

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that that the lending was unsustainable.

When Mr S opened his account Marbles conducted a credit check. Marbles told us there were no signs of financial difficulties based on the checks it did. Having reviewed the checks, I don't think there is anything to suggest that it would have been unreasonable for Marbles to have approved the account. Marbles asked about Mr S's income and the amount of unsecured debt he had. Marbles also says it did a check with a credit reference agency. These checks showed Mr S had an income of £11,000 and unsecured debt of £1,300, with no arrears or defaults or payday loans showing on his credit file.

I think this suggests that the original limit of £450 was manageable for Mr S. There were no signs of financial distress and he had relatively low levels of debt, even when taking into account his relatively low income. So I don't think Marbles did anything wrong with its original lending decision.

However, I think that when Marbles made the decision to increase Mr S's credit limit to £1,200 in January 2018 things were rather different for Mr S. While Marbles says it did not see any arrears, defaults or active payday loans in its checks I don't think this is all it should have relied on at this point.

In the six months prior to January 2018 the number of credit accounts Mr S held had increased from six to 13. His available credit had increased substantially during that time and his overall debt balance stood at over £4,500 – about half his annual net income. He had also missed a repayment on another credit line in the month before and had been over his limit on his Marbles account. Marbles has not explained that it actively took this information into account.

So while Mr S wasn't in arrears with Marble and he hadn't defaulted on any credit at that point, I think Marble should have been concerned about the affordability of an increase in credit and the sustainability of the repayments he could make. Such checks would have allowed Marbles to calculate that if he used all of his available credit the minimum repayments would have been around £400 a month – a significant proportion of his net income.

I think that proportionate checks would have revealed to Marbles that is was inappropriate to increase his limit as to do so would have made the repayments unsustainable. So, I think Mr S lost out as a result of Marbles' failure to do this.

Putting things right

As I don't think Marbles should have increased Mr S's credit limit from £450, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Mr S has had the benefit of all the money he spent on the account so I think he should pay this back. Therefore, Marbles should:

- Rework the account removing all interest and charges that have been applied to balances above £450 from 19 January 2018.

- If the rework results in a credit balance, this should be refunded to Mr S 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 recorded after 19 January 2018 regarding this account from Mr S's credit file.

- Or, if after the rework the outstanding balance still exceeds £450, Marbles should arrange an affordable repayment plan with Mr S for the remaining amount. Once Mr S has cleared the outstanding balance, any adverse information recorded after 19 January 2018 in relation to the account should be removed from his credit file.
- As Marbles has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.
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*HM Revenue & Customs requires Marbles to deduct tax from any award of interest. It must give Mr S a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting tax.

I am aware that Mr S has been- and may still be – in an Individual Voluntary Arrangement. We have tried to establish whether the insolvency practitioner may have an interest in any refund but we haven't been able to do so. If Mr S is still in an IVA he will have to declare any redress to the insolvency practitioner.

My final decision

I uphold Mr S's complaint in part and direct NewDay Ltd, trading as Marbles, to 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 S to accept or reject my decision before 5 July 2022.

Sally Allbeury
Ombudsman