

## **The complaint**

Miss W is complaining about NewDay Ltd because she says it lent irresponsibly when providing her with four different credit cards.

## **What happened**

After various applications, Miss W opened the following credit card accounts with NewDay:

- Marbles – application 17 January 2016, initial limit £250, increased to £650 in July 2016 and £1,450 in April 2018;
- Pulse/Amazon – application 12 September 2018, initial limit £500, increased to £1,250 in March 2019;
- Fluid – application 28 December 2020, initial limit £900, no limit increases; and
- AO – application 3 January 2021, initial limit £900, no limit increases.

NewDay partially upheld Miss W's complaint, accepting that the credit limit increases on the Marbles card only shouldn't have been given. But it didn't accept the complaint in respect of the opening of the Marbles account or the lending on any of the other accounts.

Our investigator ultimately recommended the complaint be partly upheld. She felt the decision to open the Marbles account was reasonable. But she felt the decision to accept Miss W's applications for the Pulse, Fluid and AO accounts were irresponsible, largely because her Marbles account had been identified as being in persistent debt by this time and went on to enter a paydown plan.

Despite reminders, NewDay didn't respond to the investigator's assessment and the complaint has now been referred to me for review.

## **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've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Before lending to Miss W, NewDay was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider in respect of each lending decision are:

- Did NewDay complete reasonable and proportionate checks to establish Miss W

would be able to repay the credit in a sustainable way?

- If so, was the decision to lend fair and reasonable?
- If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

The rules, regulations and good industry practice in place at the time the credit was approved required NewDay to carry out a proportionate and borrower-focused assessment of whether Miss W could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant NewDay had to satisfy itself that making payments to the credit wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of her making payments, it had to consider the impact of the repayments on Miss W.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

I'll now address the lending decisions in respect of each card in turn:

#### *Marbles*

NewDay has described the information it gathered to before Miss W's initial application was approved. This included information contained in her application - residential status, employment status and her income, along with information from a credit reference agency (CRA), giving details of her existing credit arrangements and any past issues with credit.

When making her application in January 2016, Miss W declared her income was £15,600. In respect of her existing commitments, NewDay's credit check showed she had debt of only £600, was up to date with repayments and had no recent defaults or County Court Judgements.

After considering this information carefully, I don't think there was any indication Miss W was struggling financially. In view of this and the low credit limit of £250, I'm satisfied NewDay carried out a proportionate affordability assessment and made a reasonable decision to lend. So I'm not upholding the complaint about this lending decision.

NewDay did increase the credit limit on this account in July 2016 and March 2018, but it's already accepted these increases shouldn't have been given and I'm not disputing that assessment.

#### *Pulse*

NewDay carried out similar checks before opening this account in September 2018. But I think it's also relevant to note that only two days before her application, on 10 September 2018, NewDay had written to Miss W about persistent debt on her Marbles card. This means she'd been paying more in interest and fees than she'd been paying off the amount owed and NewDay's letter said this had been the case for the previous 18 months.

I think this is compelling evidence Miss W wasn't managing her existing credit card account well and was having trouble affording meaningful payments towards that debt. In the circumstances, I think it was irresponsible to offer her another credit account.

NewDay increased the credit limit in March 2019 at a time when the correspondence provided shows Miss W was still in persistent debt on her account, as confirmed by its letter dated 10 June 2019 confirming this had been the case for the previous 27 months. It follows that I don't think it was responsible to increase the limit further in these circumstances.

### *Fluid*

By the time Miss W applied for the Fluid card in December 2020, compared to the information obtained when she applied for the Pulse account, Miss W's recorded annual income had reduced from £21,000 to £19,000 and NewDay's credit check her overall debt had more than doubled from £1,800 to over £4,000.

Also, in March 2020, Miss W had entered a four-year paydown plan to address the persistent debt on her Marbles card. A review of the account history provided shows she'd been meeting the monthly payments on that plan but hadn't paid anything extra to help reduce the debt sooner. And a review of the Pulse account history shows Miss W had an outstanding balance of approximately £850 and hadn't made any repayments at all for over a year.

Again, I think this is compelling evidence Miss W wasn't managing her existing credit card accounts well and was having trouble affording meaningful payments towards that debt. In the circumstances, I think it was irresponsible to offer her another line of credit.

### AO

The application for this account in January 2021 came only six days after her application for the Fluid account. I've seen nothing to indicate her circumstances had improved in that short period and, for the same reasons as I don't think her application for the Fluid card should have been accepted, I don't think it was responsible to offer another credit account. Particularly so soon after the Fluid account had been opened and NewDay hadn't had the opportunity to see how Miss W would manage that.

### *In summary*

I share the investigator's view that NewDay was entitled to believe the original credit limit on the Marbles account was affordable and the decision to lend was reasonable. But if NewDay had adequately assessed whether the repayments were affordable and sustainable when considering limit increases on that account and whether to open the other three accounts, it's my view it shouldn't have lent to Miss W. It's for this reason that that I'm partially upholding her complaint.

### **Putting things right**

The principal aim of any award I make must be to return Miss W to the position she'd now be in but for the errors or inappropriate actions of NewDay. But that's not entirely possible here as the lending provided can't be undone.

Where I don't think NewDay should have lent to Miss W, I don't think it's fair for her to pay interest or charges on the amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, NewDay now needs to take the following steps for the Marbles account:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since the limit increase in July 2016 on balances over £250.
- If the reworking results in a credit balance, this should be paid to Miss W with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires NewDay to deduct tax from any interest. It must provide Miss W with a certificate showing how much tax has been deducted if she asks for one. If NewDay intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance in excess of £250, NewDay should arrange an affordable payment plan with Miss W for the shortfall.
- Remove any adverse information recorded on Miss W's credit file after the limit increase in July 2016 relating to this credit, once any outstanding balance over £250 has been repaid.

If NewDay no longer owns the debt, it should liaise with whoever does to ensure any payments Miss W has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

NewDay also needs to take the following steps for each of the Pulse, Fluid and AO accounts:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since the account was opened.
- If the reworking results in a credit balance, this should be paid to Miss W with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires NewDay to deduct tax from any interest. It must provide Miss W with a certificate showing how much tax has been deducted if she asks for one. If NewDay intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance, NewDay should arrange an affordable payment plan with Miss W for the shortfall.
- Remove any adverse information recorded on Miss W's credit file relating to this credit, once any outstanding balance has been repaid.

If NewDay no longer owns the debt, it should liaise with whoever does to ensure any payments Miss W has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the

redress I have directed above results in fair compensation for Miss W 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.

### **My final decision**

For the reasons I've explained, I'm partly upholding this complaint. Subject to her acceptance, NewDay Ltd should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 31 July 2024.

James Biles  
**Ombudsman**