

The complaint

Mr B complained that NewDay Ltd had opened credit card accounts for him without making proper checks. Mr B said this lending was never affordable for him.

What happened

Mr B said that NewDay had lent him money he couldn't afford to pay back. Mr B has now entered into an IVA. He wanted us to look at what NewDay had done, and get it to pay him back all the interest and fees he'd paid for lending, with interest.

NewDay said it first lent to Mr B on 18 September 2014. Mr B said then he was employed with an annual income of £65,000, with £10,000 in additional household income. His unsecured debt was £4,800, and whilst he had one default with an outstanding balance of £8,800, that default happened 26 months prior to his application. He had no county court judgments ("CCJs") and no payday loans, and no accounts in arrears. NewDay opened a credit card account for him with a credit limit of £600. But Mr B closed the account almost straight away, on 22 September 2014.

NewDay didn't think this first card that it opened for Mr B was a mistake.

NewDay said Mr B later applied again, and it opened a new credit card account for him on 10 November 2015. Mr B said then that he was employed with an annual income of £60,000. His unsecured debt was £10,700, and whilst he still had one default with an outstanding balance of £8,800, that happened 40 months prior to his application. He had no CCJs and no payday loans, and no accounts in arrears. He had seven other active accounts. NewDay opened a credit card account for him with a credit limit of £300.

NewDay didn't think this second card that it opened for Mr B was a mistake.

NewDay said it made one credit limit increase on this account. In May 2016 it made an increase from £300 to £1,200.

NewDay didn't think that this increase was a mistake.

NewDay said that the last payment it received on this account was in October 2017. Mr B set up a payment arrangement on 19 February 2018, but in late June 2018 his account was sold to a third-party debt collection service.

NewDay said it had also opened a third card account for Mr B, on 10 December 2016. Mr B said then that he was employed with an annual income of £53,000. His unsecured debt was £17,400, and whilst he still had one default with an outstanding balance of £8,800, that default happened 53 months prior to his application. He had no CCJs and no payday loans, and no accounts in arrears. He had six other active accounts. NewDay opened a credit card account for him with a credit limit of £300.

NewDay said it did think this lending was a mistake, the account was not suitable for Mr B. NewDay said it had made one credit limit increase on this account. In June 2017 it made an

increase from £300 to £1,200.

NewDay said that this debt had been sold to a third party in late May 2018, but it would ask that third party to remove £96 in late payment fees, £96 in overlimit fees, and £305.77 in interest. And it would ask the third party to remove the default from Mr B's credit file.

Our investigator reached the same conclusion on this lending as NewDay. I won't set out her reasoning here, as I haven't adopted it.

Mr B's representatives didn't agree. They wanted Mr B's 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 B first applied for a NewDay credit card in 2014. When he did that, Mr B reported a high personal and overall household income. But his credit file also showed a relatively recent default, just over two years ago, which still seemed to have a high outstanding balance.

I don't think, from the information I have seen, that it was clearly inappropriate for NewDay to make this lending at this time. And I also don't think Mr B has been disadvantaged by this. Mr B doesn't appear to have used this card, as he closed the account within only a few days. So I don't think NewDay has to do anything about this card now.

Mr B then opened a second card in November 2015. At that time, he again reported a relatively high personal income, although slightly lower than the year before, at £60,000, and with no additional household income. Mr B's indebtedness had risen to £10,700, and he hadn't paid anything to reduce his previous default. But I don't think his credit report and the information he passed to NewDay at this stage were such that NewDay should've realised that it would be irresponsible to lend to Mr B, on the basis of what it knew at the time.

I do though have concerns about the increased lending that NewDay subsequently made on this card. Mr B's overall total indebtedness had increased by £2,000 since NewDay opened this card for Mr B, and NewDay's own lending accounted for only £300 of that. And the card that Mr B opened in November 2015 was over its credit limit by January 2016.

Mr B was making around the minimum payment. Although he'd only held the card for a few months, NewDay increased his limit to £1,200 in May 2016.

It's clear from how Mr B used the card after this, that he wasn't managing his finances at this time. But what I need to consider is the decision NewDay made, at the time it made it.

I know that Mr B had declared a relatively high personal income when he applied for this card, but I think there were already questions about why he hadn't, with quite a high income, managed to reduce the debt owed for an outstanding default against him. I also think that the conduct of Mr B's card, and the sharp increase in his other unsecured debt, meant that by May 2016 NewDay ought not to have lent to Mr B without carrying out additional checks, to ensure this lending was affordable.

As NewDay didn't do that at this time, it can't show that this lending was affordable when it was made. Because of that, I think that NewDay should refund onto Mr B's card any interest or fees he was charged from May 2016 onwards, for a balance over his previous limit of £300, while this card was open. If that amount exceeds Mr B's current debt on this card account, then NewDay must pay the remainder back to Mr B, with 8% simple interest.

After the credit limit increase was made on this card, Mr B used all of this new available credit immediately. His May 2016 statement shows he was just below his new, significantly higher, credit limit. And his June 2016 statement shows he was over the limit. In July 2016 he was back only just below his limit. He was then just below his limit until the November 2016 statement, which shows he was back over his limit. Not long after this, NewDay opened Mr B's third account with it, in December 2016.

I think that at the time this third card account was opened, Mr B was very clearly having difficulties with managing his finances, and this was visible to NewDay because it could see how he was using his second card.

I don't think this lending should've been made to Mr B. Because of that, I think that NewDay should pay back all the fees and interest Mr B was charged on this third card. If that amount exceeds Mr B's current debt on this card account, then NewDay must pay the remainder back to Mr B, with 8% simple interest.

I understand that NewDay has already made a sizeable refund onto the debt for Mr B's third card, but if this provisional decision is confirmed, it will need to satisfy itself that this decision has been complied with in full. And, because I think this initial lending should never have been made on this third card, NewDay should remove all record of this card from Mr B's credit file.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Mr B didn't reply. NewDay sent a substantive reply.

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.

NewDay said that the default I'd commented on was recorded 40 months before Mr B applied for the second account with it. And NewDay said it is a second chance lender, so it's not unusual to see consumers with late payments and defaults using its products. NewDay said this default was considered when it assessed the application.

NewDay said it couldn't comment on why Mr B didn't make much of a reduction on the default amount despite him having a relatively high income, but NewDay said this didn't prevent him from being eligible for the credit limit increase in May 2016.

I understand that NewDay's internal policies mean it doesn't reject applications from people with previous defaults. My comment here was that this was a point of concern about Mr B's financial position, which NewDay was aware of. And, as I set out in my provisional decision, I think that this, taken with the other points of concern which had developed by then (in particular the sharp increase in Mr B's overall lending) added up to enough that Mr B shouldn't have been given a credit limit increase in May 2016 without NewDay carrying out further checks.

NewDay also wanted to set out why it understood that Mr B's second card had missed payments and had gone over its limit. It said that when the card account was opened, Mr B's account was set to receive postal statements. But he didn't get his first postal statement dated 20 December 2015, which told him to pay £5.00 by 6 January 2016. NewDay said that was why he missed a payment and went over his credit limit in January 2016. It said this was confirmed by the collections department notes dated 7 January 2016.

NewDay said when it offered to increase Mr B's credit limit from £900 to £1,200 on 22 April 2016, his account had been 'on book' for four and a half months. When it went ahead on 3 May 2016, it had been 'on book' for five months. Apart from not receiving his first statement, Mr B had made all the payments required in line with the terms and conditions of his credit agreement.

NewDay said Mr B's account then entered arrears on several occasions, and he gave the following reasons:

- June 2016 - forgot to pay.
- August 2016 - forgot to pay.
- September 2016 - on holiday.
- January 2017 - unexpected bill/expense.
- February 2018 - temporary reduction in income.

So NewDay said that Mr B made late payments, exceeded his credit limit, and incurred fees, not because of its lending decisions, but due to a combination of other factors such as not receiving a statement, forgetting and being on holiday.

I understand that Mr B did give an explanation for the first missed payment on this card account, but NewDay will be aware that people who are in financial difficulties may not always be happy to tell a lender about why they have missed payments. I think that the same applies to the further missed payments for which NewDay told us Mr B had provided explanations. So I don't think that NewDay can simply disregard Mr B's missed or late payments, just because he had offered explanations. And equally, I don't agree with NewDay's conclusion that Mr B wasn't experiencing financial difficulties at times when payments were missed, just because an alternative explanation was offered.

I've reconsidered, but my views on the lending decisions NewDay made on this card remain unchanged. I still think that, given there were some issues which I consider to be likely signs of financial difficulties, that Mr B ought not to have been given such a substantial credit limit increase in May 2016 without further investigation.

NewDay also wanted to challenge my decision on the lending it made on Mr B's third card. It said when the application was accepted, Mr B had three over-limit fees on his second card account within the preceding 12 months. NewDay repeated its argument that these weren't a result of its lending decisions but rather due to a combination of other factors.

NewDay repeated that when he applied for this third card Mr B had no accounts in arrears with other lenders and no CCJs. The last default was recorded 53 months prior; he had no payment arrangements or debt management programmes in place. NewDay said that reasonable and proportionate checks were completed before Mr B's application was accepted, and it was also in line with NewDay's lending policy. So NewDay said it didn't agree that Mr B should not have been accepted for a third account.

What NewDay has said now, in response to my provisional decision, contrasts with what NewDay told us when it sent us full details of Mr B's accounts. It said then that "NewDay

identified that it may not have been appropriate to accept the [third] application. This is because he had high indebtedness and his [second] account entered arrears in January and February 2016." As I noted in my provisional decision, NewDay had already made refunds onto this card.

When I considered the lending NewDay made on this third card, I took into account Mr B's debts elsewhere, but also the history of his second card. I thought that there were a number of signs in how that card was managed that indicated Mr B was very likely to be having financial difficulties. I still think this third card account should not have been opened for Mr B.

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 –

refund onto Mr B's second card any interest or fees he was charged from May 2016 onwards, for a balance over his previous limit of £300, while this card was open. If that amount exceeds Mr B's current debt on this card account, then NewDay must pay the remainder back to Mr B, with 8% simple interest.

refund onto Mr B's third card all the fees and interest he was charged. If that amount exceeds Mr B's current debt on this card account, then NewDay must pay the remainder back to Mr B, with 8% simple interest. And NewDay Ltd should remove all record of this card from Mr B's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 October 2021.

Esther Absalom-Gough
Ombudsman