

## The complaint

Mrs A complains that NewDay Ltd acted irresponsibly when it increased the credit limit on her credit card.

## What happened

Mrs A had a credit card account with NewDay. She says she was experiencing significant financial difficulties and was on a debt management plan. She was surprised when NewDay offered her several credit limit increases on her card and later invited her to apply for a loan. She says she accepted the credit limit increases and the loan.

She was granted the following credit limit increases on her credit card:

August 2018 - increase from £900 to £2,100

March 2019 - increase from £2,100 to £2,850

May 2019 - increase from £2,850 to £3,600

Mrs A says NewDay didn't check that the increases in credit were affordable or sustainable and there was no mechanism to safeguard her. She complained to NewDay.

NewDay looked into her complaint. It said it considered a range of information including information provided by Mrs A herself and data from external agencies before granting any credit limit increases on her credit card. It said it had no information at the time it granted the increases to inform it that she was on a debt management plan or that the loan was unaffordable. It only became aware of the debt management plan in February 2020. It said it had not acted unfairly or irresponsibly when it had granted credit limit increases on her credit card.

Mrs A referred her complaint to our service. Our investigator looked into her complaint. He thought that when the limit on her credit card was increased in August 2018, there was no evidence that NewDay was aware that Mrs A had entered into a debt management plan. He considered the external information NewDay relied on. This showed that there were no accounts in a repayment plan and Mrs A was consistently making her repayments and was within her credit limits. So, he thought NewDay hadn't done anything wrong when it increased the credit limit in August 2018.

Our investigator then looked at the subsequent increases. He said that by March 2019, NewDay would've been aware that Mrs A's circumstances had changed. She had increased borrowings, including from NewDay itself. He thought NewDay should've carried out additional checks to satisfy itself that the increased limit was affordable and sustainable. If it had carried out additional checks, he said NewDay would've found out about the repayment plan Mrs A had entered into and in those circumstances, he didn't think it would've increased the credit limit in March 2019 or in May 2019.

Our investigator said that NewDay should:

- Refund all interest and charges paid by Mrs A on the credit card since March 2019 and recalculate the capital outstanding on her account
- If there was a debit balance, NewDay should apply no further interest or charges to her account and arrange a suitable repayment plan with her;
- If there was a credit balance, NewDay should refund this amount to Mrs A together with 8% simple interest on this amount and
- NewDay should remove any adverse information recorded on Mrs A's credit file after March 2019.

NewDay didn't agree, so the complaint was passed to me to decide. I issued a provisional decision in which I said:

***What I've provisionally 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'd just point out that in this decision I'm only looking at Mrs A's complaint about her credit card. Her complaint about the loan has been looked at separately.*

*Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website. I've had this approach in mind when considering what's fair and reasonable in the circumstances of this complaint.*

*Did NewDay complete reasonable and proportionate checks to satisfy itself that Mrs A would be able to repay the agreement in a sustainable way?*

*New Day says that it assesses affordability by looking at a range of data including information provided by the applicant on the application form, data from external agencies which help it to estimate income and expenditure and data from credit reference agencies about other credit the applicant has. It doesn't ask the applicant to provide proof of income and expenditure and it says it's not required to do that under the relevant regulations.*

*The Financial Conduct Authority (FCA) in its Consumer Credit Sourcebook (CONC) states that a lender must undertake a reasonable assessment of the creditworthiness of a customer before providing credit or significantly increasing that credit. The creditworthiness check requires the lender to make reasonable and proportionate checks to satisfy itself that the borrower can afford the repayments and will be able to sustain the repayments. The lender is required to base its creditworthiness assessment on sufficient information. And, it can rely on information from the applicant and from external sources.*

*I've looked at the checks that NewDay carried out at each point:*

*The initial credit limit*

*The account appears to have been opened in or about January 2018. NewDay has provided evidence to show that it initially assessed Mrs A's application for credit on 30 December 2017 and it determined that it would initially offer her a credit limit of £250. But, the initial credit limit granted to Mrs A was in fact £900 – more than three times the amount that'd been set out in the underwriting comments. I asked NewDay to explain the difference between these two amounts – but it has failed to respond.*

*NewDay was aware from Mrs A's credit history that she'd defaulted on five previous credit facilities and the combined debt was in excess of £25,000. It did note on its records that the last default had occurred over 16 months previously. And, it decided she could afford a credit limit of £250.*

*So, I'm not satisfied, based on the documentation it has provided, that NewDay carried out reasonable and proportionate checks to warrant the initial limit of £900 which it set for Mrs A's account.*

*Mrs A has told us that she had first contacted a debt management agency in May 2015 and that she had various utility bills in arrears. Although there's no evidence of any debt management plan visible from looking at the credit file, given the information that was visible about defaulted accounts and taking account of the combined external debt, I think it would've been reasonable and proportionate for NewDay to ask Mrs A about her credit file history to see what arrangements, if any, she had in place to pay down the debts. If it had done that, I think it would've found out about the financial difficulties Mrs A has told us about and I'm not persuaded it would've granted her a credit limit of £900.*

#### August 2018

*NewDay carried out its affordability assessment at this point based entirely on information from external agencies. It did not contact Mrs A to confirm her income or expenditure. The increase in the credit limit was from £900 to £2,100 – so the limit was increasing significantly.*

*NewDay has provided a copy of the data it relied on. At this point, it appeared that Mrs A had been maintaining the repayments on her credit card. There doesn't appear to be any missed payments, late payments or over limit positions on her credit card. Her credit report showed that she was maintaining her repayments on her other credit facilities – although the historical position regarding the defaulted accounts was still visible.*

*Having looked at the information NewDay had access to including Mrs A's credit history and the fact that the credit limit was significantly increasing, I'm not satisfied it carried out reasonable and proportionate checks to satisfy itself that the increased limit was affordable. So, I've then considered what information further checks might have brought to light.*

*One of the things NewDay could have done to make further enquiries about whether the increase was affordable, was to ask Mrs A for copies of her bank statements, for the months leading up to the increase. So, I've looked at bank statements which Mrs A has provided for the period after May 2018. I can see that although the account remained in credit, with regular credits from salary payments, there were returned direct debits each month from May 2018. Some of these direct debits related to utility and other essential household bills. I don't see any evidence of the debt management plan payments Mrs A has told us about during the period prior to August 2018.*

*Having thought about everything, I think NewDay should've carried out further checks in August 2018 and if it had done that I think it would've become aware that Mrs A was experiencing difficulties managing her finances – with some essential household bills not being paid. And, I don't think it would have agreed to increase the credit limit in August 2018.*

### March 2019 and May 2019

Mrs A has told us that NewDay granted her a loan of £5,000 in December 2018. Just a few months later it increased her credit card limit again - from £2,100 to £2,850. Given the recent increase in her indebtedness, I agree with our investigator when he says that NewDay should have carried out additional checks before increasing Mrs A's limit at this time. If it had done that, I think it would've become aware that she'd started to make monthly repayments from her bank account under a debt management plan. And, I don't think it would've increased her credit limit either in March 2019 or subsequently in May 2019 when it increased the limit again to £3,600.

### Did NewDay act unfairly or unreasonably in some other way?

I haven't seen anything to indicate that NewDay has acted unfairly or unreasonably in any other way.

### **How to put things right**

As I don't think NewDay ought to have opened the account or provided subsequent credit increases, I've provisionally decided that I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But, I think Mrs A should pay back the amounts she borrowed. Therefore, NewDay should:

- Rework the account removing all interest and charges that have been applied since the date the account was opened.
  - If the rework results in a credit balance, this should be refunded to Mrs A 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 A's credit file.
- Or,
- if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mrs A for the remaining amount. Once Mrs A has cleared the balance, any adverse information in relation to the account should be removed from their credit file.

As NewDay has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

### **My provisional decision**

For the reasons given above my provisional decision is that I intend to uphold this complaint about NewDay Ltd.

I intend to require it to:

- Rework the account removing all interest and charges that have been applied since the date the account was opened.
  - If the rework results in a credit balance, this should be refunded to Mrs A 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 A's credit file.
- Or,
- if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mrs A for the remaining

*amount. Once Mrs A has cleared the balance, any adverse information in relation to the account should be removed from their credit file.*

*As NewDay has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.*

Mrs A responded to my provisional decision. She said she accepted the provisional decision in its entirety.

NewDay also responded to my provisional decision. It said it was unable to understand why the initial credit limit had been set at £900 in January 2018 when the information available on its files indicated this should've been £250. In the circumstances it said it agreed with my findings.

So, I now need to make my 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've considered the responses to my provisional decision. Both parties have agreed to accept my decision and I haven't received any new or further information. So, there's nothing that persuades me to change my view as set out in my provisional decision or the actions I think NewDay needs to take to resolve this matter.

### **My final decision**

For the reasons given above I uphold this complaint about NewDay Ltd. I now require it to take the following actions:

- Rework the account removing all interest and charges that have been applied since the date the account was opened.
  - If the rework results in a credit balance, this should be refunded to Mrs A 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 A's credit file.
- Or,
- if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mrs A for the remaining amount. Once Mrs A has cleared the balance, any adverse information in relation to the account should be removed from Mrs A's credit file.

As NewDay has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

*\*HM Revenue & Customs requires NewDay Ltd to deduct tax from any award of interest. It must give Mrs A a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or

reject my decision before 9 November 2022.

Irene Martin  
**Ombudsman**