DRN-3297572

The complaint

Mrs A says NewDay Ltd lent to her irresponsibly.

What happened

Mrs A took out a 60-month instalment loan for £5,000 from NewDay on 10 December 2018. The monthly repayments were £132.41 and the total repayable was £7,994.74. I understand there is an outstanding balance.

Mrs A says she was already struggling financially and in a debt management plan. But NewDay offered her the loan and she applied as she was desperate. It failed to check the loan was affordable for her.

Our investigator said Mrs A's complaint should be upheld. NewDay was aware her indebtedness had increased over the prior year and so should have carried out further checks. Had it done so it would most likely have seen Mrs A was having financial difficulties and was unlikely to be able to sustainably repay this loan.

NewDay disagreed. In summary, it said its checks were sufficient and did not show evidence of financial strain, such as payday loans or arrears.

As an agreement wasn't reached the complaint was passed to me to make 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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The rules and regulations when NewDay lent to Mrs A required it to carry out a reasonable and proportionate assessment of whether she could afford to repay what she owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So NewDay had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mrs A. In other words, it wasn't enough for NewDay to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mrs A. Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they have applied for.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the lower a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether NewDay did what it needed to before agreeing to lend to Mrs A. So to reach my conclusion I have considered the following questions:

- did NewDay complete reasonable and proportionate checks when assessing Mrs A's loan application to satisfy itself that she would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did NewDay make a fair lending decision?
- did NewDay act unfairly or unreasonably in some other way?

Mrs A opened a credit card account with NewDay in January 2018. At this stage it asked for information on her annual income, her employment status and her residential status. It also carried out a credit check. From what I can see when she applied for this loan it reviewed how she was managing her credit card, as well as the monthly data it received from at least two of the credit reference agencies. It has said it also uses third party data to understand applicants' likely living costs, but it hasn't shown what this meant for Mrs A's loan affordability assessment.

I don't think these checks were proportionate. Mrs A was applying for a loan that she would need to be able to sustainably repay over a five-year period. I think given her circumstances NewDay should have verified her income and understood her actual living costs before deciding the loan was affordable. NewDay could see from the credit checks that her level of revolving (most typically credit card/storecard) debt had increased every month for the previous 10 months. It knew from the credit card application checks that at that time Mrs A had five defaulted accounts with around £25,000 of unsettled debt so it was aware she had a history of problems managing money. So I think it ought to have carried out further checks to get the assurances it need that Mrs A's finances were stable at this time.

In order to understand what better checks would most likely have shown NewDay I have reviewed Mrs A's bank statements from the months prior to her application. I am not saying NewDay had to do exactly this, but it is a way for me to understand what proportionate checks would most likely have shown the lender. Mrs A's bank statements show she was in a debt management plan making a £100 monthly payment into the plan. Had NewDay carried out better checks and become aware of this it would have realised Mrs A's finances were under pressure and extending her borrowing further would be irresponsible.

It follows I find NewDay was wrong to lend to Mrs A.

I haven't seen any evidence that NewDay acted unfairly or unreasonably towards Mrs A in some other way.

Putting things right

I think it's fair and reasonable for Mrs A to repay the capital that she borrowed, because she had the benefit of that money. But she has paid interest and charges on a loan that shouldn't have been provided to her.

If NewDay has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If NewDay is not able to buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below.

It should:

- Remove all interest, fees and charges from the loan and treat all the payments Mrs A made as payments towards the capital.
- If reworking Mrs A's loan account results in her having effectively made payments above the original capital borrowed, then NewDay should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- If reworking the account leaves an amount of capital still to be paid, then NewDay should work to agree an affordable repayment plan with Mrs A.
- Remove any adverse information recorded on Mrs A's credit file in relation to the loan.

*HM Revenue & Customs requires NewDay to deduct tax from this interest. NewDay should give Mrs A a certificate showing how much tax it's deducted, if she asks for one.

My final decision

I am upholding Mrs A's complaint. NewDay Ltd must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 27 April 2022.

Rebecca Connelley
Ombudsman