

## **The complaint**

Mr J complained about lending made to him by NewDay Ltd. He said he already had a considerable amount of unsecured debt when NewDay lent him this money, and he thought this lending was irresponsible.

## **What happened**

Mr J said he applied for a credit card with NewDay in 2017, around the time that he experienced a close family bereavement. He said that he had a large amount of lending at the time, with multiple applications for other credit, and loans with late repayments and default notices issued. Mr J also said he was off work and had a minimum income. He didn't think that this lending was responsible.

Mr J said he told NewDay in 2017 about his personal situation, and this wasn't taken into account. This made his mental health much worse. Mr J said that the debt has since been sold, and he's being harassed to pay money he can't afford.

Mr J wanted this default removed, and the debt to be written off in full, because he said he shouldn't have been lent this money.

NewDay said that Mr J had opened his account at the end of May 2016. He'd told NewDay he was earning £18,500 and had total unsecured debt of £22,300. NewDay said that the information it received from Mr J's credit file at the time showed that he had no adverse data. It didn't think it had made a mistake by lending to him.

NewDay also showed us that it had taken action when Mr J told it about his financial difficulties, including cancelling the interest on Mr J's card.

Our investigator didn't think this complaint should be upheld. He said that Mr J had applied for the card earlier than he thought, in 2016 not 2017. And he had no arrears, no defaults, and no payday loans at the time. Although the credit file data did show nine active accounts and seven credit searches done in the past 12 months, that didn't necessarily mean Mr J was experiencing financial difficulties.

Our investigator said that NewDay's decision to lend Mr J £900 wasn't irresponsible. Our investigator also said that NewDay had initially said there was no record that Mr J had contacted it about his financial difficulties. But when it replied to our service, it said it had found this record, and could show it had taken action. It received his letter in April 2017, and placed the account on a payment arrangement from May 2017. NewDay also stopped applying interest and charges to the account. Our investigator said he'd confirmed this by checking Mr J's statements. The account was later sold on to a third party, at the end of August 2017.

Our investigator didn't think NewDay had done anything wrong.

Mr J said that multiple accounts with a high utilisation percentage should've been a red flag to NewDay. And unsecured debt of £23,000 should also have been a red flag. So he felt that

lending him £900 was irresponsible. He said that although data showed he was managing his account well, that wasn't the case, and he fell into financial difficulty shortly after this lending. He thought this lending was a significant part of that.

Mr J wanted this complaint to be considered by an ombudsman, so it was passed to me for a final decision.

### **My provisional decision**

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

Mr J's complaint is in two parts, about the lending NewDay made to him, and how it responded when he told it about his financial difficulties.

I'd like to start by saying that I'm satisfied NewDay did take steps when Mr J told it about his financial problems, and that those included suspending interest on the account. I've checked that too.

I don't think that this part of Mr J's complaint should be upheld.

I'll now turn to the question of whether NewDay lent responsibly to Mr J.

The Financial Conduct Authority Handbook sets out what a lender must do to satisfy themselves that someone can make the repayments that will fall due, before that lender enters into an agreement to lend. And it's important that any assessment the lender does is based on sufficient information.

This part of the handbook sets out the different sources that a lender can use, to put together its assessment. And it says that the extent of this assessment must be dependent upon and proportionate to a list of factors. Those factors include the financial position of the customer at the time of seeking the credit.

NewDay has told us that Mr J had no adverse credit data. But it also noted his low income, and high indebtedness.

When Mr J sought this credit, he had overall indebtedness which was 1.24 times his annual salary, before tax. That was all unsecured debt. The lending that NewDay was proposing would take that figure up to 1.29 times his annual salary.

I think, in those circumstances, it was appropriate for NewDay to seek more information than it has shown us. It didn't have anything to tell it about the monthly repayments that Mr J was making, and his expenses.

NewDay had to assess Mr J's ability to repay this lending in a sustainable manner. I simply don't think that NewDay had sufficient information to do that.

Because of the questions raised by the high number of other active accounts, the extent of Mr J's unsecured credit, and his relatively low income, I don't think it was sufficient in this case for NewDay to base its assessment on assumptions about Mr J's outgoings, or to rely on the credit reference agency report and score that it told us constituted the basis for the decision it made.

So I think that NewDay did make a mistake when it lent Mr J this money without completing additional checks.

Mr J wants this default removed, and he wants the debt to be written off entirely. But I don't think either of those steps would be appropriate in this case. That's because I can't say that this lending was definitely irresponsible, or that it was NewDay's lending decision which has caused the later default. What Mr J has told us about the events that happened subsequently, make me think that this default would've been likely to occur in any event.

Nor do I think that this debt has to be written off entirely. Mr J did receive the money that NewDay lent him. It would be very unusual for our service to say he doesn't have to pay it back. But allowing a lender to profit from lending which it hasn't been clear is responsible lending is different. Because NewDay can't show this lending was responsible, I think it should pay back all the interest and fees that were added to this lending. It should use that money to reduce Mr J's debt in the first instance.

If NewDay isn't able to make this refund without buying back Mr J's debt from a third party, then it must do so.

Mr J says that he was in a cycle of debt, and this lending made it worse. Mr J has also told us about personal issues which happened a little after this lending was made. I think those personal issues have clearly also contributed to the problems Mr J experienced, so I don't think NewDay is solely responsible for that. I think the refund I've asked NewDay to make, provides a fair and reasonable outcome to this complaint.

I invited the parties to make any final points, if they wanted, before issuing my final decision. NewDay didn't reply. Mr J simply said he accepted my 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.

I haven't changed my mind. I'll now make the award I originally proposed.

### **My final decision**

My final decision is that NewDay Ltd must pay back all the interest and fees that were added to this lending. It should use that money to reduce Mr J's debt in the first instance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 27 August 2021.

Esther Absalom-Gough  
**Ombudsman**