

## The complaint

Mrs S complains that NewDay Ltd have irresponsibly lent to her.

## What happened

Mrs S 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 October 2019, with an initial £300 credit limit:

March 2020	£300 to £1,300
January 2021	£1,300 to £2,050

Card B – approved January 2021, with an initial £450 credit limit:

May 2021	£450 to £1,200
September 2021	£1,200 to £2,200

Mrs S complained that NewDay had irresponsibly lent to her. NewDay did not uphold her complaint. They said that when Mrs S applied for A, Mrs S had declared an income of £25,000, she was retired, and she had unsecured debt of £100. They said there were seven defaults showing on her credit file, the latest default had happened 14 months prior to her application and the total of the defaults were £2,600. Her credit file also showed one public record, but this was 65 months prior to her application.

NewDay said when Mrs S applied for B, she had declared an income of £25,000 through employment, and unsecured debt of £1,900. Her last default was showing as 29 months old and she had five defaults showing, totalling £2,300. Mrs S brought her complaint to our service.

Our investigator partially upheld Mrs S's complaint. She said that the credit limit increase on A was irresponsible from the January 2021 increase and the credit limit increase on B was irresponsible from the acceptance of B, as Mrs S's bank statements showed she was in financial difficulty prior to January 2021 increase on A and acceptance for B.

Our investigator said that NewDay should refund all interest and charges for balances above £2,050 on A and all interest and charges on B, to reduce the outstanding balance, but if there was a positive balance after the repayment, then any positive balance should be paid to Mrs S with 8% simple interest added to the repayment. She also said that NewDay should remove any adverse credit from Mr S's credit file after the increase was deemed irresponsible for A (7 January 2021) and for B (25 January 2021). Our investigator said if after the rework the outstanding balance still exceeds £2,050 (A) and £450 (B), NewDay should arrange an affordable repayment plan with Mrs S for the remaining amount. Once Mrs S has cleared the outstanding balance, NewDay should remove any adverse information related to her accounts on her credit file recorded after 7 January 2021 (A) and 25 January 2021 (B).

NewDay asked for an Ombudsman to review the complaint. In summary, they said initially, the credit limit may be more modest, however, this gives the customer the opportunity to improve their credit profile over time, following regular risk-based assessments. They said that Mrs S increased her balances by increasing the credit limit and the accounts were being managed appropriately prior to the increases in credit. NewDay said they could not infer from the data available at the time of her credit increases that she would have financial difficulties.

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 Mrs S, NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable for her. 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 Mrs S'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 Mrs S had provided before approving her application.*

*But I'm not persuaded that the account opening checks were proportionate. I say this as while the information showed that Mrs S had total unsecured borrowings of only £100 when she was approved for A, they also showed that there was an outstanding balance on a payday loan of £210.*

*This might indicate that Mrs S may not be able to manage her day to day living and may need to rely on payday loans to do so. In addition, Mrs S was showing as retired, but she was much younger than the state retirement age and the age which you could normally take a private pension. The income recorded of £25,000 may seem disproportionate for a retired applicant for someone who would be unlikely to take their pension at this age (or an earlier age). I have considered that the data showed her as being widowed, so it may be that she would be able to take a widowers pension at a younger age, but I'm persuaded that this is something NewDay should have looked into to be satisfied that the data they had was accurate and borrower focused.*

*But that's not all NewDay's data showed. The data also showed that Mrs S had adverse credit data in the form of seven defaults and one public record. So NewDay would have been aware that Mrs S had previously not maintained his agreements – on more than one occasion. And the total balance of the defaults would mean that some of the defaults would be around the amount of the initial credit limit. So if Mrs S had previously not been able to repay small amounts, this may indicate that even a relatively modest credit limit of £300 may not be affordable or sustainable for her.*

*So for these reasons, I'm persuaded that as part of a proportionate check, NewDay should have requested information from Mrs S to discuss her finances, for example, one of the things they could have asked Mrs S to provide is her recent bank statements to ensure the*

*credit would be affordable and sustainable for Mrs S.*

*Mrs S has provided her bank statements so we could see how she managed her money at the time. Mrs S's bank statements show that her income is mainly benefits based and not pension based. The income showing is substantially less than what was reported on her application.*

*Although all of Mrs S's income was from state benefits, NewDay would accept benefits as income. Although the benefits could be reviewed or stopped in the future, they would be allowed to consider this income as part of affordability calculations. While the application data did not match up with Mrs S's bank statements, I'm still persuaded that if NewDay had made further checks into the discrepancies highlighted above, they still would have approved the £300 credit limit and I'll explain why.*

*It's possible the payday loan was a defaulted account as opposed to a current payday loan at the time. I say this as from July 2019-September 2019, there were no credits or debits to the account for the payday loan. NewDay's data shows that there are no arrears on payday loans in the last 6-12 months, so it wouldn't appear that at the time Mrs S applied for A that she was reliant on payday loans.*

*In addition, Mrs S does appear to have disposable income which allows her to save into a linked savings account. Mrs S has provided these statements also. Although she often transfers money back and forth between her savings account and bank account, it appears there was no sign of any financial difficulties at the point of application for A.*

*So while I'm persuaded that NewDay should have made further checks, based on the information they had, I'm satisfied that if they made these checks, they still would have made a fair lending decision to approve the £300 credit limit here.*

*March 2020 credit limit increase for A - £300 to £1,300*

*I've looked at the information that NewDay had available to them when they increased Mrs S's credit limit. I can see that Mrs S had incurred an overlimit charge early on when A had been approved. This may suggest that Mrs S may not be managing her credit limit effectively here. So I've looked at the data NewDay had around the time to get a broader sense of how Mrs S was managing her finances prior to her credit limit being increased.*

*The data shows that Mrs S had made 18 cash transactions in a five month period before her credit limit was increased. While Mrs S would be free to use her account as she wishes and this alone may not be any sign of financial difficulty, it could be masking an affordability issue. I say this as it is not clear why Mrs S would choose to incur £55.80 in cash transaction charges if she had money in her bank account or savings account which wouldn't cost her to use.*

*In addition, the credit limit was increased to over four times the limit she had been approved for only five months earlier. As detailed under the acceptance for A above, it was established that Mrs S did not have the income that was reported on the application, as NewDay would have been aware of this and in light of the other issues mentioned above, I'm persuaded that as part of a proportionate check, NewDay should have requested information from Mrs S to discuss her finances again, for example, one of the things they could have asked Mrs S to provide is her recent bank statements to ensure the credit would be affordable and sustainable for Mrs S.*

*Mrs S has provided her bank statements so we could see how she managed her money at the time. Mrs S's bank statements again show that Mrs S does appear to have disposable*

*income which allows her to save into a linked savings account. Mrs S has provided these statements also. Although she often transfers money back and forth between her savings account and bank account, it appears there was no sign of any financial difficulties at the point of this credit limit increase.*

*So while I'm persuaded that NewDay should have made further checks, based on the information they had, I'm satisfied that if they made these checks, they still would have made a fair lending decision to approve the £1,300 credit limit here.*

*January 2021 credit limit increase for A - £1,300 to £2,050*

*I've looked at the information that NewDay had available to them when they increased Mrs S's credit limit. I can see that Mrs S had incurred an overlimit charge within a few months of the prior credit limit increase. This may suggest that Mrs S may not be managing her credit limit effectively here. So I've looked at the data NewDay had around the time to get a broader sense of how Mrs S was managing her finances prior to her credit limit being increased.*

*The data shows that Mrs S had made 40 cash transactions in a six month period since her last credit limit increase. As I've previously mentioned, while Mrs S would be free to use her account as she wishes and this alone may not be any sign of financial difficulty, it could be masking an affordability issue. I say this as it is not clear why Mrs S would choose to incur £158.10 in cash transaction charges if she had money in her bank account or savings account which wouldn't cost her to use.*

*In addition, the credit limit was increased by over 50% of the previous credit limit (and nearly seven times the original credit limit) As detailed under the acceptance for A earlier, it was established that Mrs S did not have the income that was declared on the application, so as NewDay would have been aware of this and in light of the other issues mentioned above, I'm persuaded that as part of a proportionate check, NewDay should have requested information from Mrs S to discuss her finances again, for example, one of the things they could have asked Mrs S to provide is her recent bank statements to ensure the credit would be affordable and sustainable for Mrs S.*

*Mrs S has provided her bank statements so we could see how she managed her money at the time. This time, Mrs S's bank statements show she has a reliance on borrowing. I say this as between 5 October 2020 - 21 December 2020, Mrs S has borrowed from a third party credit lender eight times. So it does appear that Mrs S was heavily reliant on borrowing to meet her outgoings.*

*So I'm persuaded that if NewDay had made proportionate further checks here, based on the information on Mrs S's bank statements, that they wouldn't have increased her credit limit as this would not be affordable or sustainable for her.*

*Acceptance for B - initial credit limit:*

*I've looked at what checks NewDay said they did when initially approving Mrs S's application for B. NewDay said they looked at information provided by credit reference agencies and information that Mrs S had provided before approving his application.*

*But I'm not satisfied that the account opening checks were proportionate here. I say this as the credit limit increase for A was only 18 days earlier than when B was accepted. As discussed above I've set out why I'm satisfied NewDay shouldn't have approved the last credit limit. And these are largely the same reasons that B should not have been approved.*

*In addition, the application data for B does seem to contradict some of the information NewDay held for Mrs S. The income is still recorded as £25,000, which had previously been established as incorrect and NewDay would have been aware of this had they made further proportionate checks with A. But this time Mrs S is shown as employed. While she may have been retired previously and worked now, I would have expected her income to be different if NewDay thought the £25,000 was retirement income previously.*

*The application data shows since Mrs S had opened A, Mrs S had gone from having two accounts to seven accounts. While the unsecured debt was showing as £1,900, Mrs S had a credit limit with NewDay alone of £2,050 when she was accepted for B.*

*As I mentioned in the section above, had NewDay made further checks which were proportionate to the level of credit given to her, based on the information NewDay had, then when B was accepted, this should be a clear indicator that Mrs S might be unable to take on any further credit and to be able to pay this in a sustainable or affordable way. I'm persuaded that if NewDay had seen this information, then they shouldn't have approved B for Mrs S and as they shouldn't have approved Mrs S for B, then they wouldn't have increased the credit to £1,200 in May 2021 and £2,200 in September 2021 either as this was not affordable or sustainable for Mrs S. So it follows I intend to ask NewDay to put things right."*

I invited both parties to let me have any further submissions before I reached a final decision. NewDay accepted my provisional decision. Mrs S said that NewDay should have asked for up to date income and expenditure before increasing any credit limit and they should have checked to see if anything had changed and not solely relied upon the information provided to them by credit reference agencies. She said if they had done that, then it would've come to light how her health impacts her as well as her finances, therefore, the credit increases wouldn't have been in the interests of herself or them as a business.

### **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 Mrs S has said about how NewDay should have asked her for her up to date income and expenditure before increasing her credit limit. But they aren't required to do so by the regulator when increasing a credit limit. What they are required to do though is to make proportionate checks to ensure that the credit is affordable and sustainable for her though. As I mentioned in my provisional decision, there's no prescribed list of checks that a lender should make. But I said in my provisional decision that NewDay should have made further checks when they approved the £300 credit limit on A, and when they increased the credit limit to £1,300, also on A.

So if NewDay did ask for her income and outgoings and they were provided the same savings/bank statements that Mrs S provided our service, I'm persuaded that they would have still approved A and the £1,300 credit limit. This is because there was no indication that Mrs S was having any financial difficulties at the time the initial credit limit and the first increase was approved. Mrs S was still able to put money into her savings account during this timeframe.

I've also considered what Mrs S has said about how NewDay should have checked to see if anything had changed when they increased her credit limit as it would have come to light about her health issues affecting her ability to manage her money. But in the letter NewDay sent her regarding the proposed credit limit increase, they did say that if she knew of, or expected a change in her financial circumstances which would cause her to be unable to afford the increase then she should contact them to decline the increase. But Mrs S did not

let them know of her circumstances despite NewDay asking for this if it would affect her ability to make her repayments. So based on the statements Mrs S provided to us, it appears she was able to afford the repayments when the credit limit was increased to £1,300 for the reasons I gave in my provisional decision – but not when the credit limit was increased further.

In summary, Mrs S's response hasn't changed my view and my final decision and reasoning remains the same as in my provisional decision. I know Mrs S will be disappointed, but I hope she understands my reasons.

### **Putting things right**

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

NewDay should arrange to transfer any debt back to themselves if it has been passed to a debt recovery agent.

Card A: NewDay should also rework the account, refunding all interest and charges that have been applied to any balances above £1,300. If the rework results in a credit balance, this should be refunded to Mrs S along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information recorded from January 2021 regarding this account from Mrs S's credit file.

Or, if after the rework the outstanding balance still exceeds £1,300, NewDay should arrange an affordable repayment plan with Mrs S for the remaining amount. Once Mrs S has cleared the outstanding balance, any adverse information recorded from January 2021 in relation to the account should be removed from her credit file.

Card B: Rework the account removing all interest and charges that have been applied. If the rework results in a credit balance, this should be refunded to Mrs S along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding this account from Mrs S's credit file.

Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mrs S for the remaining amount. Once Mrs S has cleared the balance, any adverse information in relation to the account should be removed from her credit file. I'm still satisfied this is a fair outcome for the reasons given previously.

\*If NewDay considers that it's required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mrs S how much they've taken off. They should also give Mrs S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

### **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 Mrs S to accept or reject my decision before 4 August 2022.

Gregory Sloanes

**Ombudsman**