

The complaint

Miss T complains that NewDay Ltd lent to her irresponsibly.

What happened

Miss T complained about the card that NewDay opened for her in 2016. She told us she was in a seriously bad financial situation then with a poor credit rating, multiple payday loans, one after the other for some years, as well as high-cost loans and private borrowing. And she'd frequently missed payments to her other credit cards. She said this was all visible on her credit file at the time, and she didn't think NewDay should've lent her this money.

Miss T said that her first NewDay card was maxed out and she was only making minimum payments. She'd also been over her limit and had late or missed payment penalties. She said this debt had affected her mental health, and she'd only made progress repaying this card when she asked NewDay to block it.

Miss T wanted NewDay to refund the interest and charges plus statutory interest, and to delete any negative information from her credit record.

Miss T said that although she'd only complained about the first card NewDay opened for her, it had then blocked the second card she held too. But she didn't mind, as this would help her pay it off quicker.

NewDay didn't think it had done anything wrong. It said it looked at all the lending it made to Miss T, even though she'd only complained about the first of two cards it opened for her.

NewDay said Miss T applied for her first card on 5 October 2016. She said then that she was employed earning £26,500, and had unsecured debts of £3,800. NewDay said the external information it received at the time said that she had no defaults, no county court judgments ("CCJs") no accounts in arrears, no payday loans, and had five other lending accounts. So it opened a card for her, with £900 of credit. That limit was never increased. Miss T asked to close the card on 2 April 2018, and it's been open for repayments only since then.

NewDay said Miss T then applied for a second account on 21 March 2020. She said then that she was employed earning £30,000, and had unsecured debts of £5,800. Her accommodation costs were £500 a month and living expenses were £600 a month. NewDay said the external information it received at the time was that she had no defaults, no CCJs, no accounts in arrears, no payday loans, and had nine other lending accounts. So it opened a card for her, with £500 of credit. That limit was never increased. She'd asked for an increase on 6 August 2020, but NewDay said no.

NewDay said that in light of the comments Miss T made about being unable to afford her accounts, it had closed Miss T's second card for future spend. That would also remain open for repayments only.

Our investigator didn't think this complaint should be upheld. She said NewDay had assessed Miss T's financial position when she applied for these cards, and the information it

reviewed didn't point towards the risk being too high for the lending, even though our investigator understood Miss T's actual experience might've been very different at the time.

Our investigator said that based on the level of income Miss T told NewDay she had, and the relatively low credit limits offered on both cards, she was satisfied the checks that NewDay carried out were reasonable and proportionate, and that its lending decisions were responsible and affordable.

Miss T didn't agree. She said that at the time she took out the first card, she was in a deep financial pit and although she kept up appearances, she had multiple payday loans, high cost loans, credit cards and private loans from friends. Her monthly outgoings were always bigger than her income. There were also multiple markers of late payments.

Miss T wanted an ombudsman to consider her complaint, 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:

When a lender decides whether to open a credit card account for someone, it's able to take account of what they have told it, and what it can see on its credit bureau check. But checks on lending have to be proportionate. So that means if there's something in the information that doesn't seem to add up, a lender may well be expected to do further investigations, to check whether any lending is affordable for the applicant.

We know that NewDay did some checks that it has shown us. And on the first occasion it lent to Miss T, I don't think it found a cause for concern there.

I know Miss T says she was in a very bad financial situation at the time. So I've looked at her credit file closely for this time.

The debt level she reported looks to me to be roughly consistent with what I can see there, from the relevant time.

I can see that there are some issues which might well mean that Miss T thinks NewDay was wrong to lend to her. And I accept what she says about her financial situation then being poor. But NewDay said it couldn't see evidence of this at the time. And I can't see that NewDay could have known this at the time it made its lending decision, in October 2016.

I can see that Miss T missed a series of payments to a different credit card from October 2016 onwards, but credit files take some time to update, so I wouldn't expect this to be visible to NewDay at the time her application was made. It also appears that this card was over its limit, and had been for some time. But the credit file that Miss T sent us suggests that this lender hadn't reported problems with this lending to credit reference agencies, so NewDay wouldn't have known about this.

Similarly, Miss T's short term lending does seem to have increased around this time, but NewDay has shown us the report it got at the time didn't tell it about Miss T's short term lending. In my experience, payday lending often didn't show in full on a lender's credit checks at that time. And of course, NewDay wouldn't know about private lending, when Miss T borrowed from friends.

So it doesn't look like NewDay was aware of the full extent of Miss T's borrowing at the time that it opened her first credit card account. But I don't think that was NewDay's fault. And I don't think that further enquiries would have revealed these issues at the time, simply because of the amount of time it takes for a credit file to update. So I don't think NewDay made a mistake when it opened the first card account for Miss T.

I've also looked at the information that NewDay had available to it when Miss T applied for her second card. And I think that the second time NewDay lent to Miss T, some things that she told it didn't add up. So I think NewDay should've done more then to check that its lending would be affordable for Miss T.

At that time, Miss T apparently declared unsecured debts of £5,800. But other internal data held by NewDay suggests that it should have been aware that her debt was almost twice this amount at that time. I think that calls into question the lending decision NewDay made then.

Because I think NewDay should've realised that Miss T had greatly under-reported her other lending, I think NewDay should've looked more closely at Miss T's financial situation then. If it had done so, it may have found that the credit card which was over its limit in 2016 was still over its limit some years later. And she'd missed seven payments onto that card in the last two years.

I think NewDay ought also to have realised that if Miss T had so seriously underestimated her debts, she may also not have provided robust figures for her income and expenditure.

NewDay didn't do these additional checks. So it can't be sure that its lending to Miss T on this second card was responsible and affordable for her. For that reason, I think NewDay should refund onto Miss T's second card, any interest and fees that she was charged for this lending while the card was open, and it should not charge interest going forward. I don't expect that there will be a surplus, but if there is, NewDay should pay that to Miss T, with 8% simple interest.

And because I don't think this lending should have been made, I'll also ask NewDay to remove any adverse information on this second credit card from Miss T's credit file.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both parties replied.

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.

Miss T accepted my provisional decision. She wanted us to note that at the time the second card was issued to her by NewDay, it had also recognised she was in persistent debt with it on her first card, and it had been writing to her to tell her this. Miss T said she had now managed to get out of persistent debt on the first card, but that only happened after this second card was issued.

So Miss T said NewDay didn't have to look as far as external credit scoring companies to see clearly what her financial situation was. It had already categorised her as "in persistent

debt" and had told her about this in writing. Miss T said that also called into question the lending decision on her second card.

NewDay also replied. It didn't agree with my provisional decision.

NewDay said that I'd expressed doubts about its lending on the second card, because Miss T had declared unsecured debts of £5,800, but other data held by NewDay said that she had total debts of almost twice this. NewDay said that, although it considered the unsecured debt amount Miss T provided on her application, it also took into account the information about Miss T's debt level reported by the credit reference agency, before making the decision to accept Miss T's application.

NewDay said it gave Miss T a credit limit of £500 on this second card. Based on the assumption that she used the full amount of the credit limit of £500 immediately, her monthly minimum repayments would have been £17.62. NewDay said its data showed that from May to December 2020, Miss T paid well in excess of this amount every month, sometimes four times the amount needed. So NewDay said it couldn't agree that repayments were not affordable for Miss T.

NewDay wanted me to reconsider.

I recognise that this is an unusual case, because although Miss T's credit file shows extended periods of missed payments and extensive short term lending, the file I've seen doesn't yet show defaults. However, I don't think that this means that the lending NewDay made, on its second card, was in fact affordable for Miss T.

When NewDay made that lending decision, for the second card, it was required to assess Miss T's capacity to pay back the money it was offering to lend her. I don't think NewDay has shown that it made a robust decision at this point. In particular, I remain of the view that the fact that Miss T had greatly under-reported her existing debts ought to have made NewDay question the other things she'd told it too, and look more closely at her position before it decided to lend to her. It doesn't look as if NewDay did that.

But what NewDay appears to be saying now is that there wasn't actually a problem with this lending in practice, because Miss T didn't have any difficulties with it. NewDay says that must be right, because Miss T was making her payments, and often more than the minimum.

I don't think this follows. When NewDay makes lending like this, it's only supposed to go ahead if it thinks Miss T could repay the lending in a sustainable fashion. And that doesn't just mean servicing the debt. So it's about more than just paying the interest, or covering purchases made to keep the card within its limits.

"Sustainable" means paying back all of the amount borrowed, within a reasonable time, and without needing to borrow elsewhere to do that. So if NewDay wanted to say that this lending had worked out ok, even though its decision may not have been robust, I think it would need to show me that Miss T was paying back the money she borrowed, and reducing her debt, without borrowing elsewhere.

That's not what happened here. Whilst Miss T has made repayments to her second card, the card has also been used in almost every month since it was taken out. The information NewDay has sent isn't entirely clear on this, but it appears that Miss T spent up to the limit by around the time of her first statement. It is clear that she has remained around her credit limit since. And NewDay has told us she was charged for exceeding the limit in August and October.

I don't think that this evidences that Miss T has been able to pay back the principal amount that she borrowed, in a sustainable fashion. And for that reason, I haven't changed my mind about the appropriate outcome in this case. I'll now make the decision I originally proposed.

My final decision

My final decision is that NewDay Ltd should refund onto Miss T's second card, any interest and fees that she has been charged for this lending, and it should not charge interest on this card going forward. If there is any surplus, NewDay Ltd should pay that to Miss T, with 8% simple interest. NewDay Ltd should also remove any adverse information on this second credit card from Miss T's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 19 November 2021.

Esther Absalom-Gough
Ombudsman