

The complaint

Ms S is unhappy that NewDay Ltd is holding her liable for debts she says were taken out in her name without her consent.

What happened

Between December 2016 and October 2018, five credit card accounts were opened with NewDay in various versions of Ms S's name using the same date of birth and address.

Ms S has explained that she was the victim of physical, mental and financial abuse and believes her ex-husband, who had access to her details, opened the accounts in her name. She's explained that throughout her marriage she had no control over her finances and would be given cards to use when she needed household essentials like food and petrol or something for their children, but wasn't sure which accounts the cards linked to. She's said she had no oversight of her finances and any purchases she needed to make were tracked by her ex-husband and he has at various points asked her to sign documents but she doesn't know what these were for.

In 2019 Ms S discovered the extent of the borrowing in her name after moving away from her ex-husband. She discovered the debts but due to financial difficulties was unable to repay them. She made a complaint to NewDay and said the money was lent to her irresponsibly. She also said NewDay should've been concerned so many people with similar names lived at her address, had the same date of birth and it should've been clear one person was borrowing across several accounts.

In July 2019 NewDay responded to the complaint and said the applications it received had been assessed correctly and had met its criteria so it had no concerns about its decision to lend.

Ms S brought the complaint to our service. In addition to her complaint about the irresponsible lending she said the accounts had been opened without her consent. Our service contacted the third party debt collection agencies that had taken over the administration of Ms S's debts and it appears all agreed to write off the balances owed. However, the adverse information on Ms S's credit file in relation to the debts remain.

I issued in March 2022 and didn't uphold the complaint. Overall I didn't think NewDay had acted unfairly in lending to Ms S or holding her liable for the accounts.

Ms S disagreed with my provisional decision. She said that:

- She was only ever given the bank card from her own current account to use for household spending and only knew the PIN for this card. She says she was not given any credit cards.
- She confirmed she didn't have access to her email account or her text messages during the period the accounts were being used. When she left her marital home she was able to access the accounts by arranging to change the passwords.

- She didn't understand why I'd said she'd benefitted from the funds that had been spent on the credit card accounts as she only ever used her own salary to pay for things for her children and the only money she was ever given to spend came from her own bank account.
- She's said she was always under duress whenever she signed anything or agreed to anything and wasn't aware of what she was signing or agreeing to.
- She felt the fact that the date of birth and address was the same meant a manual check should've been carried out in the case of her applications.
- She felt I'd made assumptions about her situation and there was a lack of understanding of what she had been through.

NewDay responded and confirmed it had no further information for me to consider 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.

I have considered both parties' responses to my provisional decision. Having done so, my decision remains the same. For completeness, I have set my provisional decision out below and addressed the parties' arguments within it to form my final decision.

Did NewDay act unreasonably in lending to Ms S?

I understand the main concern for Ms S is that all the applications are from one person and this should've been picked up by NewDay. And, it's clear the date of birth and address given for each of the applications was the same.

But, NewDay's application process, as is the case with many lenders, is largely automated. It's explained that it checks the applicant's credit file to verify the information provided. In the case of each of Ms S's applications, NewDay has shown me that each version of her name given appeared to have its own credit reference profile, which seemingly contains a record of borrowing as you'd expect with a genuine applicant. And I think it's important to note the differences in Ms S's given names in the applications aren't slight differences. Several different surnames, first names and titles have been used. However, these are all variations of Ms S's own name – for example, both her maiden name and married name have been used, as have variations of her first names. So while the names are all different, they all refer to Ms S as she has been known at various times.

Ms S has also provided our service with a copy of what she considers her credit file, in her legitimate name. None of the other names used to open NewDay accounts are listed as aliases there or appear to be linked.

So I accept that when looking at the applications together, considering the date of birth, address and similarities in the names, there is cause for concern. But these applications were made months apart, and the checks carried out didn't pick up any links or irregularities – and separate credit histories were found for each variation of Ms S's name. Overall I don't think it's unreasonable NewDay didn't spot the applications appeared similar.

I've also considered the applications themselves, and I understand Ms S has said they weren't completed by her and I've addressed this further below. But I don't think there was anything unusual or suspicious in the individual applications that reasonably ought to have alerted NewDay to a problem at the time.

Based on the information provided in the applications, on each occasion Ms S met NewDay's lending criteria. The limit on each account was relatively low (£900, £450, £450, £250 & £300) and seems in line with Ms S's affordability criteria according to the income she provided on the applications. And although some adverse information was identified on the credit files linked to each variation of her name, on each occasion this adverse information was taken into account, but was within NewDay's lending criteria. And NewDay didn't have the full picture of all Ms S's credit history – because on each occasion it only saw the credit linked to that variation of her name.

Ms S has raised other information on her credit file at the time, specifically she's talked about a county court judgment (CCJ) she says would've been present on at least one of the applications. She thinks this should've stopped NewDay lending to her. Each lender will have its own criteria when making a commercial decision about whether or not to lend. And the presence of a CCJ may not necessarily mean a lending application should be denied. That said, NewDay has explained that it didn't see the CCJ Ms S is referring to when her applications were made because it was linked to a different address to the one provided in her applications.

Based on the information available to it at the time the applications were made, I think NewDay made reasonable and proportional checks when considering Ms S's applications and I don't think it's lent to her irresponsibly. I understand Ms S's concerns that multiple accounts were given to one person and that she thinks further and more rigorous checks should've been carried out. But this wasn't something NewDay was required to do. And ultimately several accounts were opened due to a deliberate attempt to obtain separate accounts without alerting NewDay to other accounts in Ms S's name, not because of an error on NewDay's part.

Ms S, or someone pretending to be Ms S, contacted NewDay on several occasions to explain she was experiencing financial difficulties. I've considered whether I think NewDay treated Ms S fairly when it was aware of this. I don't have all the account statements for each of Ms S's accounts but I have seen the records of contact NewDay kept at the time. It appears when Ms S informed NewDay of her financial difficulties reduced repayment arrangements were agreed and interest and charges were put on hold while this arrangement was maintained.

Unfortunately it appears the payment arrangements weren't maintained for long and the accounts were passed to third party debt collection agencies. Based on what I've seen NewDay dealt with Ms S's financial difficulties as I would've expected.

Should Ms S be responsible for the borrowing?

I'm satisfied NewDay hasn't acted unreasonably in lending to Ms S based on the information provided in her applications. But she's also said she didn't know about the applications and her ex-husband opened the accounts without her consent. In considering this part of Ms S's complaint I need to decide whether or not I think NewDay has acted reasonably in holding her liable for the accounts given the circumstances she was living in when they were taken out.

NewDay has raised several concerns about what Ms S has said about her circumstances. In particular it's raised that her testimony doesn't provide much information or detail about her

financial circumstances, how the accounts were opened or what she knew about them. And when asked to provide more information about this Ms S hasn't been able to herself and has been unwilling to provide the details of anyone who might be able to provide more information. As it does have a duty to accurately report information to her credit file, it doesn't feel it has seen sufficient evidence information relating to these accounts should be removed.

I want to begin by saying how sorry I am to hear of the circumstances Ms S has described. I can't imagine how difficult this situation has been for her. I have no doubt some of the things I have talked about here will be difficult, and I'm sorry to have to do so. I understand the nature of what Ms S has been through is very complex, and the notion of her giving consent in a situation where she was under someone else's control is a very difficult one. I understand that just because she may have been aware or even agreed to something doesn't necessarily mean this choice was her own.

I understand Ms S feels I have made assumptions about her situation in this case. But my role is to reach a decision based on the balance of probabilities and the evidence available. Unfortunately in this case, Ms S hasn't been able to explain much about the specifics of the situation with the accounts the complaint centres on and there are some inconsistencies in what she's told us. The conclusions I've reached are based on what I think is more likely than not given the information I do have.

Based on the information available, on balance, I think it appears Ms S was involved in the accounts, and it's difficult to conclude they were taken out without her consent. So I don't think NewDay is acting unfairly in holding her liable for them. In reaching this conclusion I've taken the following into account:

- Ms S hasn't been able to tell us much about her circumstances when the accounts were taken out. She's said she had no oversight of her finances, but hasn't been able to provide any detail about this and some of the other things she's said seem to suggest she was using the accounts herself. She's said she doesn't remember much and finds it difficult to talk about. She's also said she's unwilling to provide the details of anyone that might be able to provide more information about her circumstances as she's worried this might reveal her location to her ex-husband. This means we have very little information about what access Ms S had to her finances day to day and this does make it difficult to establish how the accounts were taken out and how involved Ms S was.
- Ms S didn't mention that the accounts had been taken out without her knowledge or consent when she first contacted NewDay upon leaving her relationship or in her original complaint to NewDay. It seems unusual that given she's said she wasn't aware of the accounts, she didn't raise this when she initially contacted NewDay to discuss her circumstances. I know she had gone through something very difficult, but it appears she did discuss the nature of her relationship with NewDay and didn't mention she'd only just discovered the existence of the accounts.
- When Ms S originally brought the complaint to our service and when we've questioned her further on her knowledge of the accounts she said she didn't remember or recall much. She's said she was given cards to make household purchases but wouldn't be able to tell us which cards or when. At other times she referred to being given her own card number for online purchases and her own card when going to work, for petrol and for shopping. When we asked specifically how her household bills were paid or managed she said she didn't know, but thought some were paid by her wages. She's also said she didn't ever have any knowledge of what she was signing or agreeing to and any consent she gave was under duress.

Following my provisional decision, Ms S has said she was only given her own current account card and this is the only account she ever used for household expenses and things for her children. And whilst I do accept it has now been sometime since these events, and I do understand how difficult it is for Ms S to go over her situation, it's not clear why she's now sure she was only given her own current account card when previously she hasn't been able to clarify this for us when asked. I think there are inconsistencies in what Ms S has told us and NewDay about her knowledge of the accounts and her use of them throughout her complaint. And whilst I have taken her most recent testimony into account, I've had to consider it alongside the other things she's told us about her knowledge and use of the accounts. I don't intend to suggest that Ms S has in any way been dishonest or has deliberately given us misleading or conflicting information. Rather, I recognise that memories can be fallible and uncertain, and can change over time – and I also recognise that this was a difficult situation for Ms S and that she herself seems to have had an incomplete understanding of the family finances at the time. So it's not surprising that she hasn't been able to give us a full and accurate picture of what happened and I don't criticize her for that. But the fact is that the picture is incomplete, there is uncertainty over some of what happened, and I've had to do the best I can with what's available to me.

- I think it's likely Ms S has benefitted from the money spent from the accounts. Ms S has said she doesn't understand why I think this is the case. She's said her own money was what was used to cover the household expenses. But having reviewed the statements for all of the accounts, I think it's likely they were taken out as part of managing the household expenses overall. I say this because the type of spending broadly appears to be for groceries, petrol and general household expenses. The use of the accounts follows a pattern that suggests due to financial difficulties in the household, the accounts were taken out to pay mostly for daily living and essentials, and when the limit was reached payments stopped and a new account was taken out. And it appears there has been some attempt to enter into repayment plans on some of the accounts which suggests whoever took them out had some intention of maintaining them. Ms S likely had joint responsibility for household expenses and as the accounts were used broadly for these expenses, I think this means Ms S has likely benefitted from the spending on the accounts even if she didn't consent to taking them out. And whilst I accept the household spending may not have been her responsibility alone, Ms S and her ex-husband's respective contributions is something to be resolved as part of the financial settlement following their separation. What costs Ms S was liable for during their relationship wouldn't be something NewDay could reasonably be involved in.
- Three of the accounts were set up with a direct debit in place to make repayments. And the current account linked to these appears to be Ms S's genuine bank account which according to her credit file was still being used by her until late 2020. Ms S hasn't been able to provide any more details about this but has said she thinks her income may have been used to repay the accounts.
- In the case of four of the accounts, someone, who has passed security and has said they are Ms S has confirmed they were in financial difficulties and tried to arrange repayment plans. And Ms S has told our service she called many companies over the years but she can't remember which ones, when she called or what was discussed. Due to the time that has passed recordings of these calls are no longer available. So although Ms S has said she wasn't aware of the accounts, based on her testimony it appears she may have spoken to NewDay about these accounts in order to explain she was in financial difficulties.

NewDay has shown me that accounts statements for three of the accounts were sent to Ms S's genuine email account. It's also said text messages were sometimes sent to the mobile number Ms S has used to contact our service. In response to my provisional decision Ms S has said she didn't have access to her email account herself and only gained access to this once she'd moved away from her ex-husband. She's also said she didn't have access to text messages on her mobile. She hasn't told us much more about this, and she does seem to have had some access to her mobile phone, but I accept her position that she wasn't aware of this specific correspondence.

But, taking all of the other evidence into account, I don't think I can fairly conclude that the accounts were taken out without Ms S's knowledge or consent, or that she wasn't responsible for and didn't benefit from any of the spending. NewDay carried out appropriate checks based on the information it was given in the name of the application on each occasion. I can't therefore conclude that this was irresponsible lending, or that it would be fair to remove all trace of the cards from Ms S's credit files as if they had never existed.

As I've mentioned, from what I understand the debt collection agencies that took over the debts in question have confirmed they are no longer pursuing Ms S for the outstanding balances. And although I understand there is still adverse information on Ms S's credit file in relation to the debts, for the reasons given, I don't think NewDay has acted unreasonably in not removing this information.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 17 May 2022.

Faye Brownhill
Ombudsman