

## **The complaint**

Ms B complains that NewDay Ltd ("NewDay") lent irresponsibly when they approved her credit card applications.

Ms B is represented by a claims management company ("the CMC").

## **What happened**

In September 2016, Ms B applied to NewDay for a credit card. Her application was assessed by NewDay and they agreed to provide a credit card account with a limit of £600.

Around mid-2018, Ms B's account began to demonstrate signs she might be in financial difficulty. Contractual repayments were either missed or late. Ms B made no repayments between August and December 2018 but began making repayments of £10 per month thereafter.

NewDay transferred Ms B's account to a debt collection agency in March 2019. Her account was returned to NewDay in October 2019 when the account was repaid in full.

In January 2021, Ms B applied online to NewDay for another credit card. Her application was assessed by NewDay and they agreed to provide a credit card account, again with a limit of £600. Ms B appears to have operated this account with no obvious signs of difficulty.

In June 2021, the CMC complained to NewDay on Ms B's behalf. They said the account NewDay provided to Ms B in January 2021 was unaffordable. The CMC said Ms B had a number of credit agreements, many of which were taken over a short period. They thought this was a clear indication of financial difficulty and NewDay had failed to complete proportionate checks which would've revealed that Ms B couldn't afford the lending.

The CMC wanted NewDay to refund all interest they'd charged to Ms B's account together with interest on that amount of 8% per annum. They also wanted NewDay to remove all negative or adverse information from Ms B's credit file.

NewDay responded to Ms B's complaint in July 2021. They agreed they shouldn't have allowed Ms B to open a new credit card account due to the information reported on her credit file. They agreed to refund the interest they'd charged of £75.49. But they didn't agree they should pay interest of 8% on that figure. They also didn't agree they should remove any information from Ms B's credit file as this was an accurate reflection of Ms B account with them.

NewDay also took the opportunity to review the circumstances relating to their agreement to provide Ms B with a credit card in 2016. They said that based upon the information Ms B had provided and they'd also received from the credit bureau, they hadn't done anything wrong when they agreed that application.

Ms B disagreed with NewDay's response. So, the CMC referred her complaint to this service. Having considered all the circumstances and evidence available, our investigator didn't think NewDay had acted responsibly when they agreed to provide Ms B with a credit card account in both 2016 and 2021. Our investigator thought NewDay should have completed further checks and assessments in 2016, including a detailed review of Ms B's income and expenditure. She believed this would have revealed that the lending wasn't affordable to Ms B.

Our investigator thought NewDay should calculate and refund the interest and fees Ms B paid on her credit card, and if this exceeded the initial £600 limit agreed, it should be refunded to Ms B together with interest at 8% a year. Our investigator also thought NewDay should remove any adverse information reported on Ms B's credit file in respect of both cards they'd agreed.

NewDay didn't agree with our investigator's findings. They said when Ms B applied to them in 2016, her application met their lending criteria and there was nothing within the information provided or reported to prompt further checks and assessments.

As an agreement couldn't be reached, Ms B's complaint has been passed to me to consider.

I reached a different outcome to that of our investigator. Because of that, I issued a provisional decision on 21 June 2022 – giving both Ms B and NewDay the opportunity to respond to my findings below before I reached a final decision.

In my provisional decision, I said:

#### Credit card application January 2021

NewDay have agreed they shouldn't have provided Ms B with a new credit card account in January 2021, based upon the information reported on her credit file. They've agreed to refund all interest charged since that account was opened. So, I don't propose to cover this aspect of Ms B's complaint further.

Ultimately, it's always difficult to put someone back in the position they would've been had a credit card not been given. The money has been lent and Ms B has benefited from that. So, I think it's fair that Ms B pays back anything she's spent. But I don't think it would be fair or reasonable to expect Ms B to incur any associated costs. So, I agree NewDay should refund all interest, fees and charges from the point the money was first lent.

In the event that the refund of charges and interest results in a balance being due to Mrs L (i.e. where there's been overpayments) I would expect NewDay to pay 8% simple interest from the date of each overpayment to the date of settlement. If there remains an outstanding debt, NewDay should ensure an affordable repayment plan is agreed.

The CMC have asked for all associated adverse information reported on Ms B's credit file to be removed. The copy of the credit file provided by Ms B doesn't show any adverse information reported in relation to this card. But equally, it's important that other potential lenders are aware of Ms B's existing commitments and difficulties. It's unclear whether Ms B still owes anything on her account with NewDay. But I would still expect this to be reported if she does. However, once the debt had been repaid, I wouldn't expect NewDay to leave anything adverse reported going forward.

#### Credit card application September 2016

The rules and guidance relevant at the time NewDay provided Ms B with this credit card were set by the Financial Conduct Authority (FCA) in the Consumer Credit Sourcebook (CONC). These required NewDay to carry out an assessment using reasonable and proportionate checks to determine whether Ms B could afford to repay the credit card in a sustainable way. Those checks needed to be borrower focussed and consider whether making the repayments could result in financial difficulties for Ms B.

This service believes that any checks needed to consider Ms B's personal circumstances and would usually need to be more thorough:

- the lower a consumer's income; and
- the higher the amount due to be repaid; and

- the longer the term of the debt; and
- the greater the number and frequency of debts.

Conversely, a less detailed affordability assessment, without the need for verification, is far more likely to be fair, reasonable, and proportionate where the amount to be repaid is relatively small, the financial situation appears stable, and the debt is for a relatively short period.

NewDay have shown that at the time of Ms B's application, no arrears, public records, defaults or debt management programmes were reported. Ms B stated her income as £24,000 a year with an additional household income of £35,000 a year. There were also no other active cards or payday loans reported.

Given the information above and the level of credit offered relative to Ms B's income, at the time, I don't believe it was necessary or proportionate for NewDay to complete further checks and tests in assessing Ms B's application. The credit offered equated to only 2.5% of her stated income. So, I'm persuaded that NewDay's decision to lend to Ms B was reasonable here.

NewDay have confirmed that Ms B did contact them in August 2018 with a request to increase her credit limit. However, based upon information available to them at that time, they declined to do so.

### Summary

As I've stated above, I do support NewDay's decision to uphold Ms B's complaint in respect of their decision to lend in January 2021. And for clarity, I've laid out my own view on redress below.

I do appreciate Ms B will be disappointed, but I don't agree that NewDay's decision to provide her with a credit card account in September 2016 was inappropriate based upon the information provided by Ms B at the time and obtained from the credit bureau. So, I don't propose to uphold that aspect of her complaint.

### **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.

In my provisional decision, I asked both parties to respond with any new information or comments they wanted me to consider.

Despite follow up requests from this service, neither NewDay, Ms B or the CMC responded to my provisional decision. And as I've not been provided with any additional comments or information, I've found no reason to vary from my original findings. So, my final decision remains the same.

### **My final decision**

For the reasons set out above, I uphold Ms B's complaint

I require NewDay Ltd:

- where not already done, to refund all and any interest, charges and fees in respect of the account opened in January 2021; and
- to pay 8% interest† on any overpayment from the date of payment until the date of settlement, if the effect of refunding all interest, fees and charges results in a credit balance being owed to Ms B; and
- to remove any current or subsequent related adverse information from Ms B's credit

file once the outstanding balance had been repaid; and

- where an amount is still owed by Ms B, to agree an affordable and sustainable repayment plan for that amount.

† HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Ms B a certificate showing how much tax it has taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 16 August 2022.

Dave Morgan  
**Ombudsman**