

## **The complaint**

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

Mr J is represented by a solicitors firm in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Mr J himself.

## **What happened**

Mr J was accepted for a NewDay branded credit card in June 2017 with a £450 credit limit. This was later increased to £1,350 in November 2018. He says that NewDay mis-sold the card to him as he was in arrears with his essential living costs at the time of the application. Mr J also said he was suffering from health issues and failed to understand the information in his credit agreement. The debt was later sold to a third party debt management company. Mr J made a complaint to NewDay.

NewDay did not uphold Mr J's complaint. They said that they had considered the information he included on his application, such as being employed with a gross annual salary of £55,000 and having unsecured debt of £700. They also said that external information available to them showed that he had four defaults, totalling £26,900 with the last one occurring 27 months prior to his application, five County Court Judgements (CCJ's), totalling £11,500, payday loans with outstanding balances of £375 and no accounts in arrears.

Mr J brought his complaint to our service. Our investigator upheld his complaint. He said that the lending was unaffordable for Mr J as he had four defaults totalling £26,900 and five CCJ's totalling £11,500. He also said that as Mr J had outstanding payday loan balances totalling £375, then he was either utilising payday loans at the time of the application, or he had been unable to clear his previous payday loan balance.

Our investigator said NewDay should refund the fees and charges Mr J had incurred and use this to reduce any outstanding balance. He said if this creates a positive balance then this amount should be paid back to Mr J, with 8% simple interest added and any adverse information should be removed from his credit file.

NewDay asked for an Ombudsman to review the complaint. They said they believed sufficient checks had been completed and there was nothing to indicate that Mr J would struggle with the credit card payments.

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 the credit limit for Mr J, 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.

*Initial credit limit - £450*

*I've looked at what checks NewDay said they did prior to accepting Mr J's application. They said at the time of applying for the credit card, they considered the information that Mr J had given them, such as him being employed, earning a salary of £55,000 a year and they looked at external data available to them. NewDay said that the data showed he was not in arrears at the time of the application on any of his accounts.*

*So I've considered if the checks that NewDay carried out were proportionate to the level of credit that Mr J was given. And despite Mr J being approved for a relatively modest credit limit, compared to his gross annual salary, I'm persuaded there are other factors which should have persuaded NewDay to make further checks and I'll explain why below.*

*NewDay's data showed that Mr J had four accounts which previously defaulted with a total of £26,900, with the last one being 27 months ago. The data also showed that Mr J had five CCJ's for a total of £11,500, with the last one being 17 months prior to being accepted for the NewDay card. This could indicate that Mr J was not able to manage his unsecured borrowings.*

*In addition, there was an outstanding balance of £375 on payday loans. This could indicate that Mr J did not have enough disposable income to be able to meet his outgoings. But there could also be a reason for Mr J having a payday loan where he may have needed to make a one off large payment to cover the cost of a household item (and being unable to obtain mainstream credit due to his defaults and CCJ's) as opposed to relying on payday loans to help meet his bills. I'm persuaded all of this should have prompted NewDay to make further checks to ensure the proposed credit limit would be affordable for Mr J.*

*So, I would have expected NewDay, as part of a proportionate check, to ask for further information from Mr J to ensure that a £450 credit limit would be affordable and sustainable for him, especially as he had an active payday loan balance and based on the multiple credit agreements he had not adhered to previously. They could have done this by contacting Mr J 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 would be sustainable and affordable for Mr J.*

*So I asked Mr J if he could provide his bank statements for the time period before his NewDay credit card application was accepted, as I'm persuaded this is something that NewDay could have done as part of a proportionate check to see if the NewDay credit card would be affordable for him and to ensure he could make payments in a sustainable manner based on the reasons I've already mentioned. But Mr J did not respond to any requests to provide me with his bank statements.*

*While I've considered the volume of the accounts and total balances which have defaulted or have had public records attached to them, I've also needed to consider that a customer's past behaviour would not always be indicative of how they may manage an account in the future. Here, NewDay's records show that Mr J had three active accounts at the time of the application and the total active unsecured borrowings was £700. So a £450 credit limit in addition to his active unsecured borrowing would not be high in relation to his income of £55,000. Although Mr J had a history of not managing a large amount of credit compared to his income, I can't say that this factor alone automatically makes a relatively low credit limit automatically unaffordable or unsustainable.*

*So on the face of it, it does look like NewDay should've looked more closely into this. But as my role is impartial, that means I have to be fair to both sides and although I'm satisfied that NewDay should've done more checks here – I can't say whether that would've revealed further information which means they wouldn't have lent. So as Mr J hasn't provided me with his bank statements, that means that it wouldn't be fair for me to say that NewDay shouldn't have lent here, because I don't know what further checks would reveal.*

*November 2018 credit limit increase - £450 to £1,350*

*I've looked at the information that NewDay had available to them when they increased Mr J's credit limit to £1,350. They increased the credit limit by £900, which saw the credit limit treble. NewDay had gathered a lot of information of how Mr J had used his account since he opened the account and they had gathered a lot of external data from credit reference agencies which show how Mr J was managing his external finances also. So, I would need to see that the data NewDay had available to them would support the increase. But I'm not persuaded that it did and I'll explain why.*

*I've looked at NewDay's information about Mr J's account in the months leading up to the credit limit increase. In the month prior to the credit limit increase, NewDay's data shows Mr J incurred a late payment charge. While this in isolation may not be something to be concerned about, this could be masking further issues that Mr J was facing. NewDay's data shows that the number of active accounts has doubled from when he was first accepted for the account to when his credit limit was increased. His revolving borrowings (eg credit cards) shows a doubling of the credit limits (from £700 to £1,400) only two months prior to the credit limit being trebled on his NewDay credit card.*

*But this is not all that NewDay's data showed. It shows that the balance of Mr J's nonrevolving credit (eg personal loans) had increased from £0 (three months prior to the credit limit increase on the NewDay credit card) to £7,606 (two months prior to the credit limit increase).*

*While I need to ensure that the credit is affordable, and Mr J hasn't been able to provide his bank statements to prove this one way or another, I also need to ensure that the credit NewDay made available to Mr J was able to be repaid in a sustainable manner within a reasonable amount of time. Due to how Mr J managed his NewDay account and external accounts, with the unsecured debt rising by a large amount - less than two months prior to NewDay trebling his credit limit, then I'm persuaded that NewDay should have taken these factors into account and not have increased his credit limit here to £1,350.*

*I say this as by adding another £900 of credit which Mr J had available to him, his overall borrowings would require a larger amount of his income. His NewDay minimum payments would potentially treble from when his credit limit was £450 to £1,350. But if Mr J only made minimum payments, the balance would not be repaid in a reasonable amount of time. Any credit given to Mr J should not only be affordable, but also sustainable. But as Mr J appears to have increased his credit card balances externally prior to the credit limit increase, in addition to his other unsecured borrowings rising by £7,606 shortly before the credit limit increase, this would be unlikely to be sustainable or affordable for Mr J moving forward.*

*NewDay's information showed he had searched for four payday loans shortly before having his credit limit trebled. And while the data doesn't show he took out any payday loans, it indicates that he may need to take out a payday loan if he wasn't able to obtain other borrowing.*

*So considering the recent events prior to the credit limit increasing – the doubling of the number of active accounts Mr J had, the doubling of his external credit card limits, his*

*NewDay late payment, his appetite to look for further credit, the history of him not maintaining nine previous credit agreements, his non-revolving unsecured borrowings increasing by a substantial amount prior to his NewDay credit limit trebling, I'm not persuaded that based on the information NewDay had available to them, that Mr J would be in a position to pay the credit back in an affordable or sustainable manner in a reasonable timeframe. So it follows I intend to ask NewDay to put things right for Mr J."*

I invited both parties to let me have any further submissions before I reached a final decision. Mr J said he had nothing to add to the provisional decision. NewDay did not respond to the provisional decision.

### **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.

As neither party have provided me with any further information to consider, then my final decision and reasoning remains the same as in my provisional decision.

### **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.

NewDay should also rework the account, refunding all interest and charges that have been applied to any balances above £450. If the rework results in a credit balance, this should be refunded to Mr J 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 November 2018 regarding this account from Mr J's credit file.

Or, if after the rework the outstanding balance still exceeds £450, NewDay should arrange an affordable repayment plan with Mr J for the remaining amount. Once Mr J has cleared the outstanding balance, any adverse information recorded from November 2018 in relation to the account should be removed from his credit file. I'm still satisfied this is a fair outcome for the reasons given previously.

*\*If NewDay considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr J how much they've taken off. They should also give Mr J a tax deduction certificate if he asks for one, so he 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 Mr J to accept or reject my decision before 1 September 2022.

Gregory Sloanes  
**Ombudsman**