

The complaint

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

Mr M 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 M himself.

What happened

Mr M was accepted for a NewDay branded credit card in May 2018 with a £1,200 credit limit. This was increased to £1,950 in January 2019 and later increased to £3,450 in March 2020. Mr M says that NewDay irresponsibly lent to him and he made a complaint to them.

NewDay did not uphold Mr M'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 £32,600 and having unsecured debt of £7,500. They also said that external information available to them showed that he had previously defaulted on an arrangement with a balance of £4,300, which was 56 months prior to his application, he had a public record which was 48 months prior to his application, no payday loans and no accounts in arrears.

Mr M brought his complaint to our service. Our investigator upheld his complaint. She said that the opening lending checks were proportionate, and a £1,200 credit limit was reasonable. But NewDay should not have increased the credit limit for the account based on how Mr M was managing his NewDay account, incurring overlimit charges and withdrawing cash from the account several times.

Our investigator said NewDay should refund the fees and charges Mr M had incurred over £1,200 and use this to reduce any outstanding balance. She said if this creates a positive balance then this amount should be paid back to Mr M, 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 M would struggle with the credit card repayments.

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 M, 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 - £1,200

I've looked at what checks NewDay said they did when initially approving Mr M's application. I'll address the credit limit increases later on. NewDay said they looked at information provided by credit reference agencies and information that Mr M had provided before approving his application.

I'm satisfied that the account opening checks were proportionate. I say this as the information showed that Mr M had external borrowings of £7,500 when he was approved for the account. Mr M had declared an annual income of £32,600 at the time, so it would appear that the initial credit limit may be affordable for Mr M as the initial credit limit was £1,200.

But that's not all NewDay's data showed. The data also showed that Mr M had adverse credit data in the form of a default and a public record. So NewDay would have been aware that Mr M had previously not maintained his agreements. But the data also showed he had no accounts in arrears, no repayment plans and that the adverse credit data was four years prior to his application.

It may help to explain here that, while information like a default on someone's credit file may often mean they're not granted further credit – they don't automatically mean that a lender won't offer borrowing. Here, NewDay considered the information that Mr M had on his credit history and still made a decision to lend which, in the circumstances, I think was reasonable.

January 2019 credit limit increase - £1,200 to £1,950

I've looked at the information that NewDay had available to them when they increased Mr M's credit limit to £1,950. They increased the credit limit by £750, which was an increase of over 50%. NewDay had gathered a lot of information about how Mr M had used his account since he opened the account and they had gathered a lot of external data from credit reference agencies which showed how Mr M 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 M's account since it was opened. The data appears to show that Mr M had made several transactions which incurred a cash transaction fee. While Mr M would be free to use his account as he 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 Mr M would choose to incur £36 in cash transaction charges over a four month period if he had money in his bank account which wouldn't have cost him to use.

But this is not all that NewDay's data showed. It shows that the balance of Mr M's account had exceeded his credit limit over consecutive months and within four months prior to his credit limit rising by over 50%. So this could also indicate that Mr M was not managing his finances well as this was not an isolated instance. Mr M paid roughly the minimum payment to his account. So a combination of these factors may indicate that Mr M may not be able to sustain a higher credit limit.

So, I would have expected NewDay, as part of a proportionate check, based on the reasons I've given, to ask for further information from Mr M to ensure that a £1,950 credit limit would be affordable and sustainable for him. They could have done this by contacting Mr M 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 M.

So I asked Mr M if he could provide his bank statements for the time period before the credit limit was increased, as I'm persuaded this is something that NewDay could have done as part of a proportionate check to see if the credit limit increase 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 M did not respond to any requests to provide me with his bank statements.

While I've considered the accounts and total balances which have defaulted, I've also considered that a customer's past behaviour would not always be indicative of how they may manage an account in the future. Although Mr M had a history of not maintaining some of his credit agreements, I can't say that this factor alone makes a lending decision automatically unaffordable or unsustainable.

So on the face of it, it does look like NewDay should've made further checks here. 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 M 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.

March 2020 credit limit increase - £1,950 to £3,450

I've looked at the information that NewDay had available to them when they increased Mr M's credit limit to £3,450. They increased the credit limit by £1,500, which was nearly double the previous credit limit and nearly three times the original credit limit. NewDay had gathered a lot of information of how Mr M had used his account since the last credit limit increase 14 months earlier. And they had gathered a lot of external data from credit reference agencies which showed how Mr M 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 M's account since the credit limit was last increased. The data appears to show that Mr M had made several transactions - totalling £1,171.99 which incurred cash transaction fees. In addition, he also asked NewDay for a money transfer of £260 in November 2019, only four months prior to the credit limit increase. As I've previously mentioned, while Mr M would be free to use his account as he 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 Mr M would choose to incur £49.20 in cash transaction charges since his last credit limit increase if he had money in his bank account which wouldn't have cost him to use.

But this is not all that NewDay's data showed. It shows that Mr M had made a late payment four months prior to his credit limit increase. This may be an oversight on Mr M's part in forgetting to make a payment on time, so I can't say this factor alone would be a sole reason why NewDay should not have increased his credit limit. But there are other factors which I'm persuaded that may have showed signs that he was suffering financial difficulty which NewDay should have been aware of and I'll explain why.

Mr M appears to have borrowed to pay off the majority of his balance in June 2019. I say this as the total payments he made that month were £1,928.01. But based on his net income, it would be extremely unlikely that this payment was as a result of his disposable income, especially given that Mr M had previously only managed to pay around the minimum payment. So while he didn't owe NewDay anything in August 2019, he had utilised the majority of credit on his NewDay credit card again in the month prior to NewDay almost doubling his credit limit, as NewDay's data showed he owed them £1,631.63 in February

2020.

NewDay's data also shows some concerning information. From the data they sent us, there appears to be a financial difficulty marker showing from June 2019-August 2019. But that's not all. Their data shows that on a separate account, that since the last credit increase, he was up to five months in arrears on the account. The data also shows he was in arrears on another account in November 2019 by one month. This would indicate that Mr M was not able to service all of his financial commitments for a prolonged period of time and I'm not persuaded that these issues can be described as an oversight.

I've noticed that Mr M had brought these accounts in order before his credit limit was increased to £3,450, however, I'm persuaded that based on several factors such as how Mr M managed his account, frequently incurring cash charges, generally only making roughly the monthly payment, appearing to borrow money to pay a lump sum off his credit card, only to utilise the majority of credit again, the late payment, the financial difficulty markers in between the last credit limit increase and this credit limit increase, the one month in arrears on an external account and the five months in arrears on his other NewDay account since his last credit limit increase, that NewDay should not have nearly doubled Mr M's credit limit here as these factors show that a higher credit limit may not be affordable for Mr M, or that he would not be able to repay the outstanding balance over a sustainable period of time without borrowing further. So it follows I intend to ask NewDay to put things right for Mr M."

I invited both parties to let me have any further submissions before I reached a final decision. Mr M did not respond to 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 in part 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.

NewDay should also rework the account, refunding all interest and charges that have been applied to any balances above £1,950. If the rework results in a credit balance, this should be refunded to Mr M 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 2019 regarding this account from Mr M's credit file.

Or, if after the rework the outstanding balance still exceeds £1,950, NewDay should arrange an affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the outstanding balance, any adverse information recorded from January 2019 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 M how much they've taken off. They should also give Mr M 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 M to accept or reject my decision before 12 October 2022.

Gregory Sloanes
Ombudsman