

## **The complaint**

Mr D complains that NewDay Ltd was irresponsible when it opened a credit card account for him in June 2015, and then increased the credit limit from £600 to £1,500 in September 2015. Mr D said his financial situation was already extremely poor before this.

## **What happened**

Mr D told us that when he opened an account with NewDay in June 2015, he was already in a protected trust deed, had several payday loans, and had four defaults registered on his credit file. He said this was all due to a serious gambling addiction he had at the time. He didn't think that NewDay should've made this initial lending, or substantially increased his credit limit only a few months later, in September 2015.

Mr D said he didn't think NewDay could have done proper checks on his credit record, or it wouldn't have opened this account, or increased his lending. Mr D said that by the end of 2015 he'd maxed out the card, and he couldn't pay. He said he came to an arrangement with NewDay, the debt was sold, and he'd made a partial settlement in March 2020.

Mr D said that more recently he had asked NewDay to refund interest and fees on the card, and to remove late payment and default markers from his credit file, but NewDay said it hadn't made a mistake.

Mr D said he was discharged from the trust deed in 2018 and had been getting his life back on track since. But he couldn't now apply for a mortgage with this default on his credit file, and it wasn't going to be removed until December 2022.

NewDay said Mr D had met its lending criteria when it lent to him in June 2015, and then again when it had increased his credit rating in September 2015. It didn't think it had done anything wrong.

Our investigator didn't uphold this complaint. I won't set out her reasoning here, as I haven't adopted it.

Mr D said he found it astonishing that companies were allowed to lend to people like him, who were in trust deeds, indicating pre-existing financial difficulties. He knew that people need to get their lives back on track after being in these arrangements, but Mr D thought he should only be able to build his credit back up after the trust had been released.

Mr D said he accepted he had some responsibility for all of this, because he had made this application, but he said that he had a serious gambling issue at the time. Fortunately, Mr D said he's now recovered from this.

Because no agreement was reached, this case came 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:

Mr D has told us that he was in a protected trust deed at the time that he applied for this credit card. And he's told us that this happened because he had a very serious gambling problem, which remained an issue whilst he had this card. I'm very glad to hear that Mr D has since been able to recover from this addiction.

A protected trust deed is a legally binding arrangement in Scottish law where an individual can make reduced payments to their debts, over a period which is typically at least four years. I think it's reasonable to say that a protected trust deed is a more serious step than entering into a debt management plan.

A protected trust deed doesn't prevent lenders from offering someone credit, as a matter of law. However, it is an indication that someone has experienced particularly serious financial difficulties, and it is a matter of public record. So it would clearly need to be fully considered as part of any decision to lend.

NewDay has said that it was aware of one public record on Mr D's credit file when it made the decision to lend to him. I think it's reasonable to assume that this public record was Mr D's protected trust deed, which he has told us had been in place since 2013, and remained in place until 2018.

NewDay doesn't appear to have taken any steps in 2015 to find out what lay behind this public record on Mr D's credit file. It's just said Mr D met its criteria for lending at the time. So it doesn't look like NewDay was aware of whether this public record referred to a county court judgment, or a protected trust deed, or something else.

Because NewDay doesn't appear to have explored the public record noted on Mr D's credit file, I don't think that NewDay has demonstrated that it carried out reasonable and proportionate checks to satisfy itself that Mr D would be able to repay any lending it made to him in a sustainable way, before it opened an account for him in July 2015.

And I also think if NewDay had carried out reasonable and proportionate checks at that time, it would have realised that Mr D remained in a protected trust deed, and had payday loans on top of this. Given the implications of this, I think NewDay would then have been unlikely to lend to Mr D at this time.

For the avoidance of doubt, I also think that once NewDay had lent to Mr D, and had seen that he was using a significant proportion of the credit available on this card for gambling transactions and large cash advances (which Mr D has told us were also used for gambling) NewDay ought not to have increased Mr D's credit limit in September 2015.

For those reasons, I think that NewDay should rework this debt now, so that it's reduced by the amount of any and all fees and interest charged to Mr D. If NewDay has to buy back Mr D's debt from the debt collection agents to complete this reworking, then it must do that.

There's rarely any money left once that's done, but if this results in any surplus in this case, NewDay should pay that money to Mr D, plus interest at 8% simple, starting from the date the fees or interest were charged and running until the date the payment is made.

Because I think this lending should not have been made to Mr D at all, NewDay must also remove all record of it from Mr D's credit file.

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

The parties aren't obliged to reply if they've nothing to add, and in this case neither party has done so.

I haven't changed my mind. I'll now make the award I originally proposed.

### **My final decision**

My final decision is that NewDay Ltd must do the following –

- rework this debt now, so that it's reduced by the amount of any and all fees and interest charged to Mr D. If NewDay has to buy back Mr D's debt from the debt collection agents to complete this reworking, then it must do that.
- if this results in any surplus in this case, NewDay should pay that money to Mr D, plus interest at 8% simple, starting from the date the fees or interest were charged and running until the date the payment is made.

NewDay Ltd must also remove all record of this lending from Mr D's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 February 2022.

Esther Absalom-Gough  
**Ombudsman**