

The complaint

Miss M complains that NewDay Ltd (NewDay) lent to her irresponsibly.

What happened

I don't need to go into the background here – as this provisional decision is about how to get the remedies implemented, and not the decision itself.

NewDay approved a new credit card for Miss M and then increased the limit as shown:

Date	Limit
February 2018	£250
May 2018	£900
October 2018	£2,300

Our investigator issued his view in December 2022 – which concluded that NewDay's checks were appropriate for the issue of the card in February 2018 and for the first increase in limit in May 2018.

But he said the increase to £2,300 in October 2018 hadn't been subjected to proportionate checks. And so, he said NewDay should put that right. The investigator said NewDay must:

- Refund Miss M's credit card account with interest and charges (on borrowing over £900) applied from the time of granting the increase in October 2018 to date.
- If these refunds result in a credit balance, NewDay should pay this to Miss M, along with 8% per annum simple interest calculated from the dates of the interest, or charges being reimbursed, to date.
- If an outstanding balance remains payable NewDay must arrange a suitable repayment plan with Miss M, based on her income and expenditure at that time.
- Remove all adverse reporting from Miss M's credit record relating to her credit card account.

Both Miss M and NewDay accepted the findings. But since then, unfortunately, the remedies haven't been implemented in full.

And because of that, Miss M's complaint has come to me to make a decision on. Because I'm proposing some further actions, I set this out in a provisional decision, for comments by either party.

I made a provisional decision which said:

We've asked NewDay for more evidence. And I can see:

- The interest and charges were refunded in January 2023.
- The resulting balance was £1,192 debit – so the issue of paying further compensation as a result of a credit balance didn't arise.
- The adverse entries on Miss M's credit file were removed in January 2023 – up to that date.

The outstanding remedy is that a repayment programme for the remaining balance (£1,192) hasn't been set up. Miss M has said she's called NewDay and hasn't got anywhere, and for their part NewDay say she hasn't provided them with a completed income and expenditure form – which I agree they need to work out what she can reasonably afford to pay.

NewDay have said to us that it is for our service to deal with that. I was surprised to read that in the correspondence with our investigator.

For the avoidance of doubt, the investigator's view (which was accepted by NewDay) stated it was for NewDay to speak or correspond with Miss M (their customer) and put a suitable repayment programme in place. That is consistent with how this service operates – it isn't for us to negotiate or liaise with a customer after a way forward on a complaint has been agreed. We also expect a firm to implement the agreed remedies reasonably, fairly and quickly. So - I set aside NewDay's arguments here.

I've looked at what happened and I can see that NewDay didn't recall Miss M's account back from the debt collection agency (DCA) until July 2023 – and this needed to happen earlier for NewDay to put in place an 'in-house' payment programme. So - that appears to have caused some confusion.

I can see Miss M called NewDay on 6 June 2023 and was told she needed to contact the DCA. I don't think that was a reasonable thing for NewDay to do – I'd expect them to take ownership and sort things out, and well ahead of June 2023 – given that the remedy was agreed in December 2022.

I can then see Miss M called again on 5 July 2023, but there's no evidence that any guidance was given to her, and the call ended.

I can see an internal note dated 31 August 2023 saying NewDay hadn't received the income and expenditure form 'despite numerous requests'. And NewDay have said to us that they asked Miss M for the I&E form several times.

So - I asked to see evidence of an I&E form being sent out – but the only evidence I was shown was a letter dated 7 September 2023 – which enclosed a form to complete. So – this was then nine months after the investigator's view was accepted. So – because I only have evidence of one I&E form being sent out, and evidence of Miss M (unsuccessfully) trying to make contact with NewDay – I conclude that NewDay haven't properly put in place all the agreed remedies here.

Further default: Miss M has said to us that she has paid in money to the account. I saw the statements for her account – and there are no credits paid in up to September 2023 (the last balance I've seen). The last credit entries were the refunds of interest and fees on 12 January 2023. So there's no evidence Miss M has paid in.

But what has happened in the meantime is that NewDay have defaulted the account again. So I need to consider if that's reasonable. On one hand, Miss M hasn't paid anything in – but I think it's likely she was waiting for the payment plan to be agreed. And I'm satisfied that NewDay haven't done enough to set that up.

I asked to see evidence of correspondence with Miss M – for example, warning her about the need to pay in; or giving notice of default; or confirmation that a default was registered. I haven't see such evidence. I can see NewDay sent several notices of sums in arrears (regarding the contractual amounts due) – but these didn't say anything about possible default, or any action needed by Miss M to avoid a default. So – there weren't any clear communications with Miss M.

So – in the light of all of this, it doesn't seem reasonable to me to then apply a further default Miss M's account.

Therefore, this provisional decision formalises the original view (December 2022), and further says the default should be cancelled and removed from Miss M's credit file.

And – following this provisional decision, I hope that both NewDay and Miss M can work together to ensure matters are taken forward as we'd expect.

Responses to the provisional decision:

NewDay accepted the findings. They confirmed the refunds had been made; that a balance of £1,192.92 remained; and that the previous adverse entries on Miss M's credit file had been removed.

NewDay agreed to remove the further default registered in 2023, and would write to Miss M today with an income and expenditure form to complete and return – so an affordable repayment plan can be set up.

Miss M made the following comments:

- She said again that she had made a number of attempts to speak to NewDay about the repayment of the debt, but hadn't had any success in getting this sorted out. She'd found the staff unhelpful, confused and rude.
- She gave us evidence that she had made two payments of £11. 93 (24 August 2023) and £11.90 (25 July 2023) – to the debt collection agency (DCA).
- She said a further default has been added.

I now need to consider these points and make a 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.

I'm glad that NewDay will now deal with the repayment programme for the remaining debt.

As regards Miss M's points:

She says another default has been added – but this will be dealt with as part of the remedies in the final decision.

I want to pick up on her evidence that she made two payments to the DCA. It appears these were made after the debt was brought back in-house to NewDay (which was on or around 17 July 2023). We've put this to NewDay before – and they've said no money had been received.

I've looked again at Miss M's NewDay statements – and no such credits appear, and the balance was unchanged throughout 2023 up to 7 September 2023 - £1,192.92.

So – it appears that the DCA hasn't redirected the funds to Miss M's account at NewDay – that's an operational issue for NewDay to sort out.

But – I don't think Miss M should be disadvantaged by this, and I think it's only reasonable that NewDay now credit Miss M's account with £23.83 – being the missing funds.

I am adding that action to the final decision. Other than that, my final decision is unchanged from the provisional decision.

(continued – final decision)

My final decision

I uphold this complaint. NewDay Ltd must:

- Refund Miss M's credit card account with all interest and charges (on borrowing over £900) applied from the time of granting the increase in October 2018 to date.

NewDay have confirmed this has been done.

- If these reimbursements result in a credit balance, NewDay should pay this, along with 8% simple interest calculated from the dates of the interest, or charges being reimbursed, to date. NewDay have confirmed this doesn't apply.
- If an outstanding debit balance remains payable, NewDay must arrange a suitable and mutually agreeable repayment plan with Miss M, based on her income and expenditure at that time. This action is for NewDay to implement, including making proactive contact with Miss M to complete the income and expenditure form. This should happen within 14 days of any final decision.
- Remove all adverse reporting from Miss M's credit records relating to her credit card account. I note this has been done – as regards the period up to December 2022. NewDay have confirmed this has been done.
- Cancel the default(s) applied in 2023 and remove any further adverse entries from Miss M's credit file. As at the present date, all defaults should have been removed.
- Credit Miss M's account with £23.83.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 22 March 2024.

Martin Lord
Ombudsman