

## **The complaint**

Mr M complains that NewDay Ltd lent to him irresponsibly in relation to three credit cards.

## **What happened**

Mr M applied for the first credit card online in March 2015. His application data included that he was employed and had a gross income of £19,500 a year. NewDay provided the card with a limit of £100, which it increased to £250 in February 2016.

Mr M applied for the second credit card online in July 2016. His application data included that he was employed and had a gross income of £25,100 a year. This card was provided with a limit of £250, which was increased several times subsequently.

In October 2018, Mr M applied for a third NewDay credit card online. His application data still indicated that he was employed but also that his gross annual income had dropped to £21,500. This card was provided with a limit of £300 and this wasn't increased.

In 2021 Mr M complained to NewDay. He said it had lent to him irresponsibly regarding the credit cards and that it hadn't carried out sufficient checks prior to offering the credit cards and limit increases.

NewDay responded to say it was satisfied it had lent to him appropriately and in line with its acceptance criteria. It said it had considered a range of information when looking at his 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, Mr M 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 original credit limit granted. But the investigator thought that NewDay shouldn't have offered Mr M the credit limit increase in relation to that card or offered the second and third credit cards at all. They said that, to put things right for Mr M, NewDay should pay him back for the interest and charges incurred on the first credit card from February 2016 for balances over £100 with interest. The investigator asked NewDay to do the same for the second and third credit cards from the start of each credit card, and remove all adverse information relating to the credit limit increase and the second and third credit cards from his credit file.

Mr M didn't dispute the investigator's findings but NewDay disagreed with them. It said there was no reason to think Mr M was in any financial difficulty prior to the lending or until he informed it of this in July 2020. NewDay rejected the investigator's finding that it could have linked the second and third credit cards and factored them into its decision-making as it had limited details from Mr M with which to do so.

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 Mr M's complaint.

I'm not going to address the lending decision regarding the first credit card in detail here. That's because Mr M hasn't substantially 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 2015 showed Mr M had an income of £19,500 but also a relatively low level of unsecured debt, which stood at £400.
- The credit checks NewDay carried out showed defaulted accounts but none in the 40 months leading up to the application. There was little else of concern in the results of its credit checks.
- There was little sign that Mr M was in financial difficulty at that time. The checks NewDay had carried out were, on balance, reasonable and proportionate.
- With a relatively low credit limit of £100, it follows that the minimum monthly payments would also have been relatively low.
- There was insufficient reason overall for NewDay to suspect, given the checks it had carried out, that Mr M might struggle to sustainably afford the credit card repayments.

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 credit limit increase on the first credit card and its decisions to offer the second and third credit cards.

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 Mr M fairly and reasonably when it provided him with the credit in 2016 and 2018. These include:

- 1) Did NewDay complete reasonable and proportionate checks to satisfy itself that Mr M 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 Mr M 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 Mr M 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 Mr M 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 Mr M had a low income. This would reflect that it could be more difficult for him to meet the credit card repayments with a low income.

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

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

In summary then, the circumstances of the credit limit increase and the second and third credit card applications are as follows:

- The annual interest rates (APR) that applied to the credit cards were between 49.9% and 69.9%.
- Mr M was recorded by NewDay as having a gross yearly income of between £21,500 and £25,100 when he applied for the second and third credit cards.
- The credit limits of £250 (up from £100), £250 and £300 were, in themselves, fairly low particularly when compared with Mr M's recorded earnings.

It's unclear what information NewDay relied on from Mr M regarding the credit limit increase for the first credit card, if any, despite more than doubling the limit. In its final response to Mr M's complaint, it said it had carried out an in-depth evaluation of each credit limit increase. This included instances where Mr M had exceeded the existing credit limit, missed payments, or made them late, how he used the credit limit, how he managed other accounts with NewDay, access to other credit and so on.

While I accept NewDay may have made those checks in response to the complaint in 2021, I've seen little to suggest it carried them out at the time of the lending. Or that NewDay asked Mr M for updated personal information such as his income. This is despite the lending decision being made almost a year after Mr M's initial credit card application.

Given the time that had passed between Mr M's initial credit card application and NewDay's offer of a credit limit increase – and the uncertainty surrounding Mr M's financial situation by February 2016 – I don't believe NewDay completed reasonable and proportionate checks in the circumstances as it should have done.

When NewDay assessed Mr M's applications for the second and third credit cards, it used information provided by him at the relevant times as well as through checking some of his credit details via a credit reference agency. It said the checks it made showed Mr M had other active accounts at these times, but with no evidence of current arrears, defaults, or adverse public records. There was evidence of money owed or owing for payday loans but only at the time of the application for the first credit card.

That said, I think some of the information NewDay held about Mr M regarding how he was managing his first credit card cast his financial situation in a less favourable light. Specifically, the information provided by the credit reference agencies NewDay had instructed shows that, by May 2016, he'd been flagged as experiencing at least some degree of financial difficulty. The flag remained for four consecutive months until August 2016. Although the information Mr M provided to NewDay suggested he had no other active cards, we know that wasn't the case. Considering Mr M already had a credit card with NewDay, I'm satisfied ought to have picked up on the discrepancy and carried out further checks.

Although NewDay says it wouldn't reasonably have been aware of Mr M's other credit card, I believe it had adequate information with which to establish the facts. For example, and as NewDay accepts, Mr M applied for all his credit cards using the same name, date of birth and email address. Although some of the details Mr M provided differed, I think it probably could have used the common details to match the accounts.

Regarding the third credit card taken out in October 2018, Mr M declared a total unsecured borrowing balance of £200. But his existing NewDay credit card accounts had a combined balance of well over £3,000 by that time – the balance on one of these cards even exceeded the limit. As I say, I'm satisfied NewDay had sufficient information to be put on notice that there were discrepancies with some of the application details it had received.

I think this ought to have led NewDay into completing further checks. These checks would have helped it to determine whether Mr M could sustainably afford to repay the increased credit card limit on the first card and the limit for the second and third credit cards.

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 at the relevant times, which required it to carry out reasonable and proportionate checks to satisfy itself that the Mr M could sustainably afford to make the repayments in respect of the credit facilities he was being provided with. Bearing in mind the above, I don't believe the checks NewDay carried out prior to it offering the credit limit increase in relation to the first credit card or the second and third credit cards showed Mr M 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?*

In terms of the credit limit increase on the first credit card, I think it would have been reasonable for NewDay to check how Mr M was managing the card with the existing limit of £100. These would have been in addition to any checks it carried out and to establish that he was able to sustainably afford the increased credit card repayments.

The information NewDay's provided shows the activity on the credit card. This includes one late fee added in late 2015 and instances of overlimit fees being charged. There were also occasions where Mr M had made small cash withdrawals.

In isolation these might not be definitive indicators of financial difficulty, but they do suggest there might have been problems. Significantly, copy bank statements show Mr M had also arranged several payday loans in the six months leading up to the credit limit increase.

I'm satisfied this information would have helped NewDay develop a picture of Mr M's financial situation at that time.

These show that, broadly, Mr M was reliant on debt to get by. Payday loans are known to be an expensive way to borrow and were likely to be an indicator that he was struggling financially.

I believe this ought to have given NewDay significant cause for concern in offering the lending that it did.

If anything, I consider that proportionate checks made in July 2016 and October 2018 would have shown Mr M was struggling even more than he had been previously. For example, the credit report he's provided us with shows defaults logged on a credit card (with another provider) in July and August 2016. I realise this was just after the second credit card was granted but I think it's more likely than not that the defaults were preceded by account arrears prior to Mr M's application. This would have suggested to NewDay that Mr M wasn't managing his finances well.

*Did NewDay make a fair lending decision?*

That Mr M was flagged by the credit reference agencies as being in financial difficulty (at least to some degree), owed more than he'd let on in applying to NewDay for credit and was in default at various times during the period in question all indicate to me that he was struggling financially.

I believe the indications are that borrower focussed checks by NewDay would have highlighted that Mr M's financial situation was such that the credit he was offered at various times was unlikely to be sustainably affordable for him.

For these reasons, I think that NewDay should have realised in the circumstances that it was unlikely Mr M would have been able to cope with the credit it was offering and that it wasn't a fair decision to lend to him on those occasions.

*Did NewDay act unfairly or unreasonably towards Mr M 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 Mr M in some other way.

**Putting things right**

NewDay should put things right for Mr M in relation to the credit limit increase on the first credit card and the second and third credit cards from the start, albeit he's had the benefit of the money borrowed and so may need to repay the principal amounts. So, NewDay should:

- Rework the account for the first credit card to ensure that, from February 2016, interest is only charged on the first £100 outstanding – to reflect the fact that no further credit limit increases should have been provided.
- Rework Mr M's current credit card balances for the second and third credit cards so that all the interest, fees and charges applied to them from the start are removed.
- If an outstanding balance remains once these adjustments have been made, NewDay should contact Mr M to arrange a suitable repayment plan for this.
- 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 on any of the accounts, 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†.

† HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Mr M a certificate showing how much tax it's taken off if he 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 Mr M as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 July 2022.

Nimish Patel  
**Ombudsman**