

The complaint

Mr R is being represented by a claims manager. He's complaining about NewDay Ltd because he says it lent irresponsibly by giving him credit cards he couldn't afford to repay.

What happened

In February 2020, Mr R opened a Marbles credit card account with an initial credit limit of £1,200. This was increased to £2,200 in August 2020, £3,450 in January 2021, £4,700 in March 2021 and £5,950 in September 2021.

In December 2022, Mr R opened a Fluid credit card account with an initial credit limit of £1,500. This was increased to £2,050 in April 2023.

Both accounts were offered and run by NewDay.

After the complaint was referred to me, I issued my provisional decision setting out why I thought it should be partly upheld. My reasons were as follows:

Before lending to Mr R, 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 Mr R 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 Mr R 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 him making payments, it had to consider the impact of the repayments on Mr R.

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.

NewDay has described the information it gathered to assess whether Mr R's credit was affordable before it was approved. This included:

- information contained in his application, including his employment status and income;*
- information obtained from a credit reference agency (CRA), giving details of his existing credit arrangements and any past issues with credit; and*
- for the credit limit increases, information about how he'd been managing the account previously.*

NewDay maintains its affordability assessments were proportionate to the credit being given and demonstrated it was affordable. I've considered its lending decisions in chronological order.

Opening the Marbles account in February 2020

In making his application, Mr R declared his annual income was £40,000 and he doesn't appear to be disputing this figure. In respect of his existing commitments, NewDay's credit check showed he had debt totalling £12,700, was up to date with payments and had no recent history of arrears or defaults.

After considering this information carefully, I don't think there was any indication Mr R was struggling financially at this point. He wasn't heavily indebted compared to his declared income and seemed to be managing his existing commitments well. In view of this information, and given the amount of credit being offered was relatively low, I'm satisfied the affordability assessment was proportionate in this case. Further, I think NewDay was entitled to believe repayments would be affordable and that it made a reasonable decision to lend.

Increasing the credit limit on the Marbles account in August 2020

After carefully reviewing the information NewDay obtained before increasing the credit limit in August 2020, I think there were factors that should have prompted it to carry out further checks. In particular, I note that one of its credit checks showed Mr R's debts were now nearly £25,000 – double what he owed six months earlier when the card was opened. It's also apparent that he'd spent up to the limit on the card almost immediately the account was opened and the balance stayed at this level as he hadn't made repayments sufficient to reduce it. I consider these were signs of potential financial difficulty that NewDay should have investigated before offering further credit.

In the circumstances, I don't agree the affordability assessment was reasonable and proportionate on this occasion. I can't know exactly what further checks NewDay might have carried out at the time, but I think a consideration of Mr R's actual income and expenditure would have been reasonable. So we've obtained copies of his bank statements for the three months prior to the lending to establish what information could reasonably have been discovered.

A review of the statements shows Mr R was gambling extensively. In the period from the beginning of May to the end of July 2020, I counted 127 payments to online gambling sites totalling £7,295. This compared to payments into his account from those sites (presumably winnings) totalling only £3,500.

If NewDay had seen this information, in addition to what it already knew about his increased debt and how he was managing his Marbles account, it's my view that it should have concluded it wasn't responsible to lend further to Mr R.

Later increases to the credit limit on the Marbles account between January and September 2021

The information provided by NewDay shows it could see Mr R's debt was steadily increasing further and that he was still making relatively low repayments towards his card account balance. I've also seen nothing to indicate his overall situation, including his gambling habits (which I'll return to later), had changed since August 2020.

Taking everything into account, I think it follows that NewDay should also have decided against increasing the credit limit in 2021.

Opening the Fluid account in December 2022

In making his application, Mr R declared his annual income was £45,000. In respect of his existing commitments, NewDay's credit check showed he had debt totalling £41,900, was up to date with payments and had no recent history of arrears or defaults.

After considering this information carefully, I think the amount of Mr R's debt compared to his income should have prompted NewDay to carry out further checks before offering him another credit card. Particularly as he already had one of its cards with a limit of nearly £6,000. In the circumstances, I don't agree the affordability assessment was reasonable and proportionate on this occasion.

Again, I can't know exactly what further checks NewDay might have carried out at the time, but I think a consideration of Mr R's actual income and expenditure would have been reasonable. So we've obtained copies of his bank statements for the three months prior to the lending to establish what information could reasonably have been discovered.

As before, a review of the statements shows Mr R was gambling extensively. For example, in the short period between 23 October and 22 November 2022, I counted 27 payments to online gambling sites totalling £15,080. I think this, in addition to his consistently increasing debt, should have been seen as a strong indicator that he wasn't managing his finances well.

If NewDay had seen this information, in addition to what it already knew about his level of debt, it's my view that it should have concluded it wasn't responsible to lend further to Mr R.

Increasing the credit limit on the Fluid account in April 2023

The information provided by NewDay shows it could see Mr R's debt had increased further to over £49,000 in the four months since his account was opened. I've also seen nothing to indicate his overall situation, including his gambling habits had changed in that short period.

Taking everything into account, I think it follows that NewDay should also have decided against offering further credit in 2023.

In summary

When Mr R applied for the Marbles card in February 2020, I'm satisfied NewDay carried out a proportionate affordability assessment and made a reasonable decision to lend based on the information it saw. Thereafter, if NewDay had carried out appropriate checks before increasing the credit limit or offering the Fluid card and increasing the credit limit on that, I think it should have declined to lend as the available information strongly indicated Mr R wasn't managing his finances well.

It's for these reasons that I'm currently proposing to partly uphold Mr R's complaint.

Mr R accepted my provisional decision. NewDay made no further comment.

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 has made any further submissions in response to my provisional decision, my findings haven't changed from those I set out previously.

Putting things right

The principal aim of any award I make must be to return Mr R to the position he'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.

Because I don't think NewDay should have increased the credit limit on the Marbles card or offered the Fluid card at all, I don't think it's fair for Mr R to pay interest or charges on any amount borrowed above the original limit on the Marbles card. But he has had use of the money that was lent, so I think it's fair he repays the amount borrowed (without the addition of interest or charges).

To put things right, NewDay should take the following steps in respect of 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 August 2020 on balances over £1,200.
- If the reworking results in a credit balance, this should be paid to Mr R 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 Mr R with a certificate showing how much tax has been deducted if he 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 £1,200, NewDay should arrange an affordable payment plan with Mr R for the shortfall.
- Remove any adverse information recorded on Mr R's credit file after the limit increase in August 2020 relating to this credit, once any outstanding balance over £1,200 has been repaid.

And the following steps in respect of the Fluid account:

- 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 Mr R 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 Mr R with a certificate showing how much tax has been deducted if he 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 Mr R for the shortfall.
- Remove any adverse information recorded on Mr R's credit file relating to this credit, once any outstanding balance has been repaid.

In the case of either card, if NewDay no longer owns the debt, it should liaise with whoever does to ensure any payments Mr R 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 Mr R in the circumstances of his 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 Mr R's complaint. Subject to his acceptance, NewDay Ltd should now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 September 2024.

James Biles
Ombudsman