

The complaint

Ms P complains that NewDay Ltd irresponsibly provided her with two credit card accounts and subsequently increased the credit limits for both over time. She says had it completed reasonable and proportionate checks it would have identified both the issuing of the cards and the credit limit increases were unaffordable for her.

What happened

Ms P opened two different credit cards accounts with NewDay. The first she opened in May 2019 and was given a credit limit of £500 ("Card 1") and the second in July 2019 with a credit limit of £450 ("Card 2").

Ms P says that when applying for both credit cards she declared she was earning an annual income of between £20,000 and £26,000, although her actual earnings were much lower. She says she had based her earnings for each application on what she anticipated she would earn via various part-jobs that she was planning to combine with her full-time studies at university. Ms P says that when she applied for both cards, she also had unsecured debt of £6,500 which she declared, and her credit rating was fair.

NewDay offered Ms P a total of four increases to the credit limit for Card 1. These were as follows: February 2020 - £1,500, October 2020 - £2,500, March 2021 - £3,300, and in July 2021 - £4,050.

NewDay offered Ms P a total of three increases to the credit limit for Card 2. These were as follows: March 2020 - £1,700, August 2020 - £3,200 and November 2021 - £4,200.

Each time NewDay increased the credit limits for the cards, it wrote to Ms P setting out that if she didn't wish to have the limit increased then she should call and inform it and the limit would remain unchanged. Ms P didn't opt out of any of the increases made to the credit limits for either card.

Ms P says that as her earnings never met the amount she had projected, she fell into increasing financial difficulty and her unsecured debt increased. This led her to struggle to cover her everyday basic expenses and she says she has been living off her debt.

Ms P complained to NewDay about its lending practices as she said it should have conducted adequate affordability checks on both her applications for the credit cards and when it increased the credit limits. If it had, Ms P says, NewDay wouldn't have agreed to provide her with the two credit card accounts nor increased the credit limits. She said she couldn't afford to pay back what she owed particularly because of the subsequent credit limit increases and added interest. Ms P asked NewDay to write off the debt.

NewDay didn't uphold Ms P's complaint. It said that it is an instant credit provider and most of its applications were completed online. This meant that it didn't require evidence of income and expenditure by way of documents such as bank statements, but instead it used data submitted by the applicant and information from their credit file. NewDay said that it had based its assessment on what Ms P had said about her income, its estimate of

her expenditure and what it could see on her credit file. It said that Ms P met its acceptance criteria and that the credit card accounts with limits of £500 for Card 1 and £450 for Card 2 had been provided correctly.

In respect of each of the credit limit increases, NewDay said that as part of its commitment to responsible lending it would regularly review how a customer used their account as well as how they were managing other credit commitments. It said it made risk-based assessments to ensure it was lending appropriately and these reviews could lead to either an increase or decrease in a credit limit. NewDay said it was satisfied that each of the increases in the credit limits of both cards had been handled correctly. It also said that Ms P had been provided with a 40-day opt-out when it had notified her of the increase to her balance.

NewDay said it had been Ms P's decision to take these two credit accounts, it was her responsibility to manage and maintain them and also to notify it if there were circumstances that affected her ability to manage them.

Ms P was unhappy at NewDay's decision and complained to this service. She said NewDay hadn't conducted adequate affordability checks when either agreeing to provide the two credit accounts nor when it had increased the credit limits. She said she was now struggling to make the payments both because of the interest that had been charged and the size of the balances. Ms P said she struggled to cover her other essential expenditure.

Our investigator recommended that Ms P's complaint should be partially upheld. He said that the checks carried out by NewDay for the initial credit limits had been reasonable and proportionate and no adverse information had been revealed. He said that given the size of the lending along with what Ms P had told NewDay about her income at the time of applying, that it looked like she had enough disposable income each month to sustainably make the repayments on the lending in question over a reasonable period of time. Our investigator said he didn't think NewDay needed to have carried out more detailed checks and he wasn't persuaded that it had any reason to think that the initial lending nor the first credit limit increase on either of the credit cards was likely to have been unsustainable or unaffordable for Ms P.

However, our investigator said that prior to the second increase on each of the credit card accounts (October 2020 for Card 1 and August 2020 for Card 2) he thought there were unanswered questions about Ms P's financial circumstances that NewDay would have been aware of. He said NewDay should have sought answers to these questions and so ensured the borrowing was sustainable for her. Our investigator said he'd seen that Ms P had been charged for two cash advances on Card 2 prior to the August 2020 increase and that in light of the limits increasing to £3,200 (Card 2) and £2,500 (Card 1) then a more thorough check of Ms P's financial circumstances should have been undertaken. He said he didn't think that for these two limit increases NewDay had conducted reasonable and proportionate checks.

Our investigator said that had NewDay verified Ms P's income and expenses by asking for example for copies of her bank statements or payslips then it would have discovered her income was substantially less than she had declared. It would also have revealed that she appeared to be struggling financially and her bank account was in constant overdraft. He said he thought these two increases to Ms P's credit card limits had been irresponsible as had the subsequent increases in March, July and November 2021.

The impact of these credit limit increases on Ms P had, said our investigator, led her to increase the size of her debts and struggle to make repayments. He said that to put

things right he thought NewDay should do the following:

- Refund all the interest and charges Ms P had paid over £1,500 since the first increase on Card 1.
- Refund all the interest and charges Ms P had paid over £1,700 since the first increase on Card 2.
- If there was borrowing still in place, it should reduce the outstanding capital balance by the amount calculated above.
- If there remained an outstanding capital balance after the actions above, it should ensure that it isn't subject to any historic or future interest and/or charges. However, if there was a positive balance, then the amount in question should be given back to Ms P with interest added to that surplus.
- Remove any adverse information recorded on Ms P's credit file.

Ms P agreed with our investigator's view but NewDay disagreed. It said that it had reviewed sufficient information when making its decisions about agreeing both of the credit card accounts and also the subsequent credit limit increases. NewDay said that Ms P had used both accounts well, staying within the agreed limits and paying more than the monthly contractual minimum payments, she had occasionally cleared her statement balance.

In respect of the cash advances, NewDay said this was a service which was available via the cards and it wasn't a cause for concern even if it was used regularly. However, Ms P had made only limited use of this facility. It said it was satisfied that its checks had been proportionate.

As the parties were unable to reach an agreement the complaint has been passed to me. I issued a provisional decision along the following lines.

We've set out our approach to unaffordable or irresponsible lending complaints on our website and I'd considered this when deciding Ms P's complaint.

The rules and regulations in place throughout NewDay's lending relationship with Ms P required it to carry out an assessment of whether she could afford to repay what she owed in a sustainable manner. Any such assessment needed to be "borrower focused", meaning they should focus on the affordability of repayments and the potential for adverse financial impact on Ms P, rather than on the likelihood the credit would be repaid. Any assessment needed to be proportionate to the circumstances.

There isn't a prescribed list of checks a lender should make. But the kind of things I would have expected lenders to consider were 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 would also have expected it to have had access to information on the operation of each of the accounts. And I would look to see if the checks carried out had been proportionate to the amount of credit offered.

However, this wasn't an exhaustive list and even if not all of these checks had been carried out, I wouldn't necessarily think the lending had been irresponsible.

Here, Ms P had applied for both of these credit cards online and NewDay had explained that it wouldn't seek bank statements or payslips from an applicant when considering an application. It said that instead it verified a consumer's financial circumstances by looking at data provided by the applicant and also by the credit bureau. The applicant was also asked to confirm the information provided was true.

NewDay said its credit card accounts were aimed at consumers who are trying to rebuild their credit rating so it wouldn't automatically decline applications from those with a low income or a poor credit history.

The initial credit limits for Cards 1 and 2

I'd seen that Ms P didn't appear to have given her true income when making either application for the two credit cards.

Card 1 - Ms P had applied in May 2019 and declared she earned £20,000 per year and had unsecured debts of £6,500 which equated to about 32% of her annual income. She said her rent and expenses were £900 per month. These figures appeared to have left over half of her income as disposable. Her credit file showed she had seven active accounts (which would have included bank accounts), and there were no missed payments, arrears or defaults recorded. The underwriter had recorded her as being "*medium indebtedness*".

Looking at the information and the level of credit that NewDay provided (£500), I agreed that the information considered by NewDay wouldn't have highlighted that Ms P would find repayments unsustainable. I thought its checks were reasonable and proportionate in the circumstances so I couldn't reasonably say that the provision of Card 1 had been irresponsible lending on the part of NewDay.

Card 2 - Ms P had applied in July 2019 and declared her earnings as £26,000 a year and her unsecured debt as £6,400 which equated to around 25% of her annual income. There were no amounts recorded against her rent or expenses and the underwriter had noted that she had no accounts in arrears and no defaults though they had also noted that she was "*high indebtedness*". A limit of £450 was agreed by NewDay.

Again, looking at the information and the level of credit that NewDay had provided to Ms P for this credit card account, I agreed that although there was a change in her "*indebtedness*" rating, there was nothing highlighted that would have indicated Ms P would have struggled to sustain repayments. I thought the checks carried out by NewDay were reasonable and proportionate and that NewDay hadn't irresponsibly provided Card 2 to Ms P.

Although I thought the provision of the two credit card accounts to Ms P weren't the actions of an irresponsible lender, I needed to then consider if the credit limit increases required NewDay to look beyond the information it had about Ms P.

First credit limit increases – February 2020 and March 2020

Card 1 - The first increase for Card 1 had been around 10 months after Ms P had opened the account. The limit was increased to £1,500. I'd seen that prior to this uplift, Ms P hadn't exceeded the original limit and had paid more than the minimum contractual payment on a number of occasions. She had also cleared the balance off in full in October 2019.

Looking at her credit file, I'd also seen that at that time her overall outstanding debt had been reducing. Ms P had used the card regularly, and I thought it was fair to say she had been managing her account. The evidence from the credit agencies also indicated she had been managing her other credit accounts. I therefore thought that the limit rise in February 2020 was based on reasonable and proportionate checks.

Card 2 – The first increase for Card 2 had again been around 10 months after Ms P had opened the account. The information before NewDay was the same picture as it had

been when it increased the credit limit for Card 1. At that time, Ms P was only using around 50% of Card 2's limit, she was making regular payments and her overall outstanding credit balance was reducing. I was satisfied that this increase would have been found to be sustainably affordable for Ms P by NewDay on the information it had and that its checks had been reasonable and proportionate.

Second credit limit increases – August and October 2020

Card 2 – the credit limit had been raised for a second time first for this card in August 2020 to £3,200. Card 1's credit limit was raised two months later.

Our investigator had said that it was these second credit limit rises which would have required NewDay to go further in its checks than it had previously. This was because prior to the limits increasing Ms P had used the cash advance facility twice. He said this was evidence that further details as to income and outgoings should have been sought to ensure these rises were sustainably affordable for Ms P. NewDay disputed this view.

I'd seen that in May 2020, Ms P had taken a cash advance of £600 via this facility but I'd also seen that the following month she had cleared the outstanding balance of the credit card account which had been around £1,150. Additionally, there had been a reduction of the overall outstanding balances of Ms P's credit accounts.

I couldn't see that Ms P had been regularly using the cash advance facility for this card, her account appeared to have been well managed and there was no adverse information on her credit file. I couldn't reasonably say that, taking all the available information together, the use of the cash advance facility in these circumstances should have raised a red flag with NewDay that a further increase in its lending to Ms P may be sustainably unaffordable and it needed to take a deeper look at her income and outgoings. I thought the overall picture appeared to show that Ms P was managing her credit accounts and her overall debt was reducing meaning that an increase of this size, based on an income of £26,000 per year was sustainably affordable. I thought the checks carried out by NewDay for this second rise had been reasonable and proportionate.

Card 1 - The second rise for Card 1 had occurred in October 2020. I'd seen that, before this rise Ms P had again used the cash advance facility provided by Card 2 but only for an advance of £50. There had been no cash advances using Card 1, though it had this facility. Although the overall outstanding balances on Ms P's accounts were by now increasing the total amount owed had still been lower than when she had taken out the card.

I thought that taking into account Miss P had stated she had an annual income of between £20,000 and £26,000; that she appeared to be managing this and her other credit accounts well plus there was no adverse information on her credit file that this credit limit increase appeared to be sustainably affordable for her. I thought NewDay's checks on Ms P had been proportionate and reasonable for this second increase in the credit limit.

Third and subsequent credit limit increases – March, July and November 2021

Card 1 - In March 2021 NewDay had increased the credit limit to £3,300. However, the information from Ms P's account had now changed. It showed that despite making regular payments Ms P hadn't really reduced the credit limit on this account and, from the information on her credit file, her other outstanding balances had increased.

The outstanding credit balance was now higher than when she had taken out the credit

card. And since her indebtedness had been considered high at the time she had taken out Card 2, I thought the increase in the amount she'd owed and her level of earnings (£20,000 to £26,000 per year) meant that before increasing her credit limit by a further £800 that a more detailed check on the affordability of this rise should have been conducted by NewDay.

The information before NewDay had been suggesting that things had potentially changed for Ms P financially and so, before it increased the available credit to her, it would have been reasonable and proportionate for it to have sought details about her income and outgoings. I didn't think this further increase had been sustainably affordable for Ms P. There had been a further credit limit rise for Card 1 in July 2021 to £4,050. As her circumstances hadn't improved from March 2021 and her debts were not reducing, then for the same reasons as set out above, I didn't think New Day had carried out proportionate and reasonable checks. I didn't think this increase had been sustainably affordable for Ms P.

Card 2 – In November 2021 the credit limit was raised to £4,200. Although Ms P hadn't defaulted on payments for this or her other credit accounts nor had she exceeded the credit limit set, she was now using around 80% plus of the £3,200 limit. Ms P's overall credit debt was also higher than when she had taken the credit card out. I'd seen she had made use of the money transfer facility in July and September 2021.

I thought in these circumstances that it would have been proportionate and reasonable for NewDay to have asked further questions about Ms P's financial situation to verify that the repayments on the card were affordable, particularly as it had earlier increased Card 1 by £800. I thought the information before it was indicating a change to Ms P's financial circumstances that reasonably needed to be investigated as her indebtedness had now been greater than it had been before.

I didn't know what additional checks NewDay would have undertaken. If it had asked for proof of income or further details about Ms P's expenses, then looking at the bank statements she had provided to this service, I thought it would have been clear her income hadn't matched the amount she had declared on either of her applications forms. It would also have shown that her bank account was always making use of an overdraft facility to cover her payments. I thought it was reasonable to say that based on her income and expenses, Ms P didn't have the means available to her to sustainably pay the credit card limits following the increases for both cards in March, July and November 2021.

As Ms P had received benefit from the money she had borrowed, I thought it was fair that she remained liable for any remaining amount outstanding. But I intended to instruct NewDay to refund interest and charges to Ms P's Card 1 account for any amount borrowed over and above the limit of £2,500. In the event that the refunded interest and charges result in a surplus balance falling due to Ms P, then NewDay should also add interest of 8% simple to this figure.

As I also thought NewDay's decision to increase the credit limit for Card 2 from November 2021 had been inappropriate, I intended to ask it to refund all charges and interest on this account for any amount borrowed over £3,200. Again, in the event that the refunded interest and charges result in a surplus balance falling due to Ms P, then NewDay should also add interest of 8% simple to this figure.

Finally, I didn't believe that it was fair or reasonable for Ms P's credit file to be adversely impacted by NewDay's decisions. So, once the outstanding balances had been repaid, I intended to instruct NewDay to remove any related adverse information reported from

Ms P's credit file.

Neither Ms P nor NewDay has asked me to reconsider any part of my 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.

Although neither party has asked me to look again at my provisional decision, I have still reviewed the evidence and the conclusions I reached. I haven't changed my mind and still think that it would have been reasonable and proportionate for NewDay to have carried out further checks into the affordability of the credit rises for card 1 and 2 in March, July and November 2021. This is because the information before it was indicating that Ms P's financial circumstances had changed in March 2021. I also think that had it carried out these checks it would have seen that these credit rises weren't sustainably affordable for her.

For the reasons set out above, I'm partially upholding Ms P's complaint.

Putting things right

I'm asking NewDay to do the following:

- Refund all charges and interest relating to any balance owed above the limit of £2,500 on Card 1.
- Refund all charges and interest relating to any balance owed above the limit of £3,200 on Card 2.
- If an outstanding balance remains owed on either or both accounts once the refunds have been made, then it should contact Ms P to discuss a suitable repayment plan.
- If the effect of refunding all interest, fees and charges leaves a credit balance on either account, the balance should be treated as overpayments and returned to Ms P along with 8% interest from the date of payment until the date of settlement.
- Amend Ms P's credit file to reflect the new monthly balances after refund of interest and charges.
- Remove any related adverse information from Ms P's credit file once the outstanding balances have been repaid.

My final decision

As set out above, I'm partially upholding Ms P's complaint. I'm asking NewDay Ltd to do the following:

- Refund all charges and interest relating to any balance owed above the limit of £2,500 on Card 1.
- Refund all charges and interest relating to any balance owed above the limit of £3,200 on Card 2.
- If an outstanding balance remains owed on either or both accounts once the refunds have been made, then it should contact Ms P to discuss a suitable repayment plan.
- If the effect of refunding all interest, fees and charges leaves a credit balance on either account, the balance should be treated as overpayments and returned to Ms P along with 8% interest from the date of payment until the date of settlement.

- Amend Ms P's credit file to reflect the new monthly balances after refund of interest and charges.
- Remove any related adverse information from Ms P's credit file once the outstanding balances have been repaid.

If HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Ms P 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 P to accept or reject my decision before 20 October 2022.

Jocelyn Griffith
Ombudsman