

## The complaint

Miss C complains that NewDay Ltd (NewDay) lent to her irresponsibly.

## What happened

In November 2016, Miss C asked for a marbles card from NewDay – it was agreed with a limit of £300. Further increases were offered and put in place:

| Date           | Limit |
|----------------|-------|
| November 2016  | £300  |
| April 2017     | £850  |
| August 2017    | £1600 |
| December 2017  | £2100 |
| June 2019      | £3700 |
| September 2019 | £5450 |

NewDay gave a COVID19 payment holiday for three months until July 2020. But by then, Miss C was in arrears. The account was suspended and passed to NewDay's recovery unit in October 2020 with the balance £5810.72 debit.

Miss C complained. She said she shouldn't have been given the increased limits. She was only making the minimum payments. She had payday loans, including a new loan of £5000 taken out in April 2019. NewDay should've seen she couldn't afford the borrowing. She said the entries on her credit file should be removed, interest and charges refunded and 8% per annum added to the refunds.

NewDay said Miss C told them – when she applied for the card – that she earned a salary of £10800 per annum, and she had debts of £13900. She had passed their credit tests at each increase. There were no arrears or defaults showing in her records. There was one active payday loan in 2017. Payments had been made on time. Miss C could've opted out of the offers of increased limits but didn't. The entries on her credit file were correct and should remain in place. As a gesture of goodwill, they refunded some fees totalling £36, plus £15.

Miss C brought her complaint to us. Our investigator said NewDay hadn't lent responsibly in line with guidance. She felt that the checks hadn't been proportionate to the limits. She couldn't conclude that the increases before June 2019 weren't OK. But by 2019, Miss C's circumstances had changed. She had moved to a new house and started a family and was on the same salary. So, by then, the payments weren't affordable. She said that all interest and charges from June 2019 should be refunded, and 8% per annum simple added to the refunded amount. He said the entries on Miss C's credit file should remain – as it was likely that she would default again on the remaining balance, so any future entries on the credit file wouldn't help Miss C as they would be dated later and remain on her record for six years.

NewDay disagreed. They weren't to know that Miss C's circumstances would change. Miss C hadn't made a payment to her account since March 2020, nor had she proposed any

payments. They restated that she had passed their credit tests at each stage.

*I reached a provisional decision where I said:*

All lenders have an obligation to lend money responsibly. We must check whether NewDay acted in line within the Financial Conduct's (FCA) rules on creditworthiness assessment as set out in its handbook, (CONC) section 5.2. These say that a firm must undertake a reasonable assessment of creditworthiness, considering both the risk to it of the customer not making the repayments, as well as the risk to the customer of not being able to make repayments. We look at:

- Whether the lender completed reasonable and proportionate checks to satisfy itself that the borrower would be able to repay any credit in a sustainable way?
- If reasonable and proportionate checks were completed, did the lender make a fair lending decision made bearing in mind the information gathered and what the lender knew about the borrower's circumstances?
- And a reasonable and proportionate check would usually need to be *more* thorough:
  - the lower a customer's income, and the higher amount to be repaid.
  - the greater the number of loans and frequency of loans.
  - the longer the term of the loans

So – I've considered Miss C's complaint in the light of this guidance. And for me, the crux of her complaint is that the checks that NewDay should've done must have been *proportionate* to the limits being offered and have regard also to her circumstances and salary.

I can see that when Miss C asked for a card in November 2016, she was earning a gross salary of £10800 and was single and lived with her parents. But she also had other debts of

£13900. NewDay noted she had 'high indebtedness' – and for me, this was a substantial amount by comparison with her salary. But there wasn't any evidence of defaults or CCJs – and so I can see that the card was agreed with a low credit limit of £300 – that was OK.

Looking at the further increases in limit in April 2017 (£850) through to December 2017 (£2100), I can agree that NewDay's checks were OK in comparison to the limits being offered. Payments were being met – albeit only at the minimum levels. The balance was within the limits. NewDay could see there were still other debts of just over £12000 – but this was a little less than in 2016. But there were four payday loans in place by May 2017 – with several new ones being taken out between April 2017 and July 2017. So – there were some warning signs that all was not well. But on balance, I can agree that it was OK to increase the limits in the way they did. And – I note that Miss C could've opted out of the increases but didn't.

Looking at the increase in June 2019 to £3700. I think there were enough signs of difficulties to say that NewDay should've made more inquiries of Miss C before offering to increase her limit. The increase would've meant a total increase from £300 to £3700 in just over two and a half years. That's a lot. And by then, NewDay had seen that Miss C only made minimum payments for a long time – since 2016. The borrowing was consistently at the limit. And importantly, NewDay could see there was other borrowing in March 2019 of £18495 – this had increased from £12000 in December 2017, and by any measure, this was a lot for someone earning £10800 per annum. Miss C told us she borrowed a further £5000 from a

payday lender in April 2019 – and I can see that this is on her credit file and that she paid off NewDay with that money in that month. NewDay told us they couldn't be aware of where the money came from, and I appreciate their point. But equally - for Miss C to pay off a balance of £1859 (as she did) after having only made minimum payments for over two years – and in the light of her having a lot of other debts – should've caused NewDay to ask some questions, but they didn't.

I can see that Miss C's circumstances did change in 2019 – NewDay have argued that they couldn't have known this, and I agree with them on that point. But – in the light of what they could see by June 2019, NewDay should've made more inquiries of Miss C at that time. And it follows that the same applies to the limit increase to £5450 in September 2019 – just three months later. By this time, Miss C's debts had increased to almost £21000.

And so, I think that NewDay should refund all interest and charges on the borrowing over £2100 from June 2019 (as I think that the increase to £2100 was OK). I note that Miss C hasn't been charged interest since March 2020 and, some fees have been refunded already. Should the refunds result in a credit balance, then 8% simple per annum should be added from the date the credit balance arose. They should remove any adverse entries from Miss C's credit file from June 2019. While I hear what our investigator said about possible future entries on it, I don't think we can predict that will be the case, and it's best to ensure an accurate record is put in place at the current time. And – I note that no payments have been made by Miss C since March 2020. So, following the refunds, New C should agree a mutually acceptable payment plan for the remaining debt.

#### Responses to the provisional decision:

NewDay had no comments. Miss C accepted my findings and asked if the refund would be in reduction of the debt or paid to her.

So – I need to make a final 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.

As NewDay, nor Miss C didn't have any material comments, I won't be departing from my provisional decision and for the reasons I gave in it. In response to Miss C's question – the interest refund should be made to the card debt – as this was where the interest was originally debited to. And this would also enable the repayment schedule to start from a lower balance.

**(continued)**

#### **My final decision**

I uphold this complaint. And NewDay Ltd must:

- Refund interest and charges on the debt over £2100 from June 2019 to the date of any final decision - noting the refunds already made. This to be credited to the card debt.
- If a credit balance results, add 8% per annum simple to the refund.
- Remove any adverse entries from Miss C's credit file from June 2019.

- Agree a mutually acceptable repayment plan for the remaining balance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 15 October 2021.

Martin Lord  
**Ombudsman**