

The complaint

Miss W complained that NewDay Ltd lent irresponsibly when providing her with two credit cards.

What happened

Miss W applied for the first credit card online in August 2016. Her application data included that she was a part-time contractor earning £9,600 a year. NewDay provided the card with a limit of £600.

Miss W applied for the second credit card online in September 2017. Her application data included that she was employed and that she was earning £16,000 a year. This card was provided with a limit of £300.

In 2021 Miss W complained to NewDay. She said it had lent to her irresponsibly regarding both credit cards and that she'd been coerced into taking out the credit by someone she knew. She said NewDay ought to have known she'd been turned down for several payday loans which indicated she couldn't afford the credit cards.

NewDay responded to say it was satisfied it had lent to her appropriately and in line with its acceptance criteria. It said it had considered a range of information when looking at her applications including that provided by credit reference agencies, any existing account behaviour with NewDay and the information provided with the relevant applications.

Unhappy with NewDay's response, Miss W complained to us. Our investigator looked into the complaint and recommended that it should be upheld in part. They believed NewDay was entitled to provide the first credit card with the credit limit given. But the investigator thought that NewDay shouldn't have offered Miss W the second credit card. They said that, to put things right for Miss W, NewDay should pay her back for the interest and charges incurred on the second credit card, plus 8% simple interest and remove all adverse information relating to the second credit card from her credit file.

Miss W didn't dispute the investigator's findings but NewDay disagreed with them. It said it wasn't aware of any payday loans in 2017 and that these wouldn't necessarily have meant her application would have been turned down in any case. It said it was aware of her unsecured debt and that this was acceptable to NewDay given its lending criteria. NewDay said it appreciated Miss W's bank statements from that time showed she was heavily reliant on her overdraft but that it was unfair of us to rely on them to reach a retrospective decision when it wasn't required to review them in reaching its lending decision at that time.

Because the investigator couldn't resolve the complaint informally, it was passed to me to review afresh.

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.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law. And I've considered this in deciding Miss W's complaint.

I'm not going to address the lending decision regarding the first credit card in detail here. That's because Miss W hasn't responded to that (or any other) aspect of the investigator's assessment issued before the complaint came to me. But I confirm that I broadly agree with the investigator's findings on it and their reasoning. In summary, I believe:

- The evidence NewDay obtained in 2016 showed Miss W had a low income of £9,600 but also a relatively low level of unsecured debt, which stood at £600.
- The credit checks NewDay carried out showed no record of any arrears, defaults, or payday loans on Miss W's file.
- There was little sign that Miss W was in financial difficulty at that time. The checks NewDay had carried out were, on balance, reasonable and proportionate.
- There was insufficient reason for NewDay to suspect, given the checks it had carried out, that Miss W might struggle to sustainably afford the credit card repayments.

I'd like to thank Miss W for the information she's provided regarding the personal relationship she was in and the difficulties she says she experienced as a result. I appreciate this must have been very difficult for her to provide details about.

I've thought very carefully about whether the available evidence shows the relationship led to Miss W being coerced into taking this first credit card, but I'm not satisfied that it does. That's because, for example, Miss W was asked by the investigator about police reports or orders that might have been issued around the time of the application, but she hasn't been able to provide any to date. She says she never pressed charges and so is unsure if any evidence was kept on police file.

At my request, the investigator contacted Miss W again to ask her for more information regarding the relationship and its impact, but no response has been received.

Having carefully considered the available information, I haven't seen enough evidence to show Miss W was coerced into arranging the credit.

I'll now focus on the aspect of the complaint that remained in dispute following the investigator's assessment – that is, NewDay's decision to offer the second credit card.

Having done so, I've decided to uphold that part of the complaint. I'll explain why.

There are several questions that I've thought about when deciding if NewDay treated Miss W fairly and reasonably when it provided her with the credit in 2017. These include:

- 1) Did NewDay complete reasonable and proportionate checks to satisfy itself that Miss W would be able to repay the credit advanced in a sustainable way?
- 2) If not, what would reasonable and proportionate checks have shown at the time?
- 3) Ultimately, did NewDay make a fair lending decision?
- 4) Did NewDay act unfairly or unreasonably in some other way?

I'll consider each of these in turn.

Did NewDay complete reasonable and proportionate checks to satisfy itself that Miss W would be able to repay the credit advanced in a sustainable way?

The rules that NewDay had to follow required it to carry out checks that would enable it to reasonably assess whether Miss W could afford to repay the credit being offered. This is often referred to as an '*affordability assessment*'.

The rules don't set out what specific checks NewDay needed to carry out, but they did set out that those checks needed to be proportionate to the circumstances of the application. I think what this meant in practice was that the scope and extent of NewDay's checks needed to reflect the nature of the lending, bearing in mind things such as the amount of credit, the interest rate, the monthly and total amounts repayable, and any indications of customer vulnerability.

The checks NewDay needed to carry out as part of its affordability assessment had to be '*borrower focussed*'. What I mean by this is that the checks needed to consider whether paying the credit back would cause Miss W any difficulties or have any adverse consequences for her. They would also need to take account of factors such as the amount of money being lent, the monthly repayments, total charge for the credit and the interest rate being charged. This isn't an exhaustive list.

And, because of the above, I think reasonable and proportionate checks needed to be more thorough if Miss W had a low income. This would reflect that it could be more difficult for her to meet the credit card repayments with a low income.

NewDay would also need to be more thorough the higher the amounts she had to repay, as it would be more difficult to make higher repayments depending on Miss W's income.

With these principles in mind I've thought about whether NewDay completed reasonable and proportionate checks to satisfy itself that Miss W would be able to repay her credit card in a sustainable way.

In summary then, the circumstances of the second credit card application are as follows:

- Miss W was applying for the credit card which had an annual interest rate (APR) of 34.9%.
- Miss W was recorded by NewDay as having a yearly income of £16,000 when she applied for the credit card.
- The credit limit of £300 was, in itself, fairly low particularly when compared with Miss W's recorded earnings.

When NewDay assessed Miss W's application in 2017, it used information provided by her as well as through checking some of her credit details via a credit reference agency. It said the checks showed Miss W had nine other active accounts at the time, but with no evidence of arrears, defaults, adverse public records, or any outstanding payday loan balances.

That said, some of the information NewDay held about Miss W regarding how she was managing her first credit card cast her financial situation in a less favourable light. Specifically, that information (provided to NewDay by a credit reference agency) showed that by September 2016 she'd taken four payday loans – one of which had been opened in the last three months. The information showed all four payday loans were still active when she applied for the second credit card in 2017.

In addition, the information NewDay held regarding the first credit card showed that Miss W's external debt had increased steeply from around £2,000 in March 2017 to more than £10,000 in the months leading up to the application for the second credit card. Although the credit limit for the second credit card was relatively modest at £300, this should have been considered in the light of the above-mentioned debt and the existing credit limit of £600 on her first credit card.

Despite that, it seems Miss W's application was accepted automatically and without further checks being carried out.

I think the information NewDay held – which showed Miss W had taken multiple payday loans and that her debt levels had increased significantly in a short space of time – should have put it on notice that more borrower focussed checks would have been appropriate in the circumstances. These would have helped it to determine whether Miss W could sustainably afford to repay the second credit card.

As I've already alluded to, NewDay's internal lending policy isn't a determining factor in this case. The question is more one of whether it acted in accordance with the lending rules and regulations of the time, which required it to carry out reasonable and proportionate checks to satisfy itself that the Miss W could sustainably afford to make the repayments in respect of the credit facility she was being provided with. Bearing in mind the above, I don't believe the checks NewDay carried out prior to it offering the second credit card showed Miss W could sustainably afford to make the repayments. I don't think that the checks were, on balance, reasonable and proportionate.

What would reasonable and proportionate checks have shown at the time?

I think NewDay should have ensured that the scope and extent of its checks were adapted to the circumstances of its offer to Miss W. An increase of £300, while apparently modest in isolation, represented a relatively substantial extra financial burden in addition to her existing borrowing. Given this and the information NewDay had about Miss W further checks would, in my opinion, have needed to clarify her debts and verify her expenditure. These would have been in addition to the checks it carried out and establish that she was able to afford the credit card repayments.

One of the potential difficulties given the length of time since the credit card was offered is understanding what reasonable and proportionate checks might have shown, if NewDay had carried them out. To that end, our investigator asked Miss W for a copy of her full credit report and bank account transactions and these have helped develop a picture of her financial situation at that time.

These show that, in addition to Miss W's heavy reliance on debt, she was running a consistently high overdraft on her bank account to get by. For example, her transactions in the six months leading up to the second credit card application show her account was rarely in credit and that her overdraft was regularly between the low hundreds and often as much as £1,000 or more. To put that into perspective, the latter was roughly equivalent to her net monthly income at that time.

I believe such levels of debt, when taking account of Miss W's income, ought to have given NewDay significant cause for concern in offering the lending that it did.

Did NewDay make a fair lending decision?

That Miss W's bank account was consistently overdrawn, she'd taken several payday loans and her level of debt had grown sharply all indicate to me that she was struggling financially by September 2017.

I believe the indications are that borrower focussed checks by NewDay would have highlighted that Miss W's financial situation was such that the credit she was offered was unlikely to be sustainably affordable for her.

For these reasons, I think that NewDay should have realised in the circumstances that it was unlikely Miss W would have been able to cope with the credit it was offering and that it wasn't a fair decision to lend to her.

Did NewDay act unfairly or unreasonably towards Miss W in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything to suggest that NewDay acted unfairly or unreasonably towards Miss W in some other way.

Putting things right

NewDay should put Miss W in the financial position she'd be in now if she hadn't been given the second credit card, albeit she's had the benefit of the money borrowed and so needed to repay the principal amount. I understand that the credit card account has now been settled and closed. So, NewDay should:

- A. Remove any interest charged on the credit card. All late payment and over limit fees should also be removed. NewDay should then refund the difference between what Miss W owed when she closed her account and what she would have owed without those charges and fees.
- B. Add simple interest to the difference between what Miss W would have owed when she closed her account from when she closed it until she gets the refund. The interest rate should be 8% a year. †
- C. If – when NewDay works out what Miss W would have owed each month without the charges and fees – she paid more than enough to clear her balance, NewDay should also pay simple interest on the extra Miss W paid. And it should carry on paying interest until the point when Miss W would have owed NewDay something on her credit card. The interest rate should be 8% simple a year. †
- D. NewDay should tell Miss W what it's done to work out A, B and C. NewDay should also remove any adverse information it's recorded on Miss W's credit file in relation to the credit card.

† HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Miss W a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons given, I've decided to uphold this complaint in part. I require NewDay Ltd to put things right for Miss W, as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 19 May 2022.

Nimish Patel
Ombudsman