

## The complaint

Miss T complains that NewDay Ltd irresponsibly lent to her.

## What happened

Miss T was approved for a branded NewDay credit card (which I will refer to as A in this decision), in March 2020 with a credit limit of £900. I have detailed the credit limit changes below:

August 2020	£900 to £1,900
November 2020	£1,900 to £3,400
September 2022	£3,400 to £3,650
January 2023	£3,650 to £5,000
May 2023	£5,000 to £5,300

Miss T was approved for another NewDay branded credit card (which I will refer to as B in this decision), in February 2023 with a credit limit of £1,500, and the credit limit was increased to £2,250 on B in November 2023. Miss T was approved for a third NewDay branded credit card (which I will refer to as C in this decision), also in February 2023, with a credit limit of £1,200.

Miss T says that NewDay irresponsibly lent to her. Miss T made a complaint to NewDay, who did not uphold her complaint. Miss T brought her complaint to our service. NewDay contacted our service to say they should not have approved C for Miss T as she had been approved for B that month. They said there needed to be at least 12 months between applications, so they would uphold Miss T's complaint partially.

Our investigator said she thought NewDay made a fair lending decision for A and B (including the credit limit increases), but she thought NewDay were fair to uphold Miss T's complaint for C as this shouldn't have been opened based on NewDay's application criteria.

Miss T asked for an ombudsman to review her complaint. She made a number of points. In summary, she said there was no way NewDay should have offered her both B and C in February 2023, nor increased A in the same month as it was obvious she was in severe financial difficulty. She told us about her income at the credit limit increase stages, and she said her bank statements show her income was less than her spending. Miss T said she'd taken cash advances from her credit cards, and her debt had almost doubled prior to the credit limit increase on B.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Before agreeing to approve or increase the credit available to Miss T, NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable*

*for her. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances. I've listed below what checks NewDay have done and whether I'm persuaded these checks were proportionate.*

#### *Acceptance for A - initial credit limit (£900)*

*I've looked at what checks NewDay said they did when initially approving Miss T's application for A. I'll address the credit limit increases (including B and C) later on. NewDay said they looked at information provided by credit reference agencies (CRA's) and information that Miss T had provided before approving her application.*

*I'm persuaded that the account opening checks were proportionate. I say this as the CRA NewDay used showed that while Miss T was paying credit commitments of £457.72 a month, she had declared a gross annual income of £38,000, which was estimated to be £2,185.70 a month. NewDay had also estimated Miss T's housing costs, and living costs, and they estimated Miss T had the disposable income to be able to afford and sustain repayments on her account. But that's not all NewDay's data showed. The data also showed that Miss T had defaults registered on her credit file, with the last one being registered 24 months prior to her application.*

*It may help to explain here that, while information like a default on someone's credit file may often mean they're not granted further credit – they don't automatically mean that a lender won't offer borrowing. Here, NewDay considered the information that Miss T had on her credit history and still made a decision to lend which, in the circumstances, I think was reasonable.*

*I say this because this information is not all that NewDay had access to. The credit checks showed that Miss T had no County Court Judgements (CCJ's) registered, and there were no accounts in arrears in the six months prior to her application. The £900 credit limit was less than 3% of her declared gross annual income.*

*So I'm satisfied that the checks NewDay carried out here, prior to approving the initial £900 credit limit were proportionate and that NewDay made a fair lending decision to approve Miss T's application for A.*

#### *August 2020 credit limit increase for A - £900 to £1,900*

*I've looked at the information available to NewDay when they increased Miss T's credit limit to £1,900. The information that NewDay had available to them from the CRA and how she managed A do not appear to show any financial difficulties. I say this because Miss T had made repayments to A which were substantially over her minimum repayment, and there were no overlimit or late payment fees applied to the account.*

*The CRA reported no accounts in arrears over the previous six months, and there were no new defaults or any CCJ's registered on Miss T's credit file. So I'm satisfied that the checks NewDay carried out here, prior to increasing the credit limit to £1,900 were proportionate and that NewDay made a fair lending decision to increase the credit limit on A to £1,900.*

#### *November 2020 credit limit increase for A - £1,900 to £3,400*

*I've looked at the information available to NewDay when they increased Miss T's credit limit to £3,400. The information that NewDay had available to them from the CRA and how she managed A between the last credit limit increase and this credit limit increase do not appear*

*to show any financial difficulties. I say this because Miss T had again made repayments to A which were substantially over her minimum repayment, and there were no overlimit or late payment fees applied to the account.*

*The CRA reported no accounts in arrears over the previous six months, and there were no new defaults or any CCJ's registered on Miss T's credit file. So I'm satisfied that the checks NewDay carried out here, prior to increasing the credit limit to £3,400 were proportionate and that NewDay made a fair lending decision to increase the credit limit on A to £3,400.*

*September 2022 credit limit increase for A - £3,400 to £3,650*

*I've looked at the information available to NewDay when they increased Miss T's credit limit to £3,650. The information that NewDay had available to them from the CRA and how she managed A between the last credit limit increase and this credit limit increase do not appear to show any financial difficulties. I say this because Miss T had again made repayments to A which were substantially over her minimum repayment, and there were no overlimit or late payment fees applied to the account.*

*The CRA reported no accounts in arrears over the previous six months, and there were no new defaults or any CCJ's registered on Miss T's credit file. So I'm satisfied that the checks NewDay carried out here, prior to increasing the credit limit to £3,650 were proportionate and that NewDay made a fair lending decision to increase the credit limit on A to £3,650.*

*January 2023 credit limit increase for A - £3,650 to £5,000*

*I've looked at the information available to NewDay when they increased Miss T's credit limit to £5,000. I've noted that Miss T did make some money transfers into her bank account. I can see from her statements on A that the interest rate charged for purchases was the same for money transfers, so I'm not persuaded that NewDay should have thought that money transfers to Miss T's bank account in its own right would mean she was struggling financially, or that she wouldn't be able to sustain an increase to her credit limit, especially when she was making repayments to A which were significantly higher than her minimum repayments.*

*But while Miss T had been paying higher repayments than her minimum repayments, there were signs that she was struggling financially prior to the credit limit increase to £5,000. I say this because her unsecured debts were around double what they had been only four months earlier when NewDay had increased Miss T's credit limit to £3,650.*

*In addition to this, the information shows that Miss T had taken out a pay day loan, so although NewDay estimated that Miss T had £3,699.59 disposable income a month, the fact that Miss T needed to take out a payday loan, her unsecured debt had doubled since her last credit limit increase only four months earlier, and her frequent money transfers should have indicated to NewDay that their estimate of Miss T's disposable income may not be accurate.*

*It's probable that NewDay used the information from the CRA to verify Miss T's income, which is fair, however, when Miss T had originally declared a gross salary of £38,000, the disposable income they estimated would be more than her original net monthly income. So this could have been a sign that other credits to her account (possibly including the money transfers and the payday loan) could have been included in the credits from her bank account that the CRA reported which then NewDay used to calculate her estimated disposable income. So based on everything above, I'm persuaded that NewDay should have completed further checks to ensure the credit limit increase would be affordable and sustainable for Miss T.*

*There's no set way of how NewDay should have made further proportionate checks. One of the things they could have done was to contact Miss T to get an understanding of why she needed to take out a payday loan, and why she had doubled her unsecured borrowing in a short period of time, since the last credit limit increase. Or they could have asked for her bank statements as part of a proportionate check to ensure the lending was sustainable and affordable for her.*

*Miss T has provided her bank statements for the three months leading up to the £5,000 credit limit increase, which NewDay could have requested as part of a proportionate check.*

*If Miss T had sent her January 2023 transactions to NewDay prior to the credit limit increasing then they would have seen that Miss T made numerous transactions which led her to enter an unarranged overdraft by nearly four times her arranged overdraft limit. They would have seen that the week prior to the credit limit increase, Miss T's account was credited with a £2,000 personal loan, as it was clear she was unable to manage her finances at this point.*

*But to be fair to both sides, NewDay might not have had access to this information even if they requested statements as part of a proportionate check, as Miss T's January 2023 statement wouldn't have been produced at the point the credit limit was increased. So I've also reviewed her November and December 2022 bank statements.*

*These also show that Miss T exceeds her £250 arranged overdraft limit on multiple occasions between 1 November-31 December 2022. On 15 December 2022 Miss T has a £600 payday loan credit her bank account. So if NewDay had requested bank statements as part of a proportionate check, for the reasons I've given above, I'm satisfied that they would have seen that Miss T would not be able to afford and sustain a credit limit increase to £5,000, so I can't fairly say they made a fair lending decision to increase her credit limit to £5,000 on A.*

*Acceptance for B (February 2023), Acceptance for C (February 2023) and May 2023 credit limit increase on A*

*If Miss T's credit limit increase to £5,000 did not happen, then it's probable that none of the further lending decisions would have happened after this either, including the acceptance of B and C given they were approved shortly after the credit limit increase to £5,000. I think there is an argument for saying that Miss T's complaint about the subsequent lending decisions should be upheld without making a finding on reasonable and proportionate checks. After all, if matters had played out as the evidence suggests they should have done in January 2023, I'm not persuaded that NewDay would've added to the credit.*

*I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed at the end of this decision results in fair compensation for Miss T in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case."*

*I invited both parties to let me have any further submissions before I reached a final decision. Miss T accepted the provisional decision. NewDay did not respond to the provisional 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.

As neither party have provided me with any further information to consider, then my decision and reasoning remains the same as in my provisional decision.

### **Putting things right**

In the provisional decision I said I intend to uphold this complaint in part. I said I intend to ask NewDay Ltd to take the following actions;

Card A:

NewDay should arrange to transfer any debt back to themselves if it has been passed to a debt recovery agent or liaise with them to ensure the redress set out below is carried out promptly;

End the agreement and rework the account removing all interest, fees, charges, and insurances (not already refunded) that have been applied to balances above £3,650 after 20 January 2023;

If the rework results in a credit balance, this should be refunded to Miss T 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 T's credit file recorded after 20 January 2023;

Or, if after the rework the outstanding balance still exceeds £3,650, NewDay should arrange an affordable repayment plan with Miss T for the remaining amount. Once Miss T has cleared the balance, any adverse information recorded after 20 January 2023 in relation to the account should be removed from her credit file.

Cards B and C:

NewDay should arrange to transfer any debt back to themselves if it has been passed to a debt recovery agent or liaise with them to ensure the redress set out below is carried out promptly;

Rework the accounts 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 T 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 these accounts from her credit file;

Or, if after the rework there are still outstanding balances, NewDay should arrange an affordable repayment plan with Miss T for the remaining amount. Once Miss T has cleared the balances, any adverse information in relation to the accounts should be removed from her credit file.

I'm still satisfied this is a fair outcome for the reasons given previously.

*\*If NewDay considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss T how much they've taken off. They should also give Miss T a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

**My final decision**

I uphold this complaint in part. NewDay Ltd should settle the complaint in line with the instructions in the *“Putting things right”* section above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss T to accept or reject my decision before 12 December 2024.

Gregory Sloanes  
**Ombudsman**