

The complaint

Mrs P complains that NewDay Ltd ("NewDay") irresponsibly provided her with credit on a credit card account that she couldn't afford to repay.

What happened

In November 1999 Mrs P entered into an agreement to have access to credit by way of a Debenhams branded credit card account.

The account was transferred from the previous lender to NewDay in August 2014. By this time Mrs P had a credit limit on the account of £8,000 available to her. Unfortunately, due to the lapse of time, NewDay hasn't been able to provide us with details of the credit limit history for the account, including the opening credit limit.

Mrs P says she had significant difficulties keeping up with the payments on her card. In May 2021 NewDay reduced her credit limit to £6,700 and at the same time Mrs P agreed a repayment plan for her card. Unfortunately, Mrs P continued to miss meeting her monthly repayments to the account in 2022 and 2023. By November 2023 it was necessary for NewDay to send her a notice of default which led to the account being terminated in December 2023. At that point the account had a balance due of £1,617.48. The last payment made to the card was in September 2023.

Mrs P says that it was irresponsible of NewDay to provide her with the card as well as the credit limit increases that followed.

Our investigator didn't recommend the complaint be upheld. He thought NewDay didn't act unfairly or unreasonably in continuing to provide Mrs P with the account after it took over responsibility for it in August 2014.

Mrs P didn't agree and so her complaint has been passed to me for 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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and NewDay thinks part of this complaint was referred to us too late because some of the lending decisions took place more than six years ago. Our investigator explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

Seeing as I've decided not to uphold Mrs P's complaint, and given the reasons for this (which I'll go on to explain), whether Mrs P referred her complaint about the specific lending decisions that happened more than six years ago in time or not has no impact on that outcome. Like the investigator, I think Mrs P's complaint should be considered more broadly

than just those lending decisions, seeing as she complained not just about the decision to lend but also the impact this had on her over the course of her relationship with NewDay. Mrs P's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of her relationship with NewDay. I acknowledge NewDay still doesn't agree we can look at parts of this complaint, but given the outcome I have reached, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mrs P's complaint can be reasonably interpreted as being about the fairness of her relationship with NewDay, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974 ("CCA").

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (NewDay) and the debtor (Mrs P), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of its rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship.

S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given what Mrs P has complained about, I therefore need to think about whether NewDay's decision to provide credit to Mrs P or its later actions created unfairness in the relationship between her and NewDay such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mrs P's relationship with NewDay is therefore likely to be unfair if it didn't carry out proportionate affordability checks, where doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

In this complaint, whilst I can look at the whole of the lending relationship going back to when the card was first opened in 1999, NewDay can only be responsible for compensating Mrs P for the time since it was first regulated by this service in July 2011.

I've seen that Mrs P already had a credit limit of £8,000 when NewDay took over the account, as set by the previous lender. As I've already mentioned, it's not clear when this credit limit was granted, or what the credit limit was when the account was first opened in 1999.

When assessing affordability, there isn't a set list of checks that NewDay needed to complete, but they needed to be borrower focussed and proportionate to things like the type of lending, the cost of the lending as well as the amount, and how long it would take Mrs P to reduce what she owed on the account.

Mrs P told our investigator that she wasn't working when she first took out the card in November 1999 and that her husband was the sole income earner. We don't have the details Mrs P provided when she first made her application. Also, we don't have information about her financial circumstances after the card was opened and she continued to use it. This would also be relevant to better understand whether the credit limits she was given were fair in view of her financial situation. That means I don't have enough to be able to say that NewDay carried out fair and proportionate checks.

To try and get a better picture of Mrs P's financial situation, our investigator asked her for some further details and evidence about this from the time she took out the card. This would be a good starting point to help us understand whether the checks that were carried out at that time were fair and proportionate. Unfortunately, Mrs P hasn't been successful in her attempts to obtain these. Without that information, I regret to say I'm not able to assess whether or not a fair decision was made to give her the credit at the outset. Similarly, without more information about her financial circumstances when the credit increases were given, I can't make a finding as to whether those increases were likely to be affordable.

It follows that as things stand, I can't say that NewDay should be held responsible for the opening credit limit or any credit limit increases that followed. And since I can't say that NewDay has acted unfairly, I can't request it to do anything to put things right.

Overall, and based on the available evidence, I don't find that Mrs P's relationship with NewDay is currently unfair. It's not clear enough to me that NewDay created unfairness in its relationship with Mrs P. And I don't find NewDay treated Mrs P unfairly in any other way either based on what I've seen.

I am sorry to have to disappoint Mrs P. I am aware of her difficult personal circumstances and limited ability to afford to repay the sum that is still due. I would strongly recommend that NewDay ensures that she is treated with all possible forbearance and that it seeks to agree a fair and achievable repayment plan with her if it seeks to recover the outstanding sum.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 21 February 2025.

Michael Goldberg
Ombudsman