

The complaint

Mr B complains that NewDay Ltd have irresponsibly lent to him.

What happened

Mr B was approved for two NewDay credit cards which I will refer to as A and B. NewDay increased the credit limits on both cards, which I have detailed below.

Card A – approved December 2015, with an initial £600 credit limit:

June 2016	£600 to £1,600
December 2016	£1,600 to £2,600
May 2017	£2,600 to £3,350
November 2017	£3,350 to £4,850

Card B – approved December 2016, with an initial £600 credit limit:

May 2017	£600 to £1,500
October 2017	£1,500 to £2,250
February 2018	£2,250 to £3,000

Mr B complained that NewDay had irresponsibly lent to him. NewDay said that when Mr B applied for A, Mr B had declared an income of £16,000, access to other household income of £20,000 and unsecured debt of £300. They said that while there were two defaults showing on his credit file, the latest default had happened 26 months prior to his application.

NewDay said when Mr B applied for B, he had declared an income of £25,000, access to other household income of £25,000 and unsecured debt of £600. His last default was showing as 38 months old. NewDay said B was passed to a third party debt management company in March 2019. Mr B brought his complaint to our service.

Our investigator partially upheld Mr B's complaint. He said that the credit limit increase on A was irresponsible from the November 2017 increase and the credit limit increase on B was irresponsible from the October 2017 increase, as Mr B had taken an unsecured loan with a third party company for £10,000 in April 2017. He said it's unlikely NewDay would've known about this when they increased his credit limit for A in May 2017.

Our investigator said that NewDay should refund all interest and charges that arose from the credit limit increase in October 2017, to reduce the outstanding balance, but if there was a positive balance after the repayment, then any positive balance should be paid to Mr B with 8% simple interest added to the repayment. He also said that NewDay should remove any adverse credit from Mr B's credit file as a result of the interest and charges.

NewDay asked for an Ombudsman to review the complaint. They said there was no indication that Mr B would struggle financially from the credit increases and Mr B did not have any active payday loans, no arrears, no overdraft, or late payment fees at the time of the credit increases.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Before agreeing to approve or increase the credit available to Mr B, NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable for him. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances. I've listed below what checks NewDay have done and whether I'm persuaded these checks were proportionate.

Acceptance for A - initial credit limit:

I've looked at what checks NewDay said they did when initially approving Mr B's application for A. I'll address the credit limit increases later on. NewDay said they looked at information provided by credit reference agencies and information that Mr B had provided before approving his application.

I'm satisfied that the account opening checks were proportionate. I say this as the information showed that Mr B had external borrowings of only £300 when he was approved for A. Mr B had declared an annual income of £16,000 at the time, so it would appear that the initial credit limit may be affordable for Mr B as the initial credit limit was only £600.

But that's not all NewDay's data showed. The data also showed that Mr B had adverse credit data in the form of two defaults. So NewDay would have been aware that Mr B had previously not maintained his agreements – on more than one account. But the data also showed he had no accounts in arrears, no repayment plans and that the adverse credit data was over two years old.

It may help to explain here that, while information like a default on someone's credit file may often mean they're not granted further credit – they don't automatically mean that a lender won't offer borrowing. Here, NewDay considered the information that Mr B had on his credit history and still made a decision to lend which, in the circumstances, I think was reasonable.

June 2016 credit limit increase for A - £600 to £1,600

I've looked at the information that NewDay had available to them when they increased Mr B's credit limit. I can see that Mr B had incurred an overlimit charge a couple of months before the credit limit was increased. This may suggest that Mr B may not be managing his credit limit effectively here. So I've looked at the data NewDay had around the time to get a broader sense of how Mr B was managing his finances prior to his credit limit being increased – especially as the credit limit had more than doubled.

The data shows that Mr B's external debt is fairly low. At the time of the credit limit increase there were no external accounts he had showing arrears, there were no new defaults or new adverse credit information showing against his credit file. As the decision to increase Mr B's credit limit was made only six months after they accepted his application, then little appears to have changed during this period. So I am persuaded that despite the overlimit charge, the increase from £600 to £1,600 would be affordable and sustainable at this time, therefore I'm satisfied the checks that NewDay made prior to increasing Mr B's credit limit here were proportionate.

December 2016 credit limit increase for A - £1,600 to £2,600, May 2017 - £2,600 to £3,350 and November 2017 - £3,350 to £4,850

I've looked at the information that NewDay had available to them when they increased Mr B's credit limit on A. I can see that since the last increase, Mr B had fully repaid his outstanding balance. He paid £400 on 30 July 2016 and £1,130.45 on 1 August 2016, before repaying the residual balance of £35.68 on 4 August 2016.

So this may appear to NewDay that Mr B had the affordability to make large repayments to manage his credit limit in a sustainable way. But, based on the application data NewDay had for A, Mr B's employment income was recorded as £16,000. So the repayments that Mr B made to reduce his credit card balance to £0 would have been more than his net monthly salary if he had accurately declared his income on his application.

So it's likely that Mr B would have needed to either use savings (if he had any) or rely on borrowings to repay the balance. I can see that on his following statement to when Mr B paid off the balance, he had spent £1,777.22 on his A card. NewDay's data showed that Mr B incurred cash transaction fees of £57 this statement month, mostly on gambling transactions. While Mr B would be allowed to use his credit card in the ways NewDay allowed him to do so, it is not clear why Mr B would choose to use the credit card to gamble and incur several cash transaction fees as opposed to using his own money – if he had the affordability to do so, to save him incurring cash transaction fees.

On 19 November 2016, again, Mr B makes a payment to clear his outstanding balance. The amount he paid again would be more than his declared net monthly income and the payment was for £1,527.09.

NewDay's data shows that Mr B's unsecured borrowings in the month prior to the credit limit increase was £6,027. Apart from minor exceptions, NewDay could see that Mr B's total borrowings was on an upwards trend month on month since A had been opened. The total unsecured borrowings were over 20 times more than the figure Mr B declared on his application for A, only 12 months prior.

The credit limit on A had more than quadrupled from the approved credit limit 12 months prior with this increase. This increase was for £1,000. So I'm persuaded that because of all of the factors I've mentioned, that NewDay should have made further checks to ensure the credit limit increase was affordable and sustainable for Mr B.

They could have done this by contacting Mr B to discuss his personal circumstances at the time, or they could have asked for information about his income and outgoings, such as requesting his recent bank statements, to see whether the credit limit increase would be sustainable and affordable for Mr B. They could also find out how he was able to afford the large repayments which would have been more than his declared net income.

So our investigator asked Mr B to provide his bank statements for the months leading up to the increase in the credit limit to £2,600 in December 2016, which I'm persuaded that NewDay could've done as part of a proportionate check, considering the concerns I listed above.

The statements show that in both October and November 2016, that Mr B had bank charges as he had direct debits returned for unpaid payments to a third party credit card. So this could indicate that Mr B was struggling to manage his financial commitments prior to the credit limit increase.

But that's not all Mr B's statements show. They also show that Mr B had a credit into his

bank account for £3,500. This was partly from a loan with a third party for £3,750. Although the payment doesn't come directly from the provider, it ties into when Mr B took out a guarantor loan with a third party provider on 15 November 2016.

So while this would be unlikely to show on Mr B's credit file when NewDay increased his credit limit to £2,600, had they requested his bank statements as part of a proportionate check, they would (or should) have made further enquiries when they would have seen the £3,500 credit go into his bank account, and saw that Mr B had committed to paying an extra £182 a month as a result of the loan.

But I've also considered what Mr B had used this loan for. I can see that he made payments totalling just over £3,000 to financial institutions. This included NewDay and this shows that it was borrowed money being used to repay his credit card in November 2016. It's possible that Mr B may have been able to restructure his finances to make a lower monthly payment towards the loan as opposed to the combined debt he paid off.

But I'm persuaded that if NewDay would have asked for Mr B's bank statements as part of a proportionate check, then they shouldn't have increased the credit limit on A to £2,600 when they did. I say this as Mr B had just taken out a loan to consolidate his debts – but he didn't close his accounts. NewDay would have been able to find this information out by contacting him as part of a proportionate check to ensure any further credit increases would be affordable and sustainable for him. And regardless of if he closed his external credit cards (which it appears from his credit file he didn't), NewDay would've been aware he didn't close his account with them, so he still had access to the previous credit limit.

So not only would he need to make his new loan payment, but if Mr B would use the NewDay credit card, then he would also need to ensure he had the money to make at least his contractual minimum monthly payment for A. Given that prior to taking out the third party loan he had a direct debit returned in two consecutive months, then there is evidence that he would struggle to be able to do so.

While I need to ensure that the credit is affordable, I also need to ensure that the credit NewDay made available to Mr B was able to be repaid in a sustainable manner within a reasonable amount of time. Mr B had already defaulted on two previous financial commitments totalling £3,500, just over three years prior to the increased credit limit of £2,600. His total debt at the time of this increase was substantially higher than that figure.

Once Mr B's credit limit was increased to £2,600, based on how he managed his finances, with the unsecured debt rising mostly month on month, I'm persuaded that NewDay should have taken this into account and not have increased his credit limit here to £2,600 as Mr B would be unlikely to be able to repay his debt in a sustainable manner within a reasonable time frame, for the reasons I've given above. So I am persuaded that NewDay should not have increased Mr B's credit limit to £2,600 here.

In addition, As Mr B's subsequent credit limit increases were added to his previous credit limit, which includes the credit limit increase I've already concluded was granted irresponsibly for the reasons set out above, I think there is an argument for saying that Mr B's complaint about the subsequent lending decisions should be upheld without making a finding on reasonable and proportionate checks. After all, if matters had played out as the evidence suggests they should have done in December 2016, I'm not persuaded Mr B would've been able to add to the credit granted at that time, especially as he also took out a further £10,000 loan in April 2017, a month prior to NewDay increasing his credit limit again and his total unsecured balances rising over the longer term.

Acceptance for B - initial credit limit, increases to £1,500 in May 2017, £2,250 in October

2017 and £3,000 in February 2018:

I've looked at what checks NewDay said they did when initially approving Mr B's application for B. NewDay said they looked at information provided by credit reference agencies and information that Mr B had provided before approving his application. But I'm not satisfied that the account opening checks were proportionate. I say this as the information showed that Mr B had external borrowings of only £600 when he was approved for B. Mr B had a declared annual income of £25,000 at the time.

But based on NewDay's data on his application for A and the data they had gathered since Mr B was accepted for A, I'm satisfied that there was application data which should have concerned NewDay and prompted them to make further checks. And I'll explain why. It was only three days earlier that NewDay had increased Mr B's credit limit from £1,600 to £2,600. So with Mr B applying for a new credit card shortly after the increase, this could be an indication that Mr B was hungry for credit and he could be in financial difficulty – even if he hadn't utilised his credit on A yet after paying the credit card balance off.

The information on his application for B which Mr B provided should have also raised some concerns. I say this as Mr B's declared income had risen from £16,000 on his application 12 months prior, to £25,000 when he applied for B. While there might be a reasonable explanation for this, such as a promotion or Mr B working more hours, this does represent a rise of 64%. So I'm persuaded that NewDay should have made further checks to investigate this.

Also on the application for B, it shows a total unsecured balance of £600. But based on NewDay's own figures for A, they show that Mr B had total unsecured borrowings of £6,027 for the month prior, November 2016 – 10 times more than what Mr B had declared. This was information which was already available to NewDay.

As with the previous credit increase for A to £2,600 as I've mentioned in the section above, had NewDay requested further information from Mr B, such as looking at his income, outgoings and his total unsecured borrowings, then they would have realised he had recently taken out a loan, had his credit limit increased by £1,000 on A and had been previously struggling to meet his financial commitments as he had two returned unpaid direct debits which were intended to pay a third party credit card provider.

So I'm not persuaded that it would be reasonable to accept Mr B's application for B on this basis. If Mr B's application was not accepted, then none of the subsequent credit increases would have happened on this credit card either. So it follows I intend to ask NewDay to put things right for Mr B here."

I invited both parties to let me have any further submissions before I reached a final decision. Mr B accepted the provisional decision. NewDay responded to my provisional decision. They said as per their normal process, they would only agree to refund a proportion of interest that has been charged to the balance above £1,600 for A. Similarly, they would remove any adverse that has been recorded on Mr B's credit file from December 2016.

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've considered what NewDay have said in response to my provisional decision. I agree with NewDay's comments about removing any adverse information that has been recorded on Mr

B's credit file from December 2016, as this is when I'm persuaded the lending to be unaffordable for Mr B. As my provisional decision did not have this date included within what I intended to ask NewDay to do, I asked our investigator to reach out to Mr B to explain that this date should have shown in my provisional decision. Mr B accepted this, and I have slightly amended the wording in the "*Putting things right*" section below to reflect the inclusion of the December 2016 date.

In response to what NewDay have said about agreeing to refund a proportion of interest that has been charged to the balance above £1,600 for A, NewDay would be entitled to charge their standard interest on balances up to £1,600 for A, as I'm persuaded that this would have been affordable for Mr B at the time the credit limit was increased to £1,600. But as I'm persuaded that the subsequent lending was unaffordable for Mr B, then they should refund all interest and charges applied on balances above £1,600 on A and his account should be reworked to reflect this. As B was unaffordable from the start, then his account should be reworked to refund all interest and charges applied from the date B was opened to the date of settlement.

Putting things right

In my provisional decision, I said intended to uphold the complaint in part and I intend to require NewDay Ltd to do the following:

Arrange to transfer back to themselves any of the cards they have passed to a debt management company and contact Mr B to put in place an affordable repayment plan;

Rework the account for A, refunding all interest and charges that have been applied to any balances above £1,600. They should also refund all interest and charges applied from the date B was opened to the date of settlement;

If this results in a credit balance, refund that credit balance to Mr B, and add 8% simple interest per year from the date the credit card would have first gone into a credit balance to the date of settlement;

Remove any adverse entries on Mr B's credit file relating to A from December 2016 and B from account opening and ask any third party debt management company to do the same. I'm still satisfied this is a fair outcome for the reasons given previously.

My final decision

I uphold this complaint in part. NewDay Ltd should settle the complaint in line with the instructions in the "*putting things right*" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 July 2022.

Gregory Sloanes
Ombudsman