DRN-3686202

The complaint

Ms S is unhappy that NewDay Ltd provided new and further credit to her on multiple occasions, all instances of which she feels weren't affordable for her at those times.

What happened

In March 2017, Ms S successfully applied for a NewDay branded credit account ("Brand A"), and NewDay provided her with a Brand A credit account with an initial credit limit of £600.

In September 2017, NewDay increased the credit limit on the Brand A account from £600 to £1,000. Further credit limit increases followed: to £1,750 in January 2018, to £3,000 in June 2018, to £4,000 in September 2020, to £5,500 in January 2021, and to £7,000 in June 2021.

In August 2018, Ms S successfully applied for a second NewDay credit account ("Brand P"), and NewDay provided her with a Brand P credit account with an initial credit limit of £900.

In May 2019, NewDay increased the credit limit on the Brand P credit account from £900 to £1,000. Further credit limit increases followed: to £2,000 in August 2019, to £3,250 in April 2020, to £4,000 in October 2020, and to £5,000 in February 2021.

In June 2019, Ms S applied for a third NewDay branded credit account ("Brand Z"), and NewDay provided her with a Brand Z credit account with an initial credit limit of £600.

In March 2020, NewDay increased the credit limit on the Brand Z credit account from £600 to £1,600. Further credit limit increases followed: to £2,100 in January 2021, and to £3,000 in June 2021.

In November 2020, Ms S successfully applied for a fourth NewDay branded credit account ("Brand M"), and NewDay provided her with a Brand M credit account with an initial credit limit of £600. In July 2021, NewDay increased the credit limit on this account to £1,000.

In September 2021, Ms S raised a complaint with NewDay because she felt that she hadn't been able to afford any of the new or further credit that NewDay had provided to her, and that this should have been apparent to NewDay, had they undertaken checks into her financial position before providing the credit to her.

NewDay looked at Ms S's complaint. They confirmed they had undertaken checks into Mrs S's financial position before providing credit to her, and they felt that in all instances there hadn't been anything resulting from those checks that should have reasonably given them cause to suspect that Ms S might not be able to afford the credit she was then offered.

Ms S wasn't satisfied with NewDay's response, so she referred her complaint to this service. One of our investigators looked at this complaint. During their investigation NewDay made an offer to reimburse some interest and charges that had been incurred on the accounts to Ms S, and this resulting in NewDay making some reimbursement payments to Ms S.

However, Ms S still wanted her complaint considered by this service, and when our investigator completed their review they felt that, in regard to all the provisions of credit, the information that NewDay assessed should have given them causes to suspect that Ms S might not be able to afford the credit, such that it shouldn't have been subsequently provided to her. So, they recommended that this complaint be upheld in Ms S's favour on that basis.

NewDay didn't agree with the view of this complaint put forwards by our investigator, so the matter was escalated to an ombudsman for a final 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.

I issued a provisional decision on this complaint on 23 August 2022, as follows:

I'd like to begin by listing the provisions of new and further credit under consideration here in chronological order.

Date	***Brand***	***CL From***	***CL To***	***Increase***	***Total***
03-2017	*A*	*£0*	*£600*	*£600*	*£600*
09-2017	*A*	*£600*	*£1,000*	*£400*	*£1,000*
01-2018	*A*	*£1,000*	*£1,750*	*£750*	*£1,750*
06-2018	*A*	*£1,750*	*£3,000*	*£1,250*	*£3,000*
08-2018	*P*	*£0*	*£900*	*£900*	*£3,900*
05-2019	*P*	*£900*	*£1,000*	*£100*	*£4,000*
06-2019	*Z*	*£0*	*£600*	*£600*	*£4,600*
08-2019	*P*	*£1,000*	*£2,000*	*£1,000*	*£5,600*
03-2020	*Z*	*£600*	*£1,600*	*£1,000*	*£6,600*
04-2020	*P*	*£2,000*	*£3,250*	*£1,250*	*£7,850*
09-2020	*A*	*£3,000*	*£4,000*	*£1,000*	*£8,850*
10-2020	*P*	*£3,250*	*£4,000*	*£750*	*£9,600*
11-2020	*M*	*£0*	*£600*	*£600*	*£10,200*
01-2021	*A*	*£4,000*	*£5,500*	*£1,500*	*£11,700*
01-2021	*Z*	*£1,600*	*£2,100*	*£500*	*£12,200*
02-2021	*P*	*£4,000*	*£5,000*	*£1,000*	*£13,200*
06-2021	*A*	*£5,500*	*£7,000*	*£1,500*	*£14,700*
06-2021	*Z*	*£2,100*	*£3,000*	*£900*	*£15,600*
07-2021	*M*	*£600*	*£1,000*	*£400*	*£16,000*

It's for a business to decide whether it will offer credit to a customer, and if so, how much and on what terms. What this service would expect would be, that before approving a customer for a new line of credit, or before increasing the amount of credit available to a customer on an existing line of credit, the business would undertake reasonable and proportionate borrower focussed checks to ensure that any credit being offered to a customer is affordable for that customer at that time.

NewDay believe that they did that here, and note that at the time of the new account application they took information from Ms S directly about her employment status and annual income, as well as obtained information about Ms S from a credit reference agency so as to get a better understanding of her wider financial position.

NewDay also note that before offering further credit to Ms S on her accounts, they reviewed how Ms S had been managing and maintaining her accounts up to that time, as well as obtained updated information from a credit reference agency about Ms S. And NewDay contend there was nothing resulting from any of these checks, at *least up to November 2020, that they feel should have given them any reasonable cause to believe that Ms S might not be able to afford the credit she was subsequently approved for.*

<u>March 2017 – Brand A account application</u>

When Ms S applied for a new credit account with NewDay in March 2017, she told NewDay that she was employed with a gross annual income of £22,000. This equates to a net income of around £1,500 per month.

NewDay also assessed that Ms S had total existing unsecured debt at that time of £3,500. And while it is notable from Ms S's credit file that there were two defaults on record, with a total default balance of £3,200, the most recent of those was nearly three years prior at the time of the application, and as such I'm satisfied it was fair for NewDay to effectively discount these defaults and given more weight to Ms S's more recent financial position.

To that effect, Ms S's credit file showed that she wasn't in arrears on any of her existing credit commitments at that time, and she appeared to be managing her existing credit commitments without significant incident. And in consideration of all this information, I don't feel that it was unreasonable for NewDay to have felt that Ms S would in all likelihood be able to afford a new line of credit with the relatively low credit limit of £600 which they subsequently approved her for at that time.

<u>September 2017 – Brand A credit limit increase from £600 to £1,000</u>

It's notable that in the months leading up to the credit limit increase in September 2017 that Ms S appeared to have been managing and maintaining her Brand A credit account without incident. I say this because Ms S had generally maintained the balance of the account within the credit limit and hadn't incurred any overlimit of cash advance fees on the account, which can be considered as indicators of potential financial difficulty.

Additionally, Ms S's credit file didn't show any significant increase on her amount of existing unsecured debt and continued to suggest that Ms S was managing her existing credit commitments without incident. As such, given the relatively small increase under consideration, I feel that it was reasonable for NewDay to have felt that Ms S would most likely be able to afford that credit limit increase and to have therefore offered it to her.

<u>January 2018 – Brand A credit limit increase from £1,000 to £1,750</u>

In the months leading up to the credit limit increase in January 2018, Ms S continued to maintain the balance of the Brand A account within the credit limit and didn't incur any overlimit fees. And while Ms S did incur some cash advance fees on this account, the amounts withdrawn were relatively low and I don't feel were strongly suggestive that Ms S might have been struggling financially at that time.

In regard to Ms S's credit file, while it was the case that one of her existing credit accounts was showing as being one month in arrears, her amount of existing unsecured debt wasn't showing as having increased, and there was no indication of Ms S using any payday loans or other indicators of potential financial difficulty present. As such, while the overall picture of Ms S's financial position wasn't completely unproblematic here, it remained generally good, and I don't feel that it should have reasonably given NewDay cause to suspect that Ms S might not be able *to afford the credit limit increase under consideration at that time, such that it shouldn't have been offered to her.*

June 2018 – Brand A credit limit increase from £1,750 to £3,000

I feel that the overall picture of Ms S's creditworthiness begins to get murkier at this point. One reason I say this because by considering an increase of the credit limit to £3,000, NewDay would now be providing Ms S with five times the amount of credit she was initially approved for only 15 months earlier. Additionally, while Ms S was maintaining the balance of her Brand A credit account within the credit limit in the months leading up to the increase, she was utilising the majority of the £1,750 credit available to her on the Brand A account.

Furthermore, Ms S's credit file continued to show that she remained in arrears on one of her existing credit commitments, and that her amount of overall existing unsecured debt was rising, albeit not excessively, to around £5,000. And it's also notable that NewDay hadn't communicated with Ms S in person since the account application in March 2018 and hadn't updated their understanding of her income and expenditure since that time.

As such, I feel that the overall picture of Ms S's financial position that can be taken from this information – including the high credit utilisation on the Brand A account, the continuing arrears on one of her existing credit commitments, and the increase in overall debt – should have given NewDay cause to suspect that Ms S might not be able to afford any further credit at that time such that further checks should have been undertaken by NewDay before increasing he credit limit.

NewDay did communicate with Ms S directly again two months later, in August 2018, when she applied for the second NewDay account. And at that time Ms S told NewDay she was employed with a gross annual income of £24,500, which equates to a net monthly income of about £1,650. Ms S also explained to NewDay at that time that she had monthly living expenses (which would include existing credit repayment commitments) of £700 and monthly accommodation costs of £495. And given that Ms S told this to NewDay in August 2018, I feel that had NewDay undertaken further checks into Ms S's financial position in June 2018, as I feel they should have done, they would likely have learned similar information.

Considering this information, it's notable that Ms S's monthly living and accommodation costs total £1,195, which when taken against her new monthly income of £1,650, meant that Ms S had monthly disposable income available to her of about £450. And given this amount of assessed disposable income when taken against the £1,250 credit limit increase under consideration here (which if fully utilised I don't feel would have reduced the disposable income amount available to Ms S by a significant amount), I feel that on balance it would have been reasonable for NewDay to have concluded that Ms S would most likely have been able to afford that further credit limit increase, such that I don't feel that NewDay acted unfairly towards Ms S by implementing that increase.

August 2018 – Brand P account application

As discussed above, when Ms S applied for the Brand P account in August 2018, she told NewDay that she was employed with a gross annual income of £24,500. However, it's notable that in the two months since the last Brand A credit limit increase in June 2018, Ms S's total exiting debt amount had increased considerably, from £5,000 to £9,300.

This is a significant increase, and given that NewDay have a responsibility to ensure that Ms S could sustainably afford to repay any new or further credit being offered to her, I feel it's important at this point to determine roughly how much Ms S would have had to pay towards her existing credit commitments to be able to repay them in a sustainable way.

I would generally consider sustainable affordability to be where a consumer can afford to make monthly payments where at least as much capital balance is being repaid as is monthly interest. For credit balances where the annual interest rate is similar to those being provided to Ms S by NewDay here (approximately 30% APR) this roughly equates to a consumer being able to make monthly payments of about 5% of the combined capital balance and monthly accrued interest amounts.

In the case of an existing unsecured debt balance of £9,300, this means monthly repayments of approximately £475. It's notable that Ms S gave a monthly living expenses amount of £700. While this figure would include existing credit commitments, it's unclear whether these were calculated using the criteria I outlined above or whether Ms S was making minimum monthly payments – although looking at Ms S's Brand A management history from February to May 2018 (months where Ms S appears not to have taken further credit) it notable that her Brand A account balance wasn't reducing. And so, it appears more likely that Ms A was making payments towards the account closer to the minimum amount required to sustain the account without taking the balance of the account over the credit limit, rather than making payments to reduce the account balance.

It's also notable from the Brand A account data that, following the credit limit increase to £3,000 in June 2018, Ms A's credit file no longer shows that any of her other existing credit commitments are in arrears – as had been the case for several months prior to that credit limit increase. This appears to suggest that Ms S may have used the further credit provided to her by NewDay to clear credit arrears elsewhere – using credit to repay credit – which I find difficult to consider as being sustainable and which is potentially another indicator of financial difficulty.

All of which means that I feel that the information that NewDay had available to them when considering Ms S's application for the Brand P account should have given them cause to assess Ms S's creditworthiness at that time in greater detail, and that if they had, it should have been apparent to NewDay that Ms S most likely wasn't in a financial position whereby she could sustainably afford any further credit at that time. And it follows from this that I do feel that NewDay did provide this credit account to Ms S irresponsibly such that I'll be provisionally upholding this aspect of Ms S's complaint.

June 2019 – Brand Z account application

When Ms S applied for the Brand Z account in June 2019, she told NewDay that she was employed with a gross annual income of £27,900, which equated to a net income of £1,845 per month. Ms S also declared monthly living expenses of £1,000, as well as monthly accommodation costs of £475. This left Ms S with declared disposable monthly income at that time of £370.

At that time, Ms S's total amount of existing unsecured debt had risen to £13,400, which is approaching half of her gross annual income. And again, while Ms S's declared living expenses would have included her exiting credit repayments, it's unclear from that declared amount whether Ms S was making these payments in a *sustainably affordable manner or not. It also should be noted that if we use the same criteria as previously explained to calculate sustainable affordable monthly payments on a balance of £13,400, this equates to £685 per month.*

Also that in the first half of 2019, Ms S hadn't been making payments to her Brand A account large enough to reduce the balance of the account, and that the balance of that account had increased to close to the full £3,000 limit by June 2019, which I feel strongly suggests that Mrs A wasn't making sustainable monthly repayments to her exiting credit commitments.

At the very least I feel that the above should have prompted NewDay to have undertaken more detailed checks into Ms S's financial position before approving her application for credit. And I feel that had NewDay undertaken more detailed checks – which I feel should reasonably have included a review of Ms S's current account statements for the months leading up to the application – then the information they would have gathered from those additional checks should have confirmed to them that Ms S's financial position was such at that time that she wouldn't in all likelihood be able to afford any further credit at that time.

I say this because, having reviewed Ms S's current account statements for the months leading up to the credit limit, it's notable that in the two months immediately prior to the application Ms S had made payments of over £1,800 toward credit repayments, which equates to over £900 per month. It's also notable from the statements that Ms S began repaying a payday loan during that time, and that she regularly maintained the balance of her account in an overdrawn position.

As such, taking all the above into account, I don't feel that NewDay should have approved Ms S's Brand Z account application, and I'll be provisionally upholding this aspect of this complaint in Ms S's favour.

<u>September 2020 – Brand A credit limit increase from £3,000 to £4,000</u>

In September 2020, NewDay's most recent direct understanding of Ms S's income was from the Brand Z application in June 2019, when Ms S told NewDay she was employed with a gross annual income of £27,900.

In the months leading up to the Brand A credit limit increase in September 2020, NewDay assessed Ms S's total existing unsecured debt to have grown to over £21,500. This is a large percentage of Ms S's gross annual income, and almost equal to her net annual income, which would have been around £22,500 at that time.

This amount of unsecured debt is a significant increase from the £13,400 that Ms S had at that time of the Brand Z application just over a year before, and I feel that it clearly represents an unsustainable amount of borrowing on the part of Ms S such that this credit limit increase shouldn't reasonably have been offered to Ms S by NewDay. And I'll be provisionally upholding this aspect of Ms S's complaint on that basis.

<u>November 2020 – Brand M account application</u>

When Ms S applied for a Brand M account in November 2020, she told NewDay that she was employed with a gross annual income of £28,500. NewDay also assessed Ms M as having total unsecured debt at that time of £23,900.

This amount of total unsecured debt would likely have been more than Ms S's annual net income, which would have been around £23,000 at that time, and as such I'm satisfied that it didn't represent a sustainable amount of debt for Ms S and that it should have been apparent to NewDay from this information that the provision of a new line of credit to Ms S shouldn't have taken place.

Summary

In consideration of all the above, my provisional decision here is that while I feel it was reasonable for NewDay to have approved Ms S's initial Brand A account application, and to have increased the credit limit on that account up to £3,000, which took place in June 2018, I feel that all subsequent provisions of credit past that date weren't provided responsibly by NewDay and shouldn't have been offered to Ms S.

These include all three subsequent account applications (Brands P, Z, and M) as well as all credit limit increases on the Brand A account which took place after June 2018.

In response to my provisional decision, both Ms S and NewDay confirmed they were happy to accept the findings of my provisional decision. As such, I see no reason not to issue a final decision upholding this complaint in Ms S's favour on the basis explained above, and I can confirm that my final decision is that I do uphold this complaint on that basis accordingly.

Putting things right

Brand A

NewDay must reimburse to Ms S's Brand A account, all fees and charges that were incurred or accrued on the account after the credit limit increase to £4,000 which took place in September 2020.

NewDay must also reimburse to that account all interest incurred on the account for any portion of the balance over £3,000 from September 2020 onwards.

If these reimbursements result in a credit balance in Ms S's favour, NewDay must pay this balance to Ms S along with 8% simple interest calculated to the date of repayment.
If the above reimbursements result in a balance remaining for Ms S to pay, NewDay must contact Ms S to arrange an affordable repayment plan with her.

NewDay must also remove all adverse credit reporting relating to this account from September 2020 onwards, on the condition that there is no balance remaining on the account for Ms S to pay. If there is a balance remaining for Ms S to pay, NewDay must make the credit file amendments instructed above when Ms S has fully repaid that balance.

Brands P, Z, and M

NewDay must reimburse these accounts, all fees, charges, and interest that were accrued or incurred on the accounts from the point that the accounts were opened.

If these reimbursements result in one or more of the accounts having a credit balance in Ms S's favour, NewDay must pay this balance to Ms S along with 8% simple interest calculated to the date of repayment.

If the above reimbursements result in a balance remaining for Ms S to pay, NewDay must contact Ms S to arrange an affordable repayment plan with her.

NewDay must also remove all adverse credit reporting relating to these accounts from the point that the accounts were opened, on the condition that there is no balance remaining on the accounts for Ms S to pay. If there is a balance remaining for Ms S to pay on one or more of the accounts, NewDay must make the credit file amendments instructed above for those specific account when Ms S has fully repaid the balance outstanding on those specific accounts.

Additional Points

If it's the case that following the reimbursements instructed above, there are balances owed to Ms S on some accounts, but balances remaining for Ms S to pay on other accounts, NewDay may use the balances owed to Ms S (inclusive of the 8% interest) to repay the balances that remain for Ms S to pay, although they must provide a clear explanation to Ms S as to what they have done.

Finally, it's my understanding NewDay have already made some reimbursements to Ms S on 3 February 2022. It's acknowledged and expected that NewDay would take these already paid reimbursements into account when calculating any amounts that may still be due to Ms S based on the above, and that NewDay would provide clear information to Ms S of any calculations they have undertaken in this regard.

My final decision

My final decision is that I uphold this complaint against NewDay Ltd on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 4 October 2022.

Paul Cooper
Ombudsman