

The complaint

Mr M complains that NewDay Ltd was irresponsible in approving his application for a credit card and in providing subsequent credit limit increases.

What happened

Mr M has held two store branded credit cards administered by NewDay. In a previous decision I have explained why this service can't look into the first credit card (CC1) - it had been referred to this service too late. But we can look into the complaint about the second credit card account (CC2).

Mr M's application for CC2 was approved in May 2018 with a credit limit of £1,000. The credit limit was later increased to £2,000 in December 2018 and £3,200 in April 2019. Mr M says that NewDay didn't do enough checks to ensure any of the lending was affordable to him. So, he complained to NewDay.

NewDay looked into Mr M's complaint but it didn't think it had done anything wrong. It said it had correctly assessed Mr M's credit card application and credit limit increases when they were approved by considering information from Credit Reference Agencies (CRAs) available at the time, the information Mr M provided about his financial circumstances and how he maintained his account. So, it didn't uphold Mr M's complaint.

Unhappy with NewDay's response Mr M referred his complaint to us. He said that if sufficient checks had been done then NewDay would've seen that he was struggling financially. One of our investigators looked into the complaint but he didn't think NewDay had done anything wrong. He thought NewDay had carried out enough checks when it approved Mr M's application for CC2 and when it increased the credit limit. And he didn't think the checks indicated that Mr M was in financial difficulties or struggling to pay his credit commitments at that time.

Mr M didn't agree, and he asked for his complaint to be reviewed again. So, his complaint was passed to me and I issued a provisional decision

What I said in my provisional decision dated 13 May 2022

NewDay is required to lend responsibly. It needed to conduct checks to make sure that the credit facility it was giving to Mr M was affordable and sustainable. Such checks need to be proportionate to things like the credit limits it offered Mr M, how much he had to repay (including interest and charges) each month, his borrowing history with it and what it knew about him. But there is no set list of checks it had to do.

NewDay says when Mr M initially applied for CC2 it completed an external credit search through the credit reference agencies and asked about his employment, income and monthly commitments before agreeing to lend to him. And it has provided the data it collected at the time.

I've looked at the data and I can see Mr M told NewDay – on his on-line application, that he was employed on an annual income of £22,000, and that his monthly expenditure – including

living costs and monthly commitments was £1,200 per month. While the credit file data shows that Mr M had other credit commitments, the search results didn't reveal any information to indicate that Mr M had any defaults, adverse public records, or any accounts in arrears with other creditors.

So, like the investigator, I haven't found anything that I think should have prompted NewDay to think Mr M was in financial difficulty or that further checks were needed at that time to verify what Mr M had told it when he applied for CC2. It follows that I don't agree with Mr M that NewDay lent irresponsibly at this stage.

But I've reached a different view concerning the credit limit increases in December 2018 and April 2019. NewDay has provided data showing the account activity on Mr M's account from inception up to when the limit was last increased in early 2019. And I acknowledge this all shows that the account he held with it had been managed well leading up to the credit limit increases. But I don't think this information alone is sufficient to determine that increasing Mr M's credit limit was appropriate.

I say this because the limit increases here were quite significant. The first increase was double what was originally approved, and the second increase was triple the initial amount. And this all happened within 12 months of the initial application being approved. I can see that New Day did do further credit searches when it approved the limit increases. So, I've looked at this carefully.

And the data obtained at these points show that the level of Mr M's overall unsecured debt was increasing and the amount of available credit he was using had increased from 20% to 47%. This suggests to me that Mr M was becoming more reliant on credit and I think, this information should have prompted NewDay to do more checks.

There is a range of options NewDay could've taken to complete more comprehensive checks. It could have asked for bank statements to verify Mr M's income and outgoings or evidence of his income for instance. So, I've looked at what NewDay would have found out had further checks been done. And had NewDay carried out more checks, I think it would have found Mr M was unemployed, in receipt of benefit payments and was struggling financially. In my view, better checks would have led NewDay to decline the credit limit increases from December 2018 onwards. So, I agree with Mr M that NewDay lent irresponsibly in this case.

As a result, I intend to uphold Mr M's complaint and direct NewDay to refund all interest, fees and charges applied from December 2018 to date. I also intend to tell NewDay to remove any adverse information it's recorded on Mr M's credit file from December 2019 onwards. It wouldn't be fair for NewDay to record adverse information about a debt that was lent irresponsibly.

Mr M accepted my provisional decision. NewDay indicated it wanted to respond further, but despite being given an extension to the response deadline, it didn't respond further.

What has happened since

Since issuing my provisional decision, I reflected on what I thought NewDay should do to put things right.

While I hadn't changed the outcome I'd reached on this complaint, I did think what I was asking NewDay to do to put things right needed to be altered. So, I asked the investigator to contact both parties on my behalf to explain that the redress had been changed as follows:

- *If Mr M's debt has been sold to a third party, NewDay Ltd should take steps to either retrieve it or work with the new lender to put the agreed settlement in place.*
- *rework Mr M's current credit card balance so that all the interest, fees and charges applied to it from the limit increase in December 2018 are removed.*
- *rework the account to ensure that from December 2018 interest is only charged on the first £1,000 outstanding - to reflect the fact that no further credit limit increases should have been provided.*
- *if an outstanding balance remains once these adjustments have been made, NewDay Ltd should contact Mr M to arrange a suitable repayment plan for this (or ensure the above refund is passed onto the new lender).*
- *If no outstanding balance remains, any adverse information should be removed from the credit file.*

AND

- *If the refund means there's no remaining balance, any extra should be treated as overpayments and returned to Mr M.*

AND

- *pay interest of 8% simple a year on any overpayments from the date they were made (if they were) to the date of settlement†.*

NewDay didn't reply. Mr M said he still wanted the default removed. In response, I said:

I acknowledge what Mr M has said about wanting the default (CCJ) removing. But until NewDay calculates the amount of the charges and interest I've said it should refund, it's unclear what (if any) balance will be outstanding. If Mr M is left with an outstanding balance after the refund these will be funds which he has had the use of (or charges/interest incurred on the borrowing I think NewDay lent responsibly) and which I consider is fair and reasonable for Mr M to repay.

If this is the case, I think that it is also fair and reasonable for any direction that I make in relation to Mr M's credit file to reflect this. I know that Mr M wants all the adverse information recorded in relation to this account removed from his credit file. But if I were to ask NewDay to do this where an outstanding balance remains and which I'm satisfied should be repaid, I'd effectively asking NewDay to reflect that this account has been settled in full and on time when this isn't the case. I think that requiring NewDay to report such inaccurate information, which doesn't reflect what happened or what Mr M will be expected to do in terms of the likely outstanding balance going forward would be arguably be counterproductive, unreasonable in its logic and not in Mr M's interests or that of any future lender.

As this is the case, I'm satisfied that it's fair and reasonable for NewDay to remove any adverse information it recorded on Mr M's credit file about this account, only if no outstanding balance remains after all adjustments have been made.

Mr M disagreed. He said that on one hand I was saying remove all adverse data and on the other hand let the default stay. He didn't think this made sense. But he asked for a final decision to be issued.

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.

Mr M has accepted my provisional findings in relation to the outcome of the complaint about the credit limits which NewDay approved. And as NewDay hasn't provided any new information for me to consider on this point. I see no reason to depart from my findings in my provisional decision in this respect.

Mr M has questioned why I originally said the adverse data should be removed and then the said the adverse data should stay. But as set out above, the redress will only change if an outstanding balance remains after all adjustments have been made. As I have explained, if a balance is still outstanding, I think it's fair that Mr M's credit file reflects the true status of the account.

My final decision

For the reasons I've given above, I uphold Mr M's complaint and direct NewDay Ltd to settle as follows:

- If Mr M's debt has been sold to a third party, NewDay Ltd should take steps to either retrieve it or work with the new lender to put the agreed settlement in place.
- rework Mr M's current credit card balance so that all the interest, fees and charges applied to it from the limit increase in December 2018 are removed.
- rework the account to ensure that from December 2018 interest is only charged on the first £1,000 outstanding - to reflect the fact that no further credit limit increases should have been provided.
- if an outstanding balance remains once these adjustments have been made, NewDay Ltd should contact Mr M to arrange a suitable repayment plan for this (or ensure the above refund is passed onto the new lender).
- If no outstanding balance remains, any adverse information should be removed from the credit file.

AND

- If the refund means there's no remaining balance, any extra should be treated as overpayments and returned to Mr M.

AND

- pay interest of 8% simple a year on any overpayments from the date they were made (if they were) to the date of settlement†.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 July 2022.

Sandra Greene
Ombudsman