

The complaint

Mr M says NewDay Ltd irresponsibly lent to him. He has requested that the interest and late payment charges he paid be refunded.

What happened

This complaint is about credit provided by NewDay Ltd across four credit card accounts.

The first credit card ('Marbles') was taken out in November 2018 with a credit limit of £600. This account had four credit limit increases as below:

- April 2019 - Credit limit increased to £1,500
- September 2019 - Credit limit increased to £2,250
- June 2021 - Credit limit increased to £3,000
- October 2021 - Credit limit increased to £4,000.

The second credit card ('Argos') opened in June 2020 with a credit limit of £500 and had three credit limit increases to £2,950 in July 2021. The third credit card ('Aqua') opened in August 2020 with a credit limit of £900 and had two credit limit increases to £2,900 in September 2021. The fourth credit card ('Amazon') opened in June 2021 with a credit limit of £500 and had one credit limit increase to £600 in November 2021.

Mr M says he's unhappy that NewDay Ltd provided credit on the account which he couldn't afford.

Our adjudicator thought that Mr M's complaint should be partially upheld. She thought that the initial credit, the first and second credit limit increase given to Mr M on the first credit card were acceptable. She felt that by the time the lending was given on the second credit card, proportionate checks should have alerted NewDay Ltd to financial difficulties for Mr M and so, NewDay Ltd didn't act fairly or reasonably in providing credit at that time or subsequently. The adjudicator thought that NewDay Ltd shouldn't have provided that second credit card or any further credit on the four credit cards. So, our adjudicator said that NewDay Ltd should pay back interest and charges it made as a result of the credit that was unfairly extended to Mr M.

Both NewDay Ltd and Mr M disagreed with the adjudicator's assessment, so, the complaint was passed to me to decide.

I issued my provisional decision in respect of this complaint on 11 November 2022, a section of which is included below, and forms part of, this decision. In my provisional decision I set out the reasons why I didn't agree with the adjudicator's view and that it was my intention not to uphold Mr M's complaint. I set out an extract below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've set out our general approach to

complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website.

I've read and considered the whole file, but I'll confine my comments to what I think is relevant. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

NewDay Ltd needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr M could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that NewDay Ltd should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the lower a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);*
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);*
- the greater the frequency of borrowing, and the longer the period of time during which a customer has been indebted (reflecting the risk that prolonged indebtedness may signal that the borrowing had become, or was becoming, unsustainable).*

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Our adjudicator thought that point was reached in June 2020, when the second credit card was agreed by NewDay Ltd. Our adjudicator thought that the credit increase was irresponsible lending and therefore thought the later credit cards and the credit card increases should not have been given as they post-dated the provision of the second credit card in June 2020. I think the point came earlier, in September 2019, when the credit limit on the first credit card was increased to £2,250. I'll explain why I say that.

It's not easy trying to decide complaints about unaffordability lending, but it's particularly hard in this case as Mr M has not been able to provide copies of his bank statements from the times in question. And, whilst I consider that NewDay Ltd could have performed more proportionate checks on Mr M's financial position throughout the period it lent to him, I'm not convinced that better checks would have always shown the lending to be unreasonable.

When the first credit card account was opened for Mr M in November 2018, NewDay Ltd's checks showed that Mr M had some previous defaults on other credit and a public record which were all more than a year ago. Mr M's existing other unsecured borrowings were modest (£800). But NewDay Ltd also noted that Mr M was using short term lending and owed £488 in payday loans. The initial credit limit on this first credit card was reasonably modest, considering the income Mr M had declared, and the monthly repayments for that

income would also have been relatively modest. So, considering all of this, and in the light of the income that Mr M declared to NewDay Ltd, and in the absence of any further evidence from Mr M, our adjudicator thought that it seemed unlikely that better checks would have put NewDay Ltd off providing the credit to Mr M, most likely. In effect, our adjudicator did not think the initial credit seemed unreasonable. And I agree.

The next credit limit increase was in April 2019, five months later, when the credit limit increased to £1,500. NewDay Ltd could see that Mr M had spent up to his existing credit limit. NewDay Ltd's checks also showed that Mr M's other unsecured borrowings had risen to over £1,000 and so had the amount owed on short term lending. So, considering all of this, and in the light of the income that Mr M declared to NewDay Ltd, and in the absence of any further evidence from Mr M, our adjudicator thought that it seemed unlikely that better checks would have put NewDay Ltd off providing the credit to Mr M, most likely. In effect, our adjudicator did not think the initial credit seemed unreasonable. And I agree.

But the next credit limit increase was in September 2019, just ten months after the initial credit was given, when the credit limit was increased to £2,250. At that time, NewDay Ltd could see that Mr M had again spent up to his existing credit limit. NewDay Ltd's checks also showed that Mr M's other unsecured borrowings had risen to over £23,000.

And as well as the above, NewDay Ltd should have had some thought about what Mr M's own management of his credit with them was telling them about Mr M's financial situation. In the ten months Mr M had the first credit card, his pattern of lending showed that Mr M spent up to his credit limits and seemed to have no ability to pay down his balance, once the new credit limit was reached. So, NewDay Ltd should have had some thought for how Mr M was likely to be able to repay the increasing credit it was providing

NewDay Ltd was making a large credit limit available to Mr M. And it knew that Mr M already had a significant amount of unsecured borrowing at the time. It also knew that this borrowing had been taken out largely in the few months before the credit increase. All of that suggested that Mr M might have been reliant on recently acquired unsecured credit which, allied to his existing credit with NewDay, should have suggested he might be struggling.

So, I think that a proportionate check should have seen NewDay Ltd confirm that Mr M had the income sufficient to afford the new credit, whilst he maintained his actual existing expenditure.

But NewDay Ltd had information from the checks it performed that should, in itself, have been sufficient to suggest that Mr M's financial situation was in some difficulty already. So, had it conducted proportionate checks, and paid proper attention to the information it acquired and already had on Mr M, I think that NewDay Ltd would have thought that it was likely that Mr M would have been unable to make payments on the increased borrowing, if used, whilst at the same time having to meet his daily living expenses and other credit commitments, most likely.

So, I think that proportionate checks would likely have shown NewDay Ltd that Mr M was in financial difficulty already in his management of his other debts and day-to-day living expenses. I also think there was a significant risk that further increases to his credit could have led to his indebtedness increasing unsustainably, such that he had no funds available to meet his debts and regular outgoings.

It follows that I think that Mr M lost out because NewDay Ltd provided him with further credit. In my view, NewDay Ltd's actions unfairly prolonged Mr M's indebtedness by

allowing him to use credit he couldn't afford over an extended period of time and the interest being added would only have the effect of putting him into further debt.

It follows that NewDay Ltd should put things right.

Putting things right – what NewDay Ltd needs to do

As I don't think NewDay Ltd ought to have provided Mr M with the credit card increase in September 2019, or to have provided any of the credit in the three other credit cards. So, I don't think it's fair for NewDay Ltd to be able to charge any interest or charges under the credit agreements for the last three credit cards, or for the first credit card after 26 September 2019. But I think Mr M should pay back the amounts he has borrowed. Therefore, NewDay Ltd should:

- *Rework the credit removing all interest and charges that have been applied on balances over £1,500 for the first credit card, and all interest and charges on the second, third and fourth credit cards, so that Mr M only needs to pay back the capital he borrowed on the last three cards and on borrowings above £1,500 on the first credit card.*
- *If Mr M has paid back more than the capital he borrowed, any overpayments should be refunded to him along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay Ltd should also remove all adverse information regarding this credit from Mr M's credit file from 26 September 2019.*
- *Or, if after the rework there is still an outstanding balance, NewDay Ltd should arrange an affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the balance, any adverse information in relation to the credit should be removed from his credit file from 26 September 2019.*

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

My provisional decision

For the reasons set out, I'm currently minded to fully uphold Mr M's complaint, such that NewDay Ltd, should put things right in the way set out above."

I asked the parties to the complaint to let me have any further representations that they wished me to consider by 25 November 2022. Neither NewDay Ltd nor Mr M has acknowledged receipt of the provisional decision, made any further submissions or made a request for an extension to do so. I think that both parties have had sufficient time to make substantive further submissions if they had wished to. So, I am proceeding to 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.

Given that there's no new information for me to consider following my provisional decision, I have no reason to depart from those findings. And as I've already set out my full reasons for not upholding Mr M's complaint, I have nothing further to add.

Putting things right

NewDay Ltd should put things right as detailed in the section of the provisional decision called ***Putting things right – what NewDay Ltd needs to do*** (copy above).

My final decision

For the reasons set out, I'm partially upholding Mr M's complaint. NewDay Ltd should put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 December 2022.

Douglas Sayers
Ombudsman