

## **The complaint**

Mr E is unhappy that NewDay Ltd provided him with credit that was unaffordable for him and didn't sufficiently explain what his rate of interest would be.

## **What happened**

Mr E opened a credit account with NewDay at the end of 2017 with an initial credit limit of £300. In June 2018, NewDay increased Mr E's credit limit to £1,300. Further credit limit increases took place in October 2018 (to £2,500) and in May 2019 (to £3,250).

In August 2019, Mr E contacted NewDay and made them aware that he was in financial difficulty. Mr E's account fell into arrears, and the account was ultimately defaulted by NewDay in February 2020. Mr E wasn't happy about this, and he felt that NewDay shouldn't have increased his credit limit when they did because the credit limit increases had been unaffordable for him at those times, and that NewDay hadn't clearly told him what the rate of interest on his account would be. So, he raised a complaint.

NewDay looked at Mr E's complaint. They felt that, with regard the initial account application and the first two credit limit increases, there had been nothing resulting from the checks that they had undertaken into Mr E's financial position at those times that should have made them consider that the credit being offered might not be affordable for Mr E.

However, with regard the final credit limit increase in May 2019, NewDay acknowledged that this credit limit increase shouldn't have been offered. So, they upheld Mr E's complaint on that basis and reimbursed Mr E the interest, fees, and charges that had accrued on the account following that credit limit increase.

Mr E wasn't satisfied with NewDay's response, so he referred his complaint to this service. One of our investigators looked at this complaint, but they felt that NewDay had undertaken reasonable checks into Mr E's financial position at the time of the account application and the credit limit increases, and they agreed that there had been nothing resulting from these checks, up to and including the second credit limit increase, that should have given NewDay cause to suspect that the credit being offered wasn't affordable for Mr E, at those times.

Additionally, our investigator felt that the response already issued by NewDay regarding the final credit limit increase, including the reimbursement made to Mr E, did represent a fair resolution to what had happened. And finally, our investigator noted that the rate of interest had been clearly indicated to Mr E during the application process. So, they didn't uphold the complaint.

Mr E remained dissatisfied, so the matter was escalated to an ombudsman for 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.

I initially issued a provisional decision on this complaint on 15 July 2021 in which I explained that I was provisionally upholding this complaint in Mr E's favour as follows:

*It's up to a business to decide whether they will offer credit to a customer, and if so, how much and on what terms. What this service would expect would be that the business would conduct reasonable and proportionate checks into the financial circumstances of their customer at the time that the credit is being offered, to ensure that the credit is affordable for that customer at that time.*

*For the most part, I feel that NewDay did that here. When Mr E first applied for the account, NewDay took information directly from Mr E regarding his income and expenditure to confirm that the potential payments due on the credit account would have been within Mr E's means to pay.*

*Additionally, NewDay obtained data from the credit reference agencies to gain a better understanding of Mr E's wider financial position. And, having reviewed the information that NewDay obtained in this regard, I'm satisfied that there was nothing in this information that ought reasonably to have given NewDay cause to consider that Mr E's credit account application, for a credit card with an initial limit of £300, wouldn't have been affordable for him at the time that he applied for it.*

*I'm also satisfied, having reviewed the relevant data, that the information that NewDay gathered before offering the first two credit limit increases – in June and October 2018 – was such that there remained nothing within that data that should have given NewDay reason to suspect that the increases in credit being offered to Mr E weren't affordable for him at those times.*

*I say this because, in both instances, the data obtained from the credit reference agencies didn't indicate that Mr E was in financial difficulties at those times, including that he had no active payday loans, and the management of Mr E's existing other borrowing appeared reasonable. And, while the total amount of other borrowing did increase by the time of the second credit limit increase, I don't feel that the amount of this increase was such that NewDay shouldn't have felt that the credit limit increase being offered wouldn't still have been affordable for Mr E at that time.*

*It also must be noted that Mr E had managed the NewDay account in question without incident since it was taken out, and while Mr E had exceeded his credit limit in the first few months of having the card, Mr E had made a complaint to NewDay about this on the basis that he hadn't been given the correct information regarding the amount of monthly payment he needed to make to stay within this limit. And this complaint had been upheld by NewDay in Mr E's favour.*

*All of which means that I'm satisfied that it was reasonable for NewDay to consider that Mr E would have been able to afford the credit that was given to him, both at the time of the initial account application and at the times of the first two credit limit increases.*

*With regard the third credit limit increase – in May 2019 – NewDay have already acknowledged that this credit limit increase shouldn't have been offered to Mr E. And this was because the data that NewDay obtained from the credit limit increases did contain information that suggested that Mr E's financial position was worsening at that time, and this data wasn't appropriately considered by NewDay before they offered the credit limit increase to Mr E.*

*As a result, NewDay have reimbursed to Mr E's account the interest, fees, and charges incurred on the account after that date – totalling approximately £1,200. However, in their correspondence with Mr E about this point, NewDay stated that they were unwilling to amend Mr E's credit file as they felt that they had an obligation to accurately report to the credit reference agencies what had taken place.*

*I can appreciate NewDay's point here – to a degree. But it must be noted that Mr E's account was defaulted with a balance of approximately £4,050 – which was £800 above the £3,250 credit limit. Given that the reimbursement paid by NewDay to Mr E was approximately £1,200, this means that following the reimbursement, Mr E's account balance is below the credit limit of £3,250. And it doesn't feel fair to me that Mr E's credit file shouldn't be amended, and that a default should remain on it for exceeding the £3,250 credit limit, in these circumstances.*

*So, I will be provisionally upholding this aspect only of Mr E's complaint and instructing NewDay to remove all adverse reporting from Mr E's credit file from the date of the third credit limit increase – May 2019 – onwards. This should result in Mr E's account being reopened and having a balance lower than the £3,250 credit limit. It would then be expected that NewDay would work with Mr E to agree a reasonable repayment plan on the remaining balance, with NewDay providing Mr E with a fair degree of forbearance.*

*I'll also be provisionally instructing NewDay to make a payment of £100 to Mr E for the distress and inconvenience he may have incurred regarding this matter - although NewDay may apply this amount to reduce the outstanding balance of Mr E's account, if they choose to do so.*

*Finally, Mr E has stated that NewDay didn't sufficiently inform him of the interest rate that would be applied to his account. However, having reviewed the information available to me, I'm satisfied that this information was readily available to Mr E, at that time that he applied for the account, and so I do not uphold this aspect of his complaint.*

However, following further information received from NewDay in response to that initial provisional decision, I issued a second provisional decision on 2 September 2021 in which I explained that I was not minded not to uphold this complaint, as follows:

*The spirit of my provisional decision was that I didn't feel that it was fair that Mr E should incur adverse reporting on his credit file if it were the case that the reimbursements paid to his account by NewDay – in acknowledgement that certain credit limit increases provided to Mr E should never have taken place – took the balance of Mr E's account lower than credit limit amount he was reported to have exceeded.*

*However, subsequent to my provisional decision, NewDay provided further information that confirmed that my appraisal of the current position of Mr E's account, as outlined in my provisional decision letter, was incorrect.*

*Specifically, NewDay confirmed that they had in fact concluded themselves that only the first credit limit increase on the account was justified, and that all credit limits from the second credit limit increase – from £1,300 to £2,500 in October 2018 – had been deemed by them as being unfair and that Mr E's account had, in March 2020, already been reimbursed all relevant interest, fees, and charges for his account balance beyond this time that exceeded £1,300.*

*NewDay also confirmed to this service that the outstanding balance still owing on Mr E's account following these reimbursements was approximately £3,100, and so was greater than the credit limit of £1,300 that the reimbursements had been affected back to.*

*This means that it isn't the case, as I initially believed, that the reimbursements to Mr E's account had taken the balance of that account lower than the credit limit for which the account was reported to the credit reference agencies as having exceeded.*

*And it follows from this that it also isn't the case that Mr E has incurred adverse reporting on his credit file following the reimbursements paid to his account by NewDay taking the balance of his account lower than credit limit amount he was reported to have exceeded.*

*As such, the very basis on which I provisionally upheld this aspect of Mr E's complaint has been demonstrated to be invalid. And, given that after the reimbursements were applied to Mr E's account by NewDay the balance of that account remained above the relevant credit limit of £1,300, I'm satisfied that any adverse information that has been recorded on Mr E's credit file in relation to his exceeding that credit limit following these reimbursements is fair and reasonable.*

*Finally, given that it remains my position that NewDay didn't act unfairly in approving Mr E's initial account application or in increasing the credit limit on the account in the first instance, it follows that my updated provisional decision will be that I do not uphold this complaint and that I won't be instructing NewDay to take any further action at this time.*

In my second provisional decision letter, I gave both Mr E and NewDay the opportunity to provide any comments or further information that they might wish me to consider before I moved to a final decision.

NewDay confirmed that they were happy to accept my revised provisional decision. However, Mr E expressed his dissatisfaction at the change of outcome detailed in my second provisional decision and forwarded details of two Consent Orders, one of which demonstrated that Mr E had incurred a County Court Judgement a few months before he applied for the NewDay account and which Mr E felt that NewDay should have been aware of, had they undertaken the checks into his financial position that they said they'd done at that time, and which Mr E feels should have provided a clear indication to NewDay that his credit application with them shouldn't have been approved.

I presented this new information to NewDay and asked for their comments. NewDay confirmed that had they been aware at the time of the application that Mr E had recently incurred a County Court Judgement that they wouldn't have approved his application or offered credit to him. However, NewDay confirmed that they did obtain information from a credit reference agency at the time that Mr E applied for the account, and that no record of the County Court Judgement was present in that information presented to them.

It's unclear why information about Mr E's recent County Court Judgement wasn't included in the information provided to them by the credit reference agency, but I'm satisfied from the information that NewDay have provided to this service that they did obtain information from the credit reference agency at that time, as would be expected of them, and that this information didn't include any reference to a County Court Judgement.

NewDay can only make lending decisions based on the information that they receive. If it had been the case that NewDay hadn't sought to check Mr E's wider financial position before issuing the credit account to him, then I might think differently here, but given that NewDay did undertake the credit reference agency checks that would be expected of them, and these checks didn't inform NewDay of Mr E's recent County Court Judgement, I don't feel that I can reasonably or fairly censure NewDay for approving Mr E's credit account application in this instance. Indeed, I'm satisfied that NewDay approved Mr E's credit account application in good faith, and in consideration of all the information that they had available to them at that time.

Additionally, NewDay have confirmed that their stated account application criteria included that persons who had incurred a County Court Judgement within the last twelve months shouldn't apply. But Mr E made his application to NewDay within two months of incurring a County Court Judgement, and as such at a time when he didn't meet the necessary application criteria. It's also notable that Mr E didn't declare his recent County Court Judgement to NewDay at any time during the application process.

All of which means that I don't feel that this further information presented by Mr E gives me any reasonable cause to change the outcome of my provisional decision as explained in my second provisional decision letter, and as such I can confirm that my final decision will be a confirmation of that later provisional decision and that I won't be upholding this complaint.

I realise that this won't be the final decision that Mr E was wanting, but I hope that he'll understand, given all that I've explained, why I've made the final decision that I have.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 15 December 2021.

Paul Cooper  
**Ombudsman**