

The complaint

Miss B complains that NewDay Ltd acted irresponsibly when they agreed to provide two credit card accounts and later increased the account limits to a level that was unaffordable.

Miss B is represented by a claims management company (“the CMC”).

What happened

In March 2016, Miss B applied to NewDay for a credit card account. NewDay assessed her application and agreed to provide a new account with an initial credit limit of £300.

Over time, NewDay offered and increased the limit on Miss B’s credit card account on four occasions to a peak of £4,000. Shortly after the final increase, Miss B repaid what she owed to NewDay and her account was closed.

In December 2019, Miss B applied to NewDay again for a new credit card account. NewDay assessed her application and agreed to provide an account with an initial limit of £900. Over the course of the following 10 months, NewDay offered and increased the limit on this account on two occasions to a peak of £1,600.

In March 2021, the CMC submitted a complaint to NewDay on behalf of Miss B. They said they’d been unable to determine that NewDay took reasonable steps to assess Miss B’s ability to meet repayments without incurring financial difficulty. They thought NewDay’s assessment, if any, may not have been sufficient or reasonable as required under CONC 5.2.2R (1).

They pointed out that Miss B had exceeded her account limit in December 2018, which was evidence of financial difficulty, and since the credit limit was increased, Miss B had incurred further charges as a result of financial difficulty demonstrating the affordability checks weren’t reasonable.

They also said Miss B’s account balance rose to near the credit limit after each increase and supports that her financial circumstances had changed, and the limit shouldn’t have been provided.

The CMC asked NewDay to

- freeze any interest charged above the amount of the account limit prior to the increase; and
- recalculate the account balance after removal of the interest, and
- refund any interest and charges; and
- pay 8% simple interest; and
- remove any adverse information from Miss B’s credit file.

In response to Miss B’s complaint, NewDay didn’t agree they’d acted irresponsibly when they agreed to provide the credit card accounts or when they increased the limits.

One of our investigators looked into what had happened. Having considered all the information and evidence provided, our investigator didn’t think NewDay had acted irresponsibly when they agreed to provide Miss B with the two credit cards. But they didn’t

think NewDay had completed reasonable and proportionate checks when they increased the credit limits.

Our investigator thought NewDay should refund all interest on any balance owed above the original limits agreed and where this resulted in Miss B having made overpayments, NewDay should pay 8% simple interest on that amount. They also thought NewDay should remove any adverse information from Miss B's credit file and agree a suitable repayment plan.

NewDay didn't agree with our investigator's findings. They said they'd completed all the necessary risk-based assessments when increasing Miss B's credit limit and her account was managed appropriately.

As an agreement couldn't be reached, the case has been passed to me for review. In doing so, I reached a different outcome to that of our investigator. Because of that, I issued a provisional decision on 2 November 2022 – giving both Miss B and NewDay the opportunity to respond to my findings below before I reach a final decision.

In my provisional decision, I said:

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

The rules and guidance relevant at the time were set by the Financial Conduct Authority (FCA) in the Consumer Credit Sourcebook (CONC). These required NewDay to carry out an assessment using reasonable and proportionate checks to determine whether Miss B could afford to repay the credit cards in a sustainable way. Those checks needed to be borrower focussed and consider whether making the repayments could result in financial difficulties for Miss B.

This service believes that any checks needed to consider Miss B's personal circumstances and would usually need to be more thorough:

- the lower a consumer's income; and*
- the higher the amount due to be repaid; and*
- the longer the term of the debt; and*
- the greater the number and frequency of debts.*

Conversely, a less detailed affordability assessment, without the need for verification, is far more likely to be fair, reasonable, and proportionate where the amount to be repaid is relatively small, the financial situation appears stable, and the debt is for a relatively short period.

In cases where there isn't evidence that proportionate checks were carried out, I need to consider if proportionate checks would likely have shown the credit was sustainably affordable.

Card 1

Miss B applied for her first card in March 2016. NewDay's records show she had no reported account arrears and no payment arrangements or debt management programmes. There had been a default, but this was 19 months before. There was also a settled debt management programme. Miss B's annual income was stated as £15,000 and she had existing unsecured debts of £3,700. There were no payday loans and seven existing active accounts.

NewDay have said they use their own credit assessment tools together with data on income and expenditure and other information held by credit reference agencies. Miss B's application passed NewDay's credit assessment process.

Having considered the information available to NewDay, I believe their assessment here met the requirements of CONC and their decision to provide an initial limit of £300 appears reasonable.

NewDay wrote to Miss B on each occasion they increased her credit limit. Each time they offered her the ability to refuse the increase. Miss B didn't do that here. They also asked her to provide any new and relevant information – nothing was provided. So, NewDay used their usual assessment methods and processes. The limit was increased in July 2016 to £1,300, December 2016 to £1,900, April 2018 to £2,900 and August 2018 to £4,000.

Over that entire period, Miss B exceeded her limit once by £8 which was promptly adjusted. There was only one instance of her payment being late. There was nothing adverse reported from her credit file to NewDay. Miss B did regularly make some cash withdrawals each month. While this could be considered a warning sign, they were always well within the limit available and proportionately small relative to her limit and available funds. I don't believe they would cause any great concern given the overall circumstances.

I did note in May 2016, her total unsecured debt increased by almost £11,000. I can't see anything to suggest NewDay specifically completed further checks to better understand what this related to. Particularly as Miss B's total unsecured debt now exceeded her annual earnings.

I've looked at Miss B's bank statements together with a copy of her credit report. I identified, and Miss B has confirmed, that the increase related to a vehicle finance agreement. It appears this was paid monthly without any apparent difficulty. So, as the debt increase was appropriately structured as a term loan which appears to have been affordable, I'm not persuaded that further checks would've meant NewDay would've reached a different decision.

Miss B's credit report shows only one arrears incident since Card 1 was first agreed to when the final limit increase was applied. I don't think this was enough to prompt concerns here. There were three instances of an arrangement to pay being recorded, but these all occurred after the final limit increase, so wouldn't have impacted any assessment.

I've then considered Miss B's bank statements from the beginning of 2016 to the end of 2020. Miss B's account initially benefitted from an overdraft limit of £500 which was increased to £700 in August 2019. The account appears to have been well run. And accepting the overdraft limit was regularly used, the account balance fluctuated month to month and often had periods when it was in credit. There were four or five small excesses of the limit over that five-year period and only one occasion when a payment was returned unpaid by the bank.

There is evidence of a small direct debit of £8 each month to a debt advice charity. Miss B has explained this relates to a period when they assisted her in consolidating her debts. I don't believe this gives undue cause for concern. It suggests to me Miss B was addressing her financial situation in a positive way and had sought advice and support to help her budget.

Having considered all the information, I accept that NewDay could've possibly done more to verify Miss B's financial circumstances each time they increased her limit. In particular by updating her income details and verifying her overall debt position. But I'm aware much of this information is available to them through the credit information they receive.

I've also considered what further checks might have revealed. My overriding impression is that while Miss B did regularly use various credit facilities, they appear to have been very well managed with clear evidence of proactive budgeting. So, I'm not persuaded that further checks would've revealed something that would've led NewDay to believe Miss B's borrowing was causing financial difficulty and wasn't repayable in a sustainable way.

Card 2

Miss B applied for her second card in December 2019. NewDay's records show she had no account arrears and no adverse public records. There had been payment arrangements although they'd been settled. The last recorded default was 64 months before. Miss B's annual income was again stated as £15,000 and she had existing unsecured debts of £1,500. There were no payday loans and seven existing active accounts.

Having considered the information available to NewDay, I believe their assessment here met the requirements of CONC and their decision to provide an initial limit of £900 appears reasonable.

NewDay increased Miss B's limit to £1,100 at Miss B's request in May 2020. They also wrote to her ahead of increasing it again to £1,600 in November 2020. Throughout that period, Miss B made repayments on time for more than the minimum and never exceeded the limit agreed. No adverse data was reported and there was no evidence of her debts rising to an unsustainable level. So, I believe the checks and tests completed by NewDay here were sufficient and their lending decisions reasonable.

Summary

Having considered the various points raised by the CMC on Miss B's behalf, many of them relate to events that took place after NewDay completed their assessments. So, I don't think they're relevant to the outcome here. I'm also aware the CMC had asked NewDay to remove adverse data reported on Miss B's credit file. But as I can't see anything reported, I don't think that's relevant here either.

As I've already mentioned, the information I've seen supports my view that while Miss B did appear to regularly rely on credit facilities, they were well managed with little in terms of adverse warning signs. And certainly nothing that might suggest Miss B was in financial difficulty. So, while I realise she will be disappointed, I don't agree with our investigator's findings and I've found no reason to uphold Miss B's complaint.

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.

NewDay have responded confirming they agree with the findings in my provisional decision.

The CMC have confirmed receipt of my provisional decision which they've sent and explained to Miss B. She hasn't provided any further comment or information to consider. So, I've no reason to vary from my previous findings.

My final decision

For the reasons set out above, I don't uphold Miss B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 29 December 2022.

Dave Morgan
Ombudsman