

## **The complaint**

Miss C, through a representative, says NewDay Ltd, trading as Opus, irresponsibly lent to her.

## **What happened**

Miss C applied for a credit card from NewDay in May 2018. It was approved with a limit of £900. She was then given four credit limit increases between June 2021 and May 2022 culminating in a limit of £5,150.

Miss C says proper checks were not undertaken by NewDay before issuing her credit card. She would like a refund of all interest and charges that were applied to the account plus statutory interest at 8%.

NewDay says all its lending decisions were based on reasonable and proportionate checks to ensure the credit was affordable for Miss C. However when Miss C complained to it, it refunded interest and fees from April and May 2023, which amounted to £325.24, as a goodwill offer. When Miss C brought her complaint to this service NewDay made an offer to refund all interest and charges applied to balances above the initial limit of £900.

However, our investigator upheld Miss C's complaint in full. He said that NewDay's checks showed Miss C did not have the disposable income to afford the credit card.

NewDay disagreed and asked for an ombudsman's review. It said as Miss C had been able to make repayments far in excess of the contractual minimum, it was only fair to ask how if she had no disposable income. It has not had sight of her bank statements to understand this.

## **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.

Our approach to unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - is set out on our website and I have followed it here.

NewDay is required to lend responsibly. It needed to conduct checks to make sure that the credit it offered to Miss C was affordable and sustainable. Such checks need to be proportionate to things like the credit limits it offered Miss C, how much she had to repay (including interest and charges) each month, her borrowing history with it and what it knew about her circumstances. But there is no set list of checks it had to do.

This means to reach my decision I need to consider if NewDay carried out proportionate checks at the time of Miss C's application and each limit increase; if so, did it make fair lending decisions based on the results of its checks; and if not, what better checks would most likely have shown. I also need to think about, bearing in mind the circumstances at the time of each additional advance in credit, whether there was a point at which NewDay ought

reasonably to have realised it was increasing Miss C's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit.

I can see as part of NewDay's checks when Miss C applied it considered her income, household income, total level of borrowing held elsewhere and monthly repayment costs – and for the limit increases it also looked at how she was managing both her Opus account and her other debt elsewhere.

I think these checks were proportionate at application given the stage in the lending relationship and the amount of credit offered, but I'm not satisfied they were for the limit increases. I think NewDay needed to take steps check Miss C's income and outgoings had not changed significantly as it extended her borrowings. I cannot see that because she seemed to be managing a limit of £900 it could be assumed she could manage a limit over five times higher sustainably. However I won't comment further on this as I do not think NewDay made a fair decision at the point of application based on the information it did gather. I'll explain why.

NewDay learnt that Miss C's monthly net income was £1,245 and her monthly housing and living costs totalled £1,400. So even before taking into account the cost of repaying her existing £1,700 active debt, she already had no disposable income to allow her to take on, and sustainably repay, additional credit. I note there was additional household income but this application was for a sole name account, so Miss C was solely liable for repaying the debt. And even putting this to one side, NewDay did not take any steps to understand household *disposable* income.

As its checks showed Miss C had no disposable income I find NewDay was wrong to lend to Miss C. It did not have the assurances it needed that Miss C would be able to make her repayments without borrowing to repay, or suffering some other financial harm.

NewDay argues that Miss C went on to repay more than the contractual minimum and wants evidence to understand how she did this. But here I am considering the affordability of the initial lending decision based on the data NewDay gathered at that time – that it was obliged to respond to. And I cannot fairly conclude it made a responsible lending decision based on its own affordability assessment.

It follows as I think NewDay was wrong to open the card, all the subsequent credit limit increases were wrong.

### **Putting things right**

As I don't think NewDay ought to have opened the account, 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 Miss C should pay back the amounts she has borrowed. Therefore, NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied.
- If the rework results in a credit balance, this should be refunded to Miss C 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 Miss C's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Miss C for the remaining amount. Once Miss C has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

\*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Miss C 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.

### **My final decision**

I am upholding Miss C's complaint. NewDay Ltd, trading as Opus, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 16 November 2023.

Rebecca Connelley  
**Ombudsman**