

The complaint

Mrs T complains that NewDay Ltd irresponsibly lent to her.

Mrs T 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 Mrs T herself.

What happened

Mrs T applied for a branded NewDay credit card in January 2018 and she was accepted with a £300 credit limit. Mrs T complained to NewDay that it was irresponsible to lend to her.

NewDay did not uphold Mrs T's complaint. They said that they had considered the information she included on her application, such as being self employed with a gross annual income of £5,000 and having unsecured debt of £1,000. They also said that external information available to them showed that she had five defaults, totalling £7,400, with the last one occurring 13 months prior to her application, one public record, no payday loans and no accounts in arrears.

Mrs T brought her complaint to our service. Our investigator upheld her complaint. He said that the lending was unaffordable for Mrs T as she had £1,000 of unsecured debt against a low income of £5,000. He concluded that the lending was not affordable or sustainable, so he said NewDay should refund the fees and charges Mrs T had incurred and use this to reduce any outstanding balance. He said if this created a positive balance then this amount should be paid back to Mrs T, with 8% simple interest added and any adverse information should be removed from her 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 Mrs T would struggle with the credit card payments. They said that her minimum payments would have been £10 a month or less, therefore this would have been stable for her.

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 Mrs T, 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 looked at what checks NewDay said they did prior to accepting Mrs T's application. They said at the time of applying for the credit card, they considered the information that Mrs T had given them, such as her being self employed, with income of £5,000 a year and they

looked at external data available to them. NewDay said that the data showed she was not in arrears at the time of the application on any of her accounts.

So I've considered if the checks that NewDay carried out were proportionate to the level of credit that Mrs T was given. And despite Mrs T being approved for a relatively modest credit limit, compared to her gross income, I'm persuaded there are other factors which should have persuaded NewDay to make further checks and I'll explain why below.

Mrs T's income was from self employment, And the income was declared as £5,000 per year. But the application data showed that Mrs T had only been self employed for six months by this point. So it would be unlikely that her income would be stable or that she would be able to realistically know what she would make on a yearly basis. Given that Mrs T had become self employed after she had defaulted on her previous accounts (five times) and the last one was only 13 months prior, then I'm persuaded that NewDay should have made further proportionate checks to ensure the borrowing was affordable for her, especially considering her low income and £1,000 of active unsecured borrowings at the time of her application.

Although Mrs T had defaulted on other credit agreements, she still had other outstanding balances of £7,400 at the time of the application, and it could be possible that Mrs T would be making payments towards these debts and the companies she owed this money to would expect her to do so, in the same way that NewDay would likely expect a customer who has defaulted on one of their accounts to try and make payments to reduce the outstanding balance owed to them. So while Mrs T had active debt of around 20% of her gross income, she had total outstanding balances in her name which exceeded 150% of her gross income at the time of her application.

Mrs T said there was £20,000 of other household income on her application, however, NewDay would need to ensure that the credit limit was affordable and sustainable for Mrs T based on her individual circumstances. The credit card was in her name and she alone would be responsible for payments. Nobody else should be expected to make payments on her behalf, even if they earn more money than her. So I'm not persuaded that this should be a reason why NewDay shouldn't have carried out further checks based on the recent financial difficulty that Mrs T had which led to the multiple accounts defaulting. I say this as it would be fair to say that if Mrs T had access to the other household income, it would be reasonable that she may have been able to avoid these other accounts defaulting.

So, I would have expected NewDay, as part of a proportionate check, to ask for further information from Mrs T to ensure that a £300 credit limit would be affordable and sustainable for her. They could have done this by contacting Mrs T to discuss her personal circumstances at the time, or they could have asked for information about her income and outgoings, such as requesting her recent bank statements, to see whether the credit limit would be sustainable and affordable for Mrs T.

So I asked Mrs T if she could provide her bank statements for the time period before her 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 her and to ensure she could make payments in a sustainable manner based on the reasons I've already mentioned.

I've looked at Mrs T's bank statements that she's sent us from June 2017-December 2017. It appears that Mrs T was having financial difficulties prior to being accepted for her NewDay account. I say this as the bank statements show that Mrs T did not have enough money in her account to pay her direct debits without entering an unauthorised overdraft on seven occasions. So I'm satisfied that if NewDay saw these statements as part of a proportionate

check, that they would realise that it would be fair to say that Mrs T couldn't manage her finances around this time and so she couldn't even afford a modest credit limit based on her past financial circumstances and her current circumstances when she was approved for the credit card.

I've considered what NewDay have said about her minimum payments would have been £10 a month or less, therefore this would have been stable for her. But as Mrs T did not have enough money in her bank account to pay for a direct debit to a water company for £3.74 on occasion, then I can't say I agree with this. In addition, if Mrs T was only paying her minimum payment but she had used the credit limit on her card, then the outstanding balance would not have been repaid in a reasonable timeframe. Considering interest which would be added to the account if Mrs T was only making payments of £10 or less, it would likely take her several years to fully repay the outstanding balance (even assuming she didn't use the card again).

So for the reasons I've already given, it appears that even a modest payment was not affordable and sustainable for Mrs T and this became a reality within a few months of Mrs T's account being opened. So I'm satisfied that if NewDay had carried out proportionate further checks as I've detailed above, they would have seen that it would be extremely likely that even a relatively modest credit limit would not be affordable or sustainable for Mrs T. And they would have been able to foresee the financial difficulty Mrs T would have even to make relatively low repayments, which I'm persuaded it should have resulted in NewDay not approving her for the credit card. So it follows I intend to ask NewDay to put things right for Mrs T."

I invited both parties to let me have any further submissions before I reached a final decision. Mrs T accepted the provisional decision. NewDay said they had no further information to add 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 and I intend to ask 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;

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 T 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 T's credit file;

Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mrs T for the remaining amount. Once Mrs T 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 T how much they've taken off. They should also give Mrs T 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. 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 T to accept or reject my decision before 7 October 2022.

Gregory Sloanes
Ombudsman