

The complaint

Mrs H complains that NewDay Ltd was irresponsible when it offered her credit card facilities and subsequent credit limit increases.

What happened

NewDay opened three credit card accounts for Mrs H under different trading names. I've set out some of the information NewDay provided about these accounts in the below table for clarity. These accounts were all open-ended or running account facilities. NewDay increased Mrs H's credit limit on two of these accounts over the years.

Account name	Date opened	Credit limit
Account 1	December 2017	£300
	May 2018	£1,200
	September 2018	£1,950
Account 2	July 2020	£700
	November 2020	£1,700
	March 2021	£2,700
Account 3	May 2021	£900

Mrs H said that she wasn't complaining about the opening of her first account in December 2017 but about its subsequent credit limit increases. I understand Mrs H is also complaining about being granted her second credit card in July 2020 and its subsequent credit limit increases, and being granted her third credit card in May 2021.

Mrs H said that NewDay increased her credit limit to unsustainable levels on her first credit card and that her finances grew progressively worse from that point. She says that although she didn't default on her accounts, she was put under significant pressure just to maintain the payments. Mrs H says she had no ability to repay the whole amount borrowed and NewDay should not have agreed the credit increases on this card nor should it have agreed further credit card facilities for her.

NewDay didn't uphold Mrs H's complaint. It said that before lending, it took into account how she was managing her accounts, information from her credit file and what she'd told it in her applications. It was satisfied that the credit increases were granted correctly and that adequate checks were completed to ensure the credit was affordable. NewDay also said that it was Mrs H's responsibility whether or not to accept or decline the credit limit increases. It says it informed Mrs H of her limit increases each time and she didn't opt out of these.

Mrs H brought her complaint to us. Our investigator assessed the complaint and found that NewDay should have gone further in its affordability checks when it increased Mrs H's credit limit on two occasions in 2018 and when she applied for her second and third accounts. They went on to find that further checks would likely have shown that the second credit limit increase on Mrs H's first account (in September 2018) and all subsequent credit wasn't likely

to be sustainably repayable for her. They recommended that NewDay reworks Mrs H's first account so that no interest is charged on balances above £1,200 and that it refunds any interest and charges she paid on her other two.

NewDay disagreed with our investigator's recommendations. It said that:

- After the first account was opened in December 2017, Mrs H remained within the credit limits with isolated exceptions in January and April 2018.
- Mrs H did not use the cash transaction facility of her first account either to withdraw cash, or to have funds paid into her current account. Cash use is an expensive way to borrow and can indicate that a customer is struggling. However, there was no evidence of this from Mrs H.
- Prior to the limit increase in September 2018, Mrs H did not make any late payments. This leads NewDay to find that she was managing her finances well.
- NewDay reviewed credit reference agency (CRA) data before the offer to increase Mrs H's credit limit from 1,200 to £1,950 was made in September 2018. This data is considered sufficient by the regulator to use as an estimate of customers' non-discretionary expenses. Therefore the decision to offer to increase the limit was done after industry recognised checks were completed.

The complaint came to me, as an ombudsman, to review and resolve. I issued a provisional decision on the 2 December explaining why I thought Mrs H's complaint should succeed and sharing the information I'd relied on. I allowed time for either party to comment on what I'd said or provide any new information they wished me to consider. Neither party has responded.

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.

Having reconsidered everything, and having no new information to take into account, I see no reason to depart from my provisional findings. I remain of the view that Mrs H's complaint should be upheld. I'll set out again my reasons why in this final decision on the matter.

As I'd said in my provisional decision, I've had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as NewDay, need to abide by. NewDay will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them and refer to them where appropriate.

Before entering into a credit agreement with Mrs H or increasing her credit limit under an existing agreement, NewDay needed to check that she could afford to meet her repayments out of her usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit (for example, the amount offered) and Mrs H's particular circumstances.

In addition, NewDay needed to monitor Mrs H's repayment record and take appropriate action where there were signs of actual or possible repayment difficulties. The overarching requirement was, and is, that NewDay needed to pay due regard to Mrs H's interests and treat her fairly.

Account 1

When Mrs H applied for her first credit card in December 2017 she gave her salary as £16,000, which I estimate equates to about £1,170 a month net. The application information also records that Mrs H's total unsecured debt balances came to £100. NewDay checked Mrs H's credit file and said that it didn't see any defaults, arrears or short term borrowing shown.

NewDay said that each time it increased the credit limits on this account it had regard to how Mrs H was managing her credit and information from her credit file which showed how she was managing any other credit she had. NewDay says that it didn't see anything in Mrs H's management of her account that suggested she was having problems managing her money, for example Mrs H didn't exceed her credit limit except on two occasions, and she didn't use her account for cash or make any late payments.

I can see from the account information NewDay provided that Mrs H had gone over her limit twice in the first six months and been charged over-limit fees. She was making more than the minimum payment but she was also using her available credit each month and the CRA data shows that she had other debts of more than £3,300, not £100.

Given this context, Mrs H's stated means and that this credit increase was significant being from £300 to £1,200 I think it would have been proportionate for NewDay to have looked into Mrs H's circumstances in more depth before granting this increase. I note NewDay says it used a CRA tool to check Mrs H's bank transactions, but it hasn't provided me with this data (beyond affordability scores) and I can't see that it verified Mrs H's actual income or investigated her expenses.

In the six months before the second credit increase (September 2018), Mrs H had made a large payment to the account, however she was also spending up to her credit limit and it seems her external debts had increased to over £7,400. As before, I think it would have been proportionate for NewDay to have looked into Mrs H's circumstances in more depth before agreeing more credit for her and taken steps to verify her means.

Mrs H has provided us with her bank statements for the months before her first account was taken out and a recent copy of her credit file. I'm not suggesting this is the information NewDay should have relied on but rather that this is a reasonable proxy for what it might have found out about Mrs H's circumstances through further checks.

Mrs H's credit file shows that she had three defaults, the last of which was in early 2017, almost a year before the credit card was opened, and she had five existing revolving credit accounts. I don't think this information of itself would have caused concern for NewDay.

The bank statements are for a joint account Mrs H held with her husband. This appears to be the main household account as there are two lots of income deposits and child benefit payments. The household rent, bills, living costs and debts are all paid from here. It's clear from the statements that Mrs H's combined outgoings with her husband's came to more than their shared income and that they were struggling with their finances. There are payments to two debt collectors along with payments to a national debt charity. The statements also show returned direct debits for council tax, home insurance, credit cards and mobile phone accounts, for example, and unpaid transaction fees.

I haven't seen anything which makes me think Mrs H's finances improved throughout 2018. The information NewDay had showed her external debts had more than doubled between opening the account and the second credit limit increase. I think it's more likely than not that Mrs H's financial difficulties continued.

Having considered everything carefully, I think NewDay would likely have seen that Mrs H wasn't in a position to be able to sustainably manage the two credit limit increases it agreed for her in 2018, had it carried out proportionate checks on these occasions. I've concluded that NewDay was irresponsible to have agreed to these increases.

Accounts 2 and 3

NewDay said that when Mrs H applied for her second account in July 2020, she told it her salary was £21,000 and she had debts of £8,100. When Mrs H applied for her third account in May 2021, she told NewDay her salary was £21,500 and she had debts of £10,600.

NewDay checked Mrs H's credit file on each application and said that it didn't show any defaults, arrears or short term borrowing. It said that, as with Mrs H's first account, each time it increased the credit limits on her second account it had regard to how Mrs H was managing both accounts, along with information from her credit file. NewDay didn't find anything in this information to suggest Mrs H was having problems managing her money.

I've reviewed the information that NewDay had when it opened these two accounts for Mrs H. The information for Account 1 shows that Mrs H was over the credit limit in July 2020, the month she took out Account 2, and in seven out of the 12 months prior to this. Mrs H was making more than the minimum payment but was spending this much again each month. Mrs H was also over the limit on Account 1 for four out of the 12 months prior to opening Account 3 in May 2021. By this point she'd also used her Account 2 card up to the limit – the May balance was £2,683 up from £1,632 just two months before.

As mentioned, Mrs H external debts were increasing. The information NewDay gathered from Mrs H's credit file shows she had external debts of £12,500 around the time of opening Account 2. By the time Mrs H opened Account 3 NewDay recorded her external debts as over £13,500.

I think NewDay should have seen from the information it had that it was highly likely Mrs H was reliant on credit. I don't think it treated Mrs H fairly and with due regard to her interests when it opened a second and third account for her without looking into her circumstances in more detail.

Mrs H hasn't provided any bank statements for the time these accounts were taken out – the bank statements I've seen are from late 2017 and I can't reasonably rely on these to give me an understanding of Mrs H's finances in mid-2020 or mid-2021 as her situation might well have changed by then.

However, given the account information I've set out above, I think it's more likely than not that any further information about Mrs H's finances would have confirmed that she was still in a position where she was spending more than she earned and wasn't likely to be able to repay more credit without difficulty and within a reasonable period of time. By October 2021, Mrs H was over the limit on all three of her NewDay credit facilities. I've concluded that NewDay was irresponsible when it provided Mrs H with Accounts 2 and 3.

Putting things right

I've concluded that NewDay was irresponsible when increased Mrs H's limit on her first account twice in 2018. I think it's fair that Mrs H repays the credit she borrowed as she's had the use of this. However, in order to put Mrs H back into the position she would have been in had this not happened means she shouldn't have to pay any interest or charges on credit granted over her initial limit of £300.

I've also concluded that NewDay shouldn't have provided Accounts 2 or 3 for Mrs H and so in the same way she shouldn't be liable for any interest or charges on the credit provided through these.

In order to put things right for Mrs H, NewDay should:

- Rework Mrs H's first account to remove all interest and charges that have been applied to balances above £300; and
 - If the effect of these reworkings results in a credit balance on the account, then this should be refunded to Mrs H along with 8% simple interest* on the overpayments from the date they were made to the date of settlement. In this case, NewDay should remove any adverse information reported to Mrs H's credit file about this account after the first increase was applied; or
 - If an outstanding balance remains on this account once these adjustments have been made NewDay needs to ensure that Mrs H is only liable for this adjusted balance and arrange an affordable repayment plan with her. Once Mrs H has cleared the outstanding balance, any adverse information recorded about this account after the first increase was granted should be removed from her credit file.
- Rework Mrs H's second and third accounts to remove all interest and charges that have been applied since each was opened; and
 - If the effect of these reworkings results in a credit balance on an account, then this should be refunded to Mrs H along with 8% simple interest* on the overpayments from the date they were made to the date of settlement. In this case, NewDay should remove any adverse information reported to Mrs H's credit file about the account; or
 - If an outstanding balance remains on an account once these adjustments have been made NewDay needs to ensure that Mrs H is only liable for this adjusted balance and arrange an affordable repayment plan with her. Once Mrs H has cleared the outstanding balance, any adverse information recorded about the account should be removed from her credit file.

* HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Mrs H a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons I've set out above, I am upholding Mrs H's complaint about NewDay Ltd regarding her three accounts and it now needs to put things right for her as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 18 January 2023.

Michelle Boundy
Ombudsman