

## The complaint

Miss B complains that NewDay Ltd irresponsibly lent to her.

## What happened

Miss B was approved for three NewDay credit cards which I will refer to as A, B and C. NewDay increased the credit limits on all three cards, which I have detailed below.

Card A – approved August 2017, with an initial £600 credit limit:

February 2018	£600 to £1,600
July 2018	£1,600 to £2,350
November 2018	£2,350 to £3,100

Card B – approved November 2017, with an initial £900 credit limit:

May 2018	£900 to £1,800
November 2018	£1,800 to £2,800

Card C – approved December 2018, with an initial £900 credit limit:

April 2018	£900 to £1,800
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Miss B complained to NewDay that they irresponsibly lent to her. She said she previously had a default, late payments and they should have never increased her credit limits. Miss B said that her credit score was very low at the time of application, they accepted her for three different credit cards and her debt with them rose to £7,700 in approximately a year from the first account opening.

NewDay did not uphold Miss B's complaint. They said as a responsible lender, when deciding to offer credit, they consider a range of information available to them. This consists of information provided by Credit Reference Agencies, account behaviour with NewDay, if she already had an account with them, as well as the information she provided on her applications - including Miss B saying she earned £27,000 gross annual income.

NewDay also said that they had seen she had two defaults registered on her credit file 28 months prior to her making her application for A. They also saw that she had an adverse public record that was showing 37 months prior to her application. But as a second chance lender, their cards are aimed at customers who are trying to rebuild their credit rating. They said with this in mind, it is not unusual to see customers with a poor credit history open an account with them. Miss B brought her complaint to our service.

Our investigator upheld Miss B's complaint. He said Miss B was making minimum payments up to the credit limit increases. Our investigator said that while contractual payments were still being made, once the increased limits were applied, Miss B interest payments increased because she continued to only make minimum payments. He recommended that NewDay needed to refund all interest and charges on all three accounts from the date of the first limit

increase up to when a repayment plan was set up and interest was stopped.

NewDay asked for an Ombudsman to review the complaint. They said that Miss B made late payments on just seven occasions over the three accounts. One of these was confirmed to be because she had changed jobs. The late payment fees were all charged well after the credit limit increases took place, not before.

NewDay also said that making minimum payments would not in itself be an indication that Miss B would be struggling financially and their risk and affordability data does not indicate she was experiencing financial strain before the credit limit increases, or indeed afterwards due to NewDay's lending decisions.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Before agreeing to approve or increase the credit available to Miss B, NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable for her. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances. I've listed below what checks NewDay have done and whether I'm persuaded these checks were proportionate.*

*Acceptance for the three NewDay credit cards – initial credit limits:*

*I've looked at what checks NewDay said they did when initially approving Miss B's application for all three cards. I'll address the credit limit increases later, as the first credit limit increase was after the third account was approved. NewDay said they looked at information provided by credit reference agencies and information that Miss B had provided before approving her application.*

*I'm satisfied that the account opening checks were proportionate. I say this as although three applications were approved within a short period of time – August 2017 to December 2017, the information that NewDay obtained prior to approving the applications was proportionate for the credit limits which were initially given.*

*The information showed that the highest unsecured borrowing which Miss B had at the time was £1,500. This was when she was approved for B credit card. Miss B had declared annual income of £27,000 at the time, so it would appear that the three initial credit limits may be affordable for Miss B as the total of these three limits were for £2,400 which was less than 10% of her gross income.*

*But that's not all NewDay's data showed. The data also showed that Miss B had adverse credit data in the form of two defaults and a public record. So NewDay would have been aware that Miss B had previously not maintained her agreements. But the data also showed she had no accounts in arrears, no repayment plans and that the adverse credit data was over two years old.*

*February 2018 increase on credit card A:*

*NewDay will have been able to see how Miss B had been using her credit cards for a limited period of time before the first credit limit increase in addition to information they obtained*

from credit reference agencies. This would have shown that Miss B's accounts were ran generally well. But I'm not persuaded that the further checks that NewDay did were proportionate in February 2018.

I say this as the increase of the credit limit on Miss B's credit card A nearly trebles from £600 to £1,600. In the previous six months, Miss B went from having no credit with NewDay to having three credit cards and a fairly substantial credit limit increase on her first card. As this was a lot higher than the credit limit prior to the increase in February 2018 and in light of Miss B's previous credit issues, then I'm persuaded that as part of a proportionate check to validate Miss B's income and expenditure then they should have requested information from Miss B to discuss her finances, for example, one of things they could have requested were her recent bank statements.

I asked Miss B if she would provide her bank statements so I could see how she managed her money at the time. Miss B's bank statements show that she had an overdraft on her account and often used the overdraft. So I looked at her income and outgoings, which I'm persuaded that NewDay should have done as part of a proportionate check to make sure the credit limit was affordable and sustainable for Miss B.

Miss B's bank statements prior to the first credit limit increase show that in total for the three month time period beforehand, she had more outgoings than income. This should have alerted NewDay that Miss B may not be able to afford a credit limit increase at this time as over a prolonged period of time her outgoings exceeded her income and she had a reliance on unsecured borrowing in the form of her overdraft. So I'm persuaded that had NewDay have looked at this information then they shouldn't have increased her credit limit on credit card A at this time.

April, May, July 2018 credit limit increases across all three NewDay credit cards:

Again, NewDay will have been able to see how Miss B had been using her credit cards for a longer period of time before the credit limit increases listed above in addition to information they obtained from credit reference agencies. This would have shown that Miss B's accounts still were ran generally well. But I'm not persuaded that the further checks that NewDay did were proportionate for the credit limit increases listed above and I'll explain why.

I've looked at the increases from April-July 2018 and the credit limits rise rapidly over a short period of time. The credit limits are increased across the three cards in three of the following four months. In March 2018, her combined credit limit across all of the three cards were £3,400. But the increases in April, May and July 2018 meant the combined credit limits were £5,950.

As the increase to the credit limits are relatively high – card B and C are double the original credit limit and card A's credit limit is increased by nearly half the existing credit limit then again, I'm persuaded that as part of a proportionate check to validate Miss B's income and expenditure to assess the affordability and sustainability of potential higher repayments, then NewDay should have requested information from Miss B to discuss her finances, for example, one of things they could have requested were her recent bank statements.

Miss B's bank statements prior to the April 2018 credit limit increase show that in total for the three month time period beforehand, she had more outgoings than income by £671.45. This should have alerted NewDay that Miss B may not be able to afford a credit limit increase at this time or in May or July 2018, as over a prolonged period of time her outgoings exceeded her income and she had a reliance on unsecured borrowing in the form of her overdraft. Miss B's bank statements also show that Miss B's salary stopped as she became self employed in June 2018. I've considered whether it was fair for NewDay to increase Miss B's

*credit limit when she had a major change in circumstances.*

*I've considered whether it is fair to hold NewDay responsible for something which they weren't aware of – that Miss B had went from an employed position to a self employed position. I've looked at the terms and conditions of her accounts and these say "you must let us know if your circumstances change in a way which is likely to change our assessment of your financial standing." But I've also considered that NewDay should have carried out proportionate checks when increasing her credit limit regardless of whether she had changed employment type or not. I'm persuaded if NewDay made further proportionate checks such as obtaining Miss B's bank statements prior to increasing her credit limits then this is when this new information would have come to light.*

*I'm persuaded that if NewDay were aware that Miss B had become self employed in June 2018 then as part of a proportionate check they would try and contact her to assess the affordability and the sustainability of how she would be able to make payments when she was self employed. So I'm persuaded that had NewDay have looked at her bank statements for example as part of a proportionate check at this stage then they shouldn't have increased her credit limit on her three credit cards in April, May and July 2018.*

*November 2018 credit limit increases across credit cards A and B:*

*Finally I've looked at the credit limit increases in November 2018 as the total credit limits rise by £1,750. Prior to the increase the total on all three cards was £5,950. So in the space of 15 months, Miss B has had no credit with NewDay to having three different credit cards totalling £7,700 with NewDay. I'm not persuaded that the further checks that NewDay did were proportionate from November 2018 either and I'll explain why.*

*The increase to the credit limits for card A is £750 which is nearly a third higher than the previous credit limit and the increase to the credit limit for card B is over half of the previous credit limit, so again, I'm persuaded that as part of a proportionate check to validate Miss B's income and expenditure to assess the affordability and sustainability of potential higher repayments, then NewDay should have requested information from Miss B to discuss her finances.*

*Miss B's bank statements prior to the November 2018 credit limit increase show that in total for the three month time period beforehand, she had more income than outgoings by £979.47. So it may look like Miss B did have affordability to raise her credit limits. But this is not all that the statements showed. The statements show that Miss B still has a heavy reliance on unsecured borrowings as she is often using her overdraft. When she is in credit this is often for a short period of time and therefore this should have alerted NewDay that Miss B may not be able to afford a credit limit increase at this time as over a prolonged period of time she had a reliance on unsecured borrowing in the form of her overdraft rather than disposable income. So I'm persuaded that had NewDay have looked at this information then they shouldn't have increased her credit limit on two of her credit cards in November 2018.*

*I've considered what NewDay have said regarding Miss B previously managing her NewDay accounts generally well, making late payments on seven occasions over the three accounts of which one of these was confirmed to be because she had changed jobs and the late payment fees were all charged after the credit limit increases took place. But her wider financial circumstances showed that the increases to her initial credit limits were not affordable or sustainable at the time they were approved.*

*All three cards increased quite quickly in a short space of time. But Miss B was normally only making the minimum repayments which indicate that the borrowing was unsustainable. The*

*reality of paying the debt back just by making minimum payments would take years and would mean Miss B wasn't able to pay off the debt in a reasonable time. And Miss B had to occasionally borrow in the form of her overdraft to make her repayments to her NewDay credit cards. So it follows I will be asking NewDay to put things right."*

I invited both parties to let me have any further submissions before I reached a final Decision. Miss B accepted the provisional decision. NewDay did not accept the provisional decision and made a number of further comments which I will summarise below.

NewDay said they are not required to ask for evidence of income and outgoings in the form of bank statements and the checks they performed were in line with the Consumer Credit Sourcebook (CONC).

They said that when the credit limits had been increased, they reviewed internal and external information and Miss B had been managing her accounts well, often paying more than the minimum payment and there were no signs of financial difficulty with her other accounts which were being reported by credit reference agencies.

NewDay said their data showed that prior to the increases on the credit cards after June 2018, the information they had was that Miss B had disposable income of £900 per month.

### **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've considered what NewDay have said regarding they are not required to verify Miss B's income and outgoings using her bank statements and that they have followed the CONC rules. But the CONC rules also state under CONC 5.5A.21 that *"the extent and scope of the creditworthiness assessment, and the steps that the firm must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent upon, and proportionate to, the individual circumstances of each case."*

So, as I mentioned in my provisional decision, due to the individual circumstances of this case, as part of a proportionate check to validate Miss B's income and expenditure then I'm persuaded that NewDay should have requested information from Miss B to discuss her finances since credit card A nearly trebles from £600 to £1,600 and in the previous six months, Miss B went from having no credit with NewDay to having three credit cards and a fairly substantial credit limit increase on her first card. Miss B had previously defaulted on two accounts with lower default balances than what the card was being increased to (a total of £800), so I'm still persuaded that as part of a proportionate check, NewDay should have requested information from Miss B to discuss her finances. This does not have to be from a bank statement but an example I used was her bank statements.

I've considered what NewDay have said about the information they used to assess Miss B's affordability and that the information that NewDay had was that Miss B had a £900 a month disposable income. But looking at Miss B's bank statements, this isn't an accurate reflection of Miss B's finances. As mentioned in my provisional decision, Miss B was often using other borrowing (her overdraft) to make her NewDay monthly repayments and she had prolonged periods of time where her outgoings exceeded her income. And as Miss B was often only making minimum payments after the credit limits were increased then this would take years to pay the outstanding balance and would mean Miss B wasn't able to pay off the debt in a reasonable time.

In summary, NewDay's response hasn't changed my view and my final decision and my reasoning remains the same as in my provisional decision. I know NewDay will be disappointed with the decision, but I hope they understand my reasons.

### **Putting things right**

In my provisional decision I said I intended to ask NewDay Ltd to rework Miss B's accounts to ensure that from the following dates, interest is only charged on the following amounts to reflect the fact that no further credit increases should have been provided.

Card A	From February 2018	£600
Card B	From May 2018	£900
Card C	From April 2018	£900

I said this as since Miss B's credit limits were increased, Miss B had more outgoings than income and/or a reliance on unsecured borrowing in the period of time before the credit limits were increased. So as the credit limit increases shouldn't have been approved, I intended to ask NewDay to refund any fees and charges from the dates the first increases were approved as shown in the table above.

If the effect of removing interest, fees and charges over the initial credit limits result in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Miss B along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then NewDay Ltd should remove any adverse information from Miss B's credit file. I'm still satisfied this is a fair outcome for the reasons given previously.

### **My final decision**

I uphold the complaint. NewDay Ltd should rework Miss B's accounts in line with what I have set out under the above section called 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 18 November 2021.

Gregory Sloanes  
**Ombudsman**