DRN-4991306

Financial Ombudsman Service

The complaint

Miss B says NewDay Ltd, trading as Marbles, irresponsibly lent to her.

What happened

Miss B applied for a credit card from NewDay in January 2021. It was approved with a limit of £600. She was then given five credit limit increases as set out below:

Increase	date	new limit
1	Jun-21	£1,600
2	Oct-21	£3,100
3	Feb-22	£4,350
4	Mar-23	£5,700
5	Jul-23	£6,450

Miss B complained to NewDay saying she should not have been given any of this unaffordable credit. It upheld her complaint in part in relation to the fifth limit increase. Unhappy with this response Miss B brought her complaint to this service.

Our investigator found NewDay had made fair lending decisions, despite not having completed proportionate checks for limit increases 2 to 4. She did not comment on increase five as NewDay had already upheld Miss B's complaint about that increase.

Miss B was unhappy with this assessment and asked for an ombudsman's review. She said her income was never £2,800. This includes money her partner had to give her to survive that she had to repay (not just a contribution to bills); her debts were a lot higher than the investigator quoted; and two of her loans were in payment plans. Her salary, plus child maintenance and child benefit, was not enough to cover all her bills and credit commitments.

I reached a different conclusion to the investigator so I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to send in any comments or new information by 29 August 2024.

Extract from my provisional decision

I can see as part of NewDay's checks when Miss B applied it considered her declared income, total level of borrowing held elsewhere, the status of this and monthly repayment costs – and for the limit increases it looked at how she was managing both her Marbles account and her other debt elsewhere.

I think these checks were proportionate at application and for the first limit increase given the stage in the lending relationship and the among of credit offered. And I find NewDay made fair lending decisions based on the information it gathered.

I say this as at application NewDay learnt Miss B's annual income was £21,000 and she had unsecured debt of £3,300. I can see she had two defaults worth £800, the most recent being

21 months prior to this application. But given the age of this historic data I don't think it was a reason not to lend. She was up-to-date on her active accounts.

At the time of the first increase NewDay's checks showed Miss B's total unsecured debt had fallen to £1,557, she remained up-to-date on all her active accounts and as the increase was only five months after account opening I find it was reasonable for NewDay to rely on Miss B's income declaration from when she applied. Her Marbles account appeared well managed – she was making her repayments on time, paying more than the minimum required and she remained within her limit typically using around 50% of her available credit.

It follows I do not find NewDay was wrong to offer Miss B an opening limit of £600 nor to increase it to £1,600 in June 2021.

Limit increases 2 and 3

I agree with the investigator that by this stage given the elapsed time since application and value of the limit increases NewDay needed to verify Miss B's income. Had it done so it would have learnt her average monthly salary was around £1,400 at the time of increase 2 and £1,460 at the time of increase 3, plus she had an additional £300 of income each month from benefits and child support. And there was nothing in how Miss B was using her Marbles account that I think ought to have triggered any further checks. By increase 3 her total unsecured debt had increased to £3,032, but it was still lower than it had been at the point of application and given her income and the management of this debt this reasonably need not have concerned NewDay.

It follows that had NewDay completed proportionate checks I find it could fairly have made the same lending decisions so I cannot conclude it was wrong to increase Miss B's limit in October 2021 or February 2022.

Limit increase 4

At this stage I think NewDay needed to do more and check not just Miss B's income but also her non-discretionary expenditure. I say this because Miss B's use of her Marbles card had changed by this time - her balance to limit ratio was much higher and she was using her card at times for cash advances. Additionally, her external debt had increased significantly to £16,609. To be clear, I am not saying these facts were reasons not to offer a limit increase, but, combined, a reason to complete further checks.

I have looked at Miss B's bank statements for the three months prior to the increase to get an idea of what better checks would most likely have shown. I am not saying NewDay needed to do exactly this but it is a reliable way for me to understand the likely results of proportionate checks. And had NewDay carried out better checks at this stage I think it, as a responsible lender, would have made a different decision and not offered Miss B a limit increase. Her average monthly income (including salary, benefits and child support) was £1,733.91. She was then spending around £880 each month on her existing credit commitments – so half her income. So even before taking into account her housing and living costs, I think NewDay ought to have been concerned that increasing Miss B's monthly spend on credit would not be sustainable and would most likely cause her financial harm. I can see from the bank statements Miss B's partner transferred varying amounts to her each month – in excess of any contribution to shared costs, but also that she was having to repay him each month. So she was already borrowing informally to try to make ends meet.

In these circumstances I don't think NewDay would have increased Miss B's limit had it carried out proportionate checks.

As the parties are not in dispute about increase 5 I will not comment here on that lending decision. I am aware Miss B has challenged some of the debt figures the investigator used in her assessment. As I have relied on that same data I wanted to clarify that as NewDay carried out credit checks and these figures are what its checks returned we would only fairly expect it to consider that data. It can be a consumer will see different entries on their full credit file – there can be timing lags and also not all lenders report to all the credit reference agencies.

I then set out what NewDay would need to do to put things right.

Both parties responded by the deadline. Miss B accepted the provisional decision, but asked if a certain loan she took out in January 2021 that is now on a payment plan was considered, and whether it would make a difference to the earlier increases.

NewDay did not accept my findings. It submitted a document that sets out its most recent approach to affordability explaining how it conducts its creditworthiness checks. It also sent in all the relevant affordability data for Miss B's account at the point of each lending decision.

It said that at the time of limit increase 4 its checks showed Miss B would have 'effective disposable income' of £244.27 and at the time of limit increase 5 £324.28. In addition, she had managed her account well, making frequent repayments and remaining within her agreed credit limit. She had no active pay day loans and wasn't on any reported repayment plans, nor was she subject to any CCJs, IVAs or bankruptcy proceedings. On this basis it continued to defend its decision to increased Miss B's limit.

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.

Our approach to unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - is set out on our website and I have followed it here.

First to clarify, NewDay has already agreed in its final response letter to uphold Miss B's complaint about increase 5, so the outstanding dispute after my provisional decision is about the fourth increase.

NewDay has explained that following its approach it concluded Miss B had monthly disposable income of £244.47 and so the additional credit was affordable. But my point is that I do not find it was fair at this point to rely on anything other than actuals for Miss B's income and expenditure. And NewDay's document is clear that it uses CATO (current account turnover) data and its own affordability model as a way of estimating a customer's income and expenditure.

This can be proportionate in many cases. But here, as I said above, there were changes in Miss B's behaviour that ought to have triggered a fuller financial review. And had NewDay done this it would have seen the flaws in the approach it had adopted for this lending decision. Using Miss B's current account turnover gave an inflated view of her income - she was borrowing informally to stay afloat so there were frequent, sizeable credits to her account in addition to her salary. But these were not guaranteed and she also had to repay these amounts (and was doing).

Checking Miss B's actual incomings and outgoings would have shown NewDay that Miss B was already spending around half her salary on credit – so it ought to have been concerned that increasing Miss B's monthly spend on credit would not be sustainable and would most likely cause her financial harm. She was already reliant on help from others with the level of debt she had.

It follows I remain of the view that NewDay was wrong to give increase 4.

Miss B asked, in response to the provisional decision, if the knowledge of a certain loan that was now on a payment plan, would change the decision about any of the earlier increases. If she asks because it was not on her credit file, as I found the checks at application and for the first increase were proportionate it would not change my findings. And as I found for limit 2 and 3 the 'missing' check was income verification it would not change my findings on any of the earlier increases.

I've also considered whether the relationship might have been unfair under Section140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Miss B 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.

Putting things right

As NewDay should not have increased Miss B's credit limit above £4,350, I don't think it's fair for it to have applied interest or charges to any balances which exceeded that limit. It is reasonable for Miss B to repay the capital she borrowed as she had the benefit of that money.

So NewDay should:

- Rework the account removing all interest, fees, charges and insurances that have been applied to balances above £4,350 (deducting the refund that was offered in respect of increase 5 if that has already been processed).
- If this rework results in a credit balance, this should be refunded to Miss B along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement.
- If this rework results in there still being an outstanding capital balance NewDay should work with Miss B to agree an affordable payment plan.
- Remove any adverse information recorded after March 2023 regarding the account from Miss B's credit file.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Miss B a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance it must do so after deducting the tax.

My final decision

I am upholding Miss B's complaint in part with regards to limit increase 4. NewDay Ltd, trading as Marbles, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 27 September 2024.

Rebecca Connelley
Ombudsman