

The complaint

The estate of Mr W complains NewDay Ltd provided the late Mr W with an unaffordable credit card.

What happened

In June 2021 NewDay provided Mr W with a credit card with a limit of £1,200.

Mr W sadly passed away in April 2022 and the executors of his estate complained to NewDay when they became aware he'd been provided with this account. They said Mr W's sole income was made up of benefits; and that NewDay had irresponsibly provided Mr W with this credit as reasonable and proportionate checks would have identified it was unaffordable for him.

NewDay issued its final response in March 2023 not upholding the complaint. It said the checks it completed were reasonable and proportionate; and that it had made a fair lending decision when providing Mr W with the approved limit.

The executors didn't accept NewDay's answer so they brought the complaint to our Service for review.

Our Investigator considered the details and upheld the complaint. She said NewDay's checks weren't reasonable and proportionate, so she went on to consider what further checks would likely have shown. She reviewed Mr W's bank statements and concluded NewDay made an unfair lending decision when providing the credit.

The executors of Mr W's estate accepted our Investigator's outcome; NewDay didn't. In summary it said:

- It doesn't discriminate against an individual with an income made solely from benefits
- It lends to customers who typically exhibit a limited credit history or adverse credit history
- It maintains its checks were proportionate based on the level of credit provided and the information it obtained; and that it made a fair lending decision

NewDay asked for an Ombudsman's review, so the complaint's been passed to me to decide.

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 done so I've reached the same conclusions as our Investigator, for broadly the same reasons.

We've set out our approach to complaints about irresponsible and unaffordable lending as well as the key rules, regulations and what we consider to be good industry practice on our website; both the executors of Mr W's estate and NewDay are aware of this.

NewDay needed to take reasonable steps to ensure the lending it provided was responsibly lent to Mr W. The relevant rules, regulations and guidance at the time of NewDay's lending decision required it to carry out reasonable and proportionate checks. These checks needed to assess Mr W's ability to afford the credit limit being provided and repay it sustainably, without causing him financial difficulties or harm.

There isn't a set list of checks a lender needs to carry out, but they should be proportionate, taking into account things like the type, amount, duration and total cost of the credit, as well as the borrower's individual circumstances.

And it isn't sufficient for NewDay to just complete proportionate checks – it must also consider the information it obtained from these checks to make a fair lending decision. This includes not lending to someone in financial hardship; and ensuring repayments can be made sustainably without the need to borrow further.

NewDay has said as part of its affordability assessment it obtained Mr W's declared income and monthly housing cost. It has said it completed a credit check and identified Mr W's existing credit commitments, as well as how he'd managed his lines of credit over the previous years.

It says it considers these checks were reasonable and proportionate based on the information it obtained; and that it went on to make a fair lending decision when providing Mr W with a limit of £1,200.

I've carefully considered NewDay's arguments, but I'm not persuaded it did complete reasonable and proportionate checks; or go on to make a fair ending decision in this instance.

I say this because based on Mr W's declared income and the size of limit NewDay was providing, I consider reasonable and proportionate checks would have consisted of NewDay obtaining details about all of Mr W's monthly expenditure, as well as his income, housing cost and credit commitments, as it did.

NewDay has told us that generally, as part of its checks, it will review credit file information and use Office of National Statistics (ONS) data to understand an individual's monthly non-discretionary expenditure. However, while NewDay has said this, it hasn't provided evidence that this was completed in Mr W's case. Instead, it appears its affordability assessment used Mr W's declared income and declared housing cost, as well as the information it identified from its credit check.

In any event, Mr W's declared income was relatively modest – equating to just over £1,000 per month. And while Mr W had a relatively low level of outstanding debt at the time of this application, it doesn't appear Mr W's circumstances meant he was the type of average customer that is represented by ONS data. Therefore, I don't consider it would have been reasonable for NewDay to have relied on this in any event when checking affordability.

The rules NewDay needed to adhere to aren't prescriptive in how it should identify obtain information. The executors of Mr W's estate have provided us with Mr W's bank statements covering the three months leading up to NewDay's lending decision. In the absence of any other information, I consider these statements allow me to identify what further checks would likely have shown NewDay at the time.

Mr W's bank statements show he didn't have the level of disposable income NewDay calculated, and it's fair to say Mr W appears to be living to a very tight budget.

Mr W's income is broadly in line with the income he declared at around £1,050 per month, solely made up of benefits. But his non-discretionary expenditure largely matches this each month, without taking into account payments towards his existing credit commitments, let alone payments towards this new line of credit.

Taking into account Mr W's housing payment, regular household bills including council tax, insurances and utilities, mobile phone contract, and payments for food, clothing and travel/transport, his total non-discretionary expenditure averages around £1,000 across each of the three months.

This left with Mr W with around £50 per month to cover his existing credit commitments, as well as this new line of credit, and any unexpected costs that may occur. So, I don't consider this credit card was sustainably affordable for Mr W without causing him financial distress or harm; and it therefore follows I'm satisfied NewDay made an unfair lending decision when providing Mr W with this line of credit.

Putting things right

I understand the executors have said NewDay Ltd should write off any outstanding balance still due. But Mr W had the use of the funds he borrowed, so I consider NewDay Ltd can reasonably recover the capital borrowed. However, NewDay Ltd has added interest and possibly fees and charges to the account which, as I've found above, shouldn't have been provided. So, in resolution of this complaint NewDay Ltd should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied
 - a) If the rework results in a credit balance, this should be refunded to the estate of Mr W along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement
 - b) Or, if after the rework there is still an outstanding balance, NewDay Ltd should engage with the executors of the estate to arrange repayment of the remaining debt
- Once any outstanding balance has been repaid, any adverse information should be removed from Mr W's credit file

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

My final decision

My final decision is that I'm upholding this complaint and direct NewDay Ltd to resolve it as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr W to accept or reject my decision before 12 February 2024.

Richard Turner
Ombudsman

