DRN-2725519

The complaint

Mrs S complains that NewDay Ltd repeatedly increased her credit limit on two credit cards. She says none of that lending was affordable and caused her financial difficulties.

What happened

Mrs S had two credit cards with NewDay, one opened in 2013 and the other in 2015. The cards initially had limits of £250 and £900 respectively, with the credit limit on both accounts increased several times.

By 2016 Mrs S's total indebtedness across both accounts had increased to £7,800. She contacted NewDay to say she was in financial difficulty, and a payment plan was discussed but only one further payment was received. NewDay recorded defaults for both credit cards on Mrs S's credit file in 2017, after the accounts had been in arrears for 180 days, and sold the debts.

NewDay applied limit increases to the accounts as follows:

Card 1 – opened with £250 credit (Jan 2013)	
May 2013 – increased to £600	
October 2013 – increased to £1,000	
February 2014 – increased to £1,600	
June 2014 – increased to £2,600	
October 2014 – increased to £3,400	
March 2015 – increased to £4,150	
	Card 2 – opened with £900 credit (June 2015)
August 2015 – increased to £4,900	
	September 2015 – increased to £1,500
January 2016 – increased to £5,650	January 2016 – increased to £2,100

On 28 June 2020 Mrs S raised a complaint with NewDay about the lending. She said she had other debts elsewhere and was struggling with her finances so it shouldn't have kept increasing the limit. Mrs S added that had the proper checks been done NewDay would have seen she couldn't repay the amounts lent within a reasonable amount of time.

NewDay's response said it couldn't reasonably be expected to investigate Mrs S's concerns about the opening of the account and the first few lending decisions, as these had happened more than six years ago. For the first card NewDay defended most of the other limit increases, saying it reviewed Mrs S's eligibility at each one and its records also showed she hadn't opted out of them. On the second credit card NewDay pointed to a high annual income on the application and no arrears showing on her credit file. NewDay did accept it shouldn't have approved the limit increases in January 2016 for either card, as those had been unaffordable. So offered to refund the charges and proportionate interest.

Mrs S wasn't happy with the offer, so referred her complaint to our service. An investigator here reviewed everything and agreed we could only consider the lending that took place in the six years prior to the complaint being raised. In her view NewDay's checks weren't sufficient – and had the lender verified Mrs S's income it would have seen she couldn't afford the borrowing from May 2015 onwards. So the investigator recommended NewDay refund all interest and charges back to that date, and remove any adverse data recorded on her credit file after that.

NewDay didn't agree. It said it wasn't required to verify Mrs S's income for this type of lending – and the affordability model it used, along with data provided by a Credit Reference Agency (CRA), indicated the lending would be affordable. As no agreement could be reached, the complaint was passed to me for a decision on the matter.

I issued a provisional decision, upholding the complaint but increasing the redress. I've quoted my rationale below:

"Firstly, though, I want to clarify the scope of our jurisdiction in this complaint. The rules that govern the complaints our service can and can't look into are called The Dispute Resolution Rules (DISP), and these are found in the FCA's handbook. They include time limits – and DISP 2.8.2 says we can't consider a complaint if it's referred to us more than six years after the event complained about, or (if later) more than three years from when the complainant ought reasonably to have been aware they had cause for complaint. All of the lending decisions in the six years prior to the complaint being raised on 28 June 2020 are in scope under the first part of that time limits rule – meaning we can consider all of the lending decisions after the limit increase on 3 June 2014 (as that took place more than six years prior to the complaint being raised). The first one we can consider being in October 2014.

When looking at the lending decisions that happened more than six years ago, I've considered whether the three-year part of the rule allowed Mrs S more time to complain. But I can see that the accounts were defaulted in April and May 2017, and I consider that to be the latest point Mrs S's ought reasonably to have been aware she might have cause for complaint. By that point the lending had become unaffordable for her, and being defaulted ought to have prompted Mr S to assess how she got there – and question whether NewDay had lent her too much. So the three years started ticking down from that point.

As Mrs S didn't raise her complaint until June 2020, none of the older lending decisions (more than six years prior to her complaining) have been referred within the three years allowed. There aren't any exceptional circumstances that explain the delay, and NewDay hasn't consented to us looking at those lending decisions. So a complaint about them is out of time, and not something our service has the power to consider. I can, however, look at the limit increase in October 2014, and the lending decisions that took place after.

Various pieces of guidance were available to NewDay at the time of the lending decisions in question – including the Office of Fair Trading's 'Irresponsible Lending Guidance' and the FCA's 'Consumer Credit Sourcebook' (CONC). Both regulators said that at each limit increase NewDay was required to carry out 'proportionate' checks to satisfy itself Mrs S *could afford to repay the credit in a sustainable way. That meant repaying it without undue difficulty, while being able to meet other commitments and without having to borrow further. The checks needed to be a borrower focussed consideration of the impact of the lending on Mrs S, rather than an assessment of the likelihood of being repaid. There was no set list of checks NewDay had to do, but they could take into account several different things such as the size of the increased limit, the amount of the monthly repayments and Mrs S's overall circumstances.*

NewDay told us that to approve the limit increase in October 2014 it relied on scoring from an internal affordability model and information from a CRA. NewDay commented generally that prior to the increases in 2014/15 there were no late payment, over limit or cash advance fees charged on the accounts – and the CRA it used reported no external accounts in arrears. Overall NewDay considered Mrs S to be managing her finances well until 2016.

I've reviewed the statements covering the six months leading up to the October 2014 limit increase. Before the previous limit increase in June 2014 Mrs S routinely paid off the (often quite large) balance in full – and usually left a large proportion of available credit. But following the limit increasing to £2,600 there was a marked change in how she managed the account. Within two months Mrs S was up to the top of her new limit, and in August 2014 she paid just above the minimum payment towards the balance. There was no spend on the account in September 2014, as Mrs S was all but at the limit, and another payment just above the minimum was made. The same happened in October. Having seen those four months of account management, NewDay increased the limit by more than 30%. But I don't consider that activity demonstrated Mrs S was managing the previous limit increase comfortably (let alone she could afford more credit). I think the change I've noted indicated the opposite might be true.

NewDay said it reviewed information from a CRA, and I've also looked at Mrs S's credit file to see what other borrowing would have likely been evident. I accept there may not have been any arrears reporting at that stage, but I've seen at least two other credit card accounts, a loan and at least ten mail order/catalogue accounts. I think it's likely some of those catalogue accounts had significant balances – as the statements show a large proportion of the spending on this credit card in the months preceding the October 2014 limit increase was toward them.

The last time NewDay had asked Mrs S for information to assess her affordability, like her income or other financial commitments, was during the initial application almost two years before, and when approving a £250 credit limit. I don't consider NewDay could have known, from the checks it did at the October 2014 limit increase, that Mrs S could afford any additional lending or a credit limit of £3,400. So, particularly given what her account management and credit file were indicating, I find that the affordability checks NewDay performed weren't reasonable and proportionate for large amount of credit being considered. Mrs S has told us her circumstances had changed and she wasn't working during this period (her bank statements show she was receiving benefits). So had extra checks been carried out they would have shown that further lending (and potentially her existing borrowing) wasn't affordable.

I've considered that a year later, when applying for a second credit card with NewDay, Mrs S lied about her income. But I'm persuaded, on balance, that wouldn't have happened during the further checks I'm saying should have been done in October 2014. By the time Mrs S was applying for another card in 2015 her finances had become unmanageable, and she's told us she was desperate to get credit from wherever she could to try and stay afloat. While I can see the signs in 2014 that things were becoming unsustainable, I don't think she was yet in the kind of difficulty that might have caused her to lie about her income.

I've gone onto think about the lending on the second card Mrs S took out with NewDay in 2015 – and I don't consider that account should have been approved. Based on how Mrs S maintained the existing account she had, and that I think NewDay ought to have realised she couldn't afford a £3,400 limit the year before, I don't think any additional lending was affordable. It's also difficult to know whether that application would have even taken place had NewDay not approved the limit increases from October 2014 onwards for her first credit card account. But by the time the second account was opened Mrs S was near the top of her limit on her other card (around £350 left on a now £4,150 limit) and had been paying not much over the minimum payment on that account for the preceding few months. I appreciate she put a high salary on the application, but Mrs S also said she had unsecured debts of around 60% of her annual income (a high percentage by anyone's standards). Mrs S's credit file also supported that she had lots of borrowing elsewhere – with four other credit card accounts, a loan and fourteen mail order/catalogue accounts being reported at the time.

Applying for another card just as the first one was maxing out with a high limit should have prompted further enquiry about her circumstances anyway. But that, combined with the growing overall debt picture and consistently paying little more than the minimum on an existing account, ought to have signalled that more checks were needed to determine affordability. Based on what we now know about Mrs S's monthly outgoings at the time, even if the stated salary was considered I think it's likely that proportionate checks would have showed the lending wasn't affordable. So the second account shouldn't have been opened."

Mrs S responded to say she accepted my provisional findings. NewDay said it didn't agree, and made the following points:

- At the time of the limit increases on the first account I'd said were unaffordable (October 2014 onwards), NewDay used its own internal data based on Mrs S's account management and data received from one CRA. The lender said there was no requirement before that time to use multiple agencies. Neither was it required to request evidence Mrs S's income and expenditure.

- The risk and affordability data it had sent me showed Mrs S did not exceed her credit limits or make any late payments before the credit limit increases took place. NewDay also said she met the terms and conditions of her credit agreement by making at least a minimum payment by her due date. So while the lender agreed Mrs S had changed the way she managed her account, it did not follow she was having problems making payments.

- With regards to the second account, NewDay said it had accepted the second account based on its assessment Mrs S had managed the first account extremely well. She hadn't exceeded her limit and was maintaining her payments in line with the terms and conditions of her credit agreement. There also wasn't any evidence of affordability issues reported externally.

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 reviewed everything afresh and considered NewDay's response, I haven't been persuaded to depart from the outcome I reached in my provisional decision. So I'm upholding Mrs S's complaint – and for the same reasons I set out above.

NewDay has argued that the change in the way Mrs S used her account wasn't necessarily evidence of financial difficulty. But I consider it ought to have prompted further checks from the lender, as it could have been an indication she was struggling. It certainly wasn't evidence she could afford more borrowing. NewDay's checks needed to be borrower focussed – and only paying the minimum payment each month wasn't a sign Mrs S was managing that level of debt comfortably. Therefore I don't agree NewDay had enough information from the checks it carried out to determine whether Mrs S could afford any additional lending.

Had NewDay carried out further checks to determine Mrs S's affordability I consider those would have revealed she couldn't afford any further borrowing. I'm also persuaded that had her circumstances been realised in October 2014, a lender with due regard for its customer and the regulator's guidance wouldn't have approved another account a few months later in 2015 either. Unless there was sufficient evidence those circumstances had significantly improved – and in this case there wouldn't have been.

Putting things right

I consider that NewDay's affordability checks across both accounts from October 2014 weren't proportionate – and had they been, they'd have highlighted the lending was unaffordable. I don't think it would be fair for NewDay to profit from those mistakes, or for Mrs S's credit file to be adversely affected as a result.

So, in order to put things right, I'm directing NewDay to:

- Buy back both accounts from the business they were sold to, so the balances can be reworked. NewDay should ask that business to remove any data related to the accounts from Mrs S's credit file.

- Rework the first account as if no interest was applied to the portion of the lending above the limit of £2,600, and to refund any other charges applied to the account after the October 2014 limit increase. If the account is in credit once those refunds are applied, NewDay should add 8% yearly simple interest on that amount from when Mrs S wouldn't have started accruing a positive balance until she gets it back.

- Remove any adverse data it has recorded on Mrs S's credit file about the first credit card account after October 2014.

- Rework the second credit card account, that shouldn't have been opened, so that all interest and charges were never applied. If those refunds mean Mrs S would have been in credit, then 8% yearly interest should be applied from the point the positive balance would have started accruing until the date settlement is paid.

- Remove all data about the second credit card account from Mrs S's credit file.

My final decision

My final decision is that I uphold Mrs S's complaint about NewDay Ltd, and direct the lender to put things right in the way I've explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 8 October 2021.

Ryan Miles
Ombudsman