

The complaint

Mrs N complains that NewDay Ltd irresponsibly lent to her.

Mrs N is represented by a claims management company in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Mrs N herself.

What happened

Mrs N was approved for an NewDay credit card (which I will refer to as A in this decision), in January 2014 with a credit limit of £250. I have detailed the credit limit changes below:

May 2014	£250 to £750
September 2014	£750 to £1,800
January 2015	£1,800 to £2,800
July 2015	£2,800 to £3,550
January 2016	£3,550 to £4,300
March 2017	£4,300 to £5,400
September 2017	£5,400 to £6,600

Mrs N was approved for another NewDay credit card (which I will refer to as B in this decision), in October 2016 with a credit limit of £900, and the credit limit was increased to £1,300 in March 2017. Mrs N says that NewDay irresponsibly lent to her. Mrs N made a complaint to NewDay, who did not uphold her complaint. Mrs N brought her complaint to our service.

Our investigator partially upheld Mrs N's complaint. She said NewDay shouldn't have increased the credit limit on A to £2,800 in January 2015, and they shouldn't have increased the credit limit on B to £1,300 in March 2017. NewDay asked for an ombudsman to review the complaint.

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 Mrs N, 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 (£250)

I've looked at what checks NewDay said they did when initially approving Mrs N's application for A. I'll address the credit limit increases (including B) later on. NewDay said they looked at information provided by credit reference agencies (CRA's) and information that Mrs N had provided before approving her application.

The information showed that while Mrs N had total unsecured borrowings at the time of £100, she also had declared a gross salary of £38,000. But that's not all NewDay's data showed. The data also showed that Mrs N had three defaults valued at £22,600 but the last one was at least 48 months prior to her application. The data also showed a public record such as a County Court Judgement (CCJ) valued at £4,200 which was registered 70 months prior to her application.

It may help to explain here that, while information like a default or a CCJ 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 Mrs N had on her credit history and still made a decision to lend which, in the circumstances, I think was reasonable.

I say this because while this amount of debt collectively was for £26,800 and Mrs N's salary was £38,000, the adverse information would leave her credit file within three months for the CCJ and within 15 months for the defaults. This information is not all that NewDay had access to either.

The credit checks showed that Mrs N had no live accounts in arrears. The £250 credit limit would have been less than 1% of her declared gross annual income, and if she utilised the full amount of the credit limit combined with the £100 of unsecured debt she had at the time of her application, this would have still been less than 1% of her declared gross salary for her active debt.

So I'm satisfied that the checks NewDay carried out here, prior to approving the initial £250 credit limit were proportionate and that NewDay made a fair lending decision to approve Mrs N's application for A.

May 2014 credit limit increase for A - £250 to £750

I've looked at what checks NewDay said they did when increasing the credit limit on A from £250 to £750. Data is limited for around this time, but given this was over ten years ago, I don't find this to be unusual. From the information NewDay's data shows, it appears she had external credit card debt of £30 just prior to the credit limit increase, and she wasn't in any arrears on her live accounts.

NewDay would also have a history of how Mrs N managed her account since it was opened. They would have been able to see there were no late fees or overlimit fees, and that Mrs N appeared to be managing the credit well.

So I'm satisfied that the checks NewDay carried out here, prior to approving the £750 credit limit were proportionate and that NewDay made a fair lending decision to increase the credit limit on A to £750.

September 2014 credit limit increase for A - £750 to £1,800

I've looked at what checks NewDay said they did when increasing the credit limit on A from £750 to £1,800. Data is limited for around this time, but given this was over ten years ago, I don't find this to be unusual. As I can't see any information about her external accounts from the CRA's, and Mrs N's credit file wouldn't go back over ten years if she could provide her

current credit file to us, then I've looked to see if there was any concerning data which might suggest the lending was irresponsible

I've looked at how Mrs N managed A since her last credit limit increase. I can see that Mrs N did incur one late payment charge prior to the credit limit increase. So this could indicate she was having financial difficulties prior to the lending decision. But this also could have been a genuine oversight from Mrs N.

It does appear that this may have been an oversight from Mrs N. I say this as there's no other obvious signs of financial difficulty prior to the credit limit being increased to £1,800. Mrs N was utilising less than a third of the available credit at its highest outstanding balance, and she previously hadn't missed (or been late) with a payment. And at times it does appear Mrs N paid more than the minimum payment.

So while I don't have the information to say that NewDay's checks that they carried out here, prior to approving the £1,800 credit limit were proportionate, I'm persuaded that based on the information available, NewDay made a fair lending decision to increase the credit limit on A to £1,800.

January 2015 credit limit increase for A - £1,800 to £2,800

I've looked at what checks NewDay said they did when increasing the credit limit on A from £1,800 to £2,800. The data from a CRA shows that Mrs N had active unsecured borrowings of £2,562 prior to the credit limit increase. So she had been using more credit than what she previously had been using.

But that's not all the data showed. It shows that Mrs N had transactions deemed to be cash transactions totalling £1,000, with her incurring a total of £31.50 in cash advance fees. So this could indicate financial difficulties as it appears multiple transactions were made which attracted the cash advance fees. Mrs N was utilising most of her credit limit at this point also.

The data also shows that the number of Mrs N's active accounts had increased from three to five prior to the credit limit increase. So based on her incurring multiple cash advance fees, using the majority of her credit limit and her recent account openings, I'm persuaded that NewDay should have carried out further checks to ensure the lending was affordable and sustainable for her.

For example, NewDay could have contacted Mrs N to get an understanding of her finances as part of a proportionate check, or they could have requested bank statements to see how Mrs N was managing her finances as part of a proportionate check based on the concerning information above.

I asked Mrs N if she could provide her bank statements leading up to the credit limit increase of £2,800, as part of a proportionate check that NewDay could have taken based on what their data showed. But Mrs N did not provide these by the deadline given, even though I extended the deadline for her.

So on the face of it, it does look like NewDay should've looked more closely into this. But as my role is impartial, that means I have to be fair to both sides and although I'm satisfied that NewDay should've done more checks here – I can't say whether further checks would've revealed further information which means they wouldn't have lent. So as Mrs N hasn't provided me with her bank statements, that means that it wouldn't be fair for me to say that NewDay shouldn't have lent here, because I don't know what further checks would reveal.

July 2015 credit limit increase for A - £2,800 to £3,550

I've looked at what checks NewDay said they did when increasing the credit limit on A from £2,800 to £3,550. The data from a CRA shows that Mrs N had active unsecured borrowings of over £4,500 prior to the credit limit increase. So she had been using more credit than what she previously had been using.

But that's not all the data showed. It shows that Mrs N had transactions attracting a cash advance fee in several of the months since the last credit limit increase. So this could indicate financial difficulties as these transactions were for relatively small amounts. So I'm persuaded that NewDay should have carried out further checks to ensure the lending was affordable and sustainable for her.

For example, NewDay could have contacted Mrs N to get an understanding of her finances as part of a proportionate check, to see why she was frequently incurring cash advance fees, or they could have requested bank statements to see how Mrs N was managing her finances as part of a proportionate check based on the concerning information above.

I asked Mrs N if she could provide her bank statements leading up to the credit limit increase of £3,550, as part of a proportionate check that NewDay could have taken based on what their data showed. But Mrs N did not provide these by the deadline given, even though I extended the deadline for her.

So on the face of it, it does look like NewDay should've looked more closely into this. But as my role is impartial, that means I have to be fair to both sides and although I'm satisfied that NewDay should've done more checks here – I can't say whether further checks would've revealed further information which means they wouldn't have lent. So as Mrs N hasn't provided me with her bank statements, that means that it wouldn't be fair for me to say that NewDay shouldn't have lent here, because I don't know what further checks would reveal.

January 2016 credit limit increase for A - £3,550 to £4,300

I've looked at what checks NewDay said they did when increasing the credit limit on A to £4,300. The data from a CRA shows that Mrs N had active unsecured borrowings of over £7,300 prior to the credit limit increase. So she had been using more credit than what she previously had been using.

But that's not all the data showed. It shows that Mrs N had transactions attracting a cash advance fee in several of the months since the last credit limit increase. So this could indicate financial difficulties as these transactions were for relatively small amounts. She had also incurred two overlimit fees, and she had again incurred cash transaction fees. So I'm persuaded that NewDay should have carried out further checks to ensure the lending was affordable and sustainable for her.

I asked Mrs N if she could provide her bank statements leading up to the credit limit increase of £3,550, as part of a proportionate check that NewDay could have taken based on what their data showed. But Mrs N did not provide these by the deadline given, even though I extended the deadline for her.

So on the face of it, it does look like NewDay should've looked more closely into this. But as my role is impartial, that means I have to be fair to both sides and although I'm satisfied that NewDay should've done more checks here – I can't say whether further checks would've revealed further information which means they wouldn't have lent. So as Mrs N hasn't provided me with her bank statements, that means that it wouldn't be fair for me to say that NewDay shouldn't have lent here, because I don't know what further checks would reveal.

Acceptance for B - initial credit limit (£900)

I've looked at what checks NewDay said they did when initially approving Mrs N's application for B. I'll address the credit limit increases later on. NewDay said they looked at information provided by CRA's and information that Mrs N had provided before approving her application.

I do think that if Mrs N's bank statements had shown previous credit limit increases on A were unaffordable then it's probable her application for B would have been declined, however, in the absence of Mrs N's statements I've looked at the account opening checks on B.

Mrs N declared a gross annual income of £33,000, which I note had fallen from £38,000 from the application of A. Her unsecured borrowings were showing as £17,800 which were more than double than at the beginning on the year when the credit limit on A was increased, and more than half of her gross income. But I also note that the data they gathered from a different CRA on A at the time showed Mrs N had higher unsecured borrowings of around £19,000 unsecured debt.

And based on how Mrs N had been using A prior to B being approved, I'm persuaded that NewDay should have carried out further checks based on the decreased income, increased debt, and the reasons given in the previous section. But as Mrs N didn't provide her bank statements, I don't know what further checks would have shown.

So on the face of it, it does look like NewDay should've looked more closely into this. But as my role is impartial, that means I have to be fair to both sides and although I'm satisfied that NewDay should've done more checks here – I can't say whether further checks would've revealed further information which means they wouldn't have lent. So as Mrs N hasn't provided me with her bank statements, that means that it wouldn't be fair for me to say that NewDay shouldn't have lent here, because I don't know what further checks would reveal.

March 2017 credit limit increase for A - £4,300 to £5,400

I've looked at what checks NewDay said they did when increasing the credit limit on A to £5,400. The data from a CRA shows that Mrs N had active unsecured borrowings of over £29,000 prior to the credit limit increase. So she had been using more credit than what she previously had been using. This was a significant increase since the last credit limit increase. Based on Mrs N's declared earnings of £38,000 when she applied for A, her unsecured debt was a high proportion of her declared income.

But NewDay would have been aware from Mrs N's data that when she applied for B only five months earlier that she declared her gross annual income to be £33,000. So Mrs N had a drop of income from £38,000 from when she applied for A to £33,000 when she applied for B. So her net annual income was likely to be less than her total unsecured borrowings at this point.

But that's not all the data showed. It shows that Mrs N had opened several more credit accounts since the last credit limit increase as prior to this increase she had 14 active accounts. She again had transactions attracting a cash advance fee in several of the months since the last credit limit increase. She also incurred a late payment fee. So all of these factors indicate that Mrs N was struggling financially.

There is evidence that Mrs N was using debt to pay debt at this point. I say this as NewDay's data showed that not only had her accounts increased since the last credit limit increase, but also she had made payments in statement periods totalling £3,000 (which was more than

her net monthly income), £1,800, and £2,150.01. But I suspect Mrs N got into a cycle of using debt to reduce her balance on A, and then using A for retail spend and transactions incurring a cash fee, which wouldn't be sustainable.

So at this stage, I'm not persuaded that it would have been appropriate to contact Mrs N and ask her about all of these factors, or to ask her for bank statements as part of a proportionate check, as the information showed Mrs N was struggling financially, had incurred overlimit fees, late payment fees, incurred several cash fees, kept opening new credit agreements and had substantially increased her debt over a period of time. Therefore, based on the data available to NewDay at this point, I'm not persuaded they made a fair lending decision to increase Mrs N's debt by a further £1,100 when they increased the credit limit on her account to £5,400.

March 2017 credit limit increase on B and September 2017 credit limit increase on A

If Mrs N's credit limit increase to £5,400 did not happen, then it's probable that none of the further lending decisions would have happened after this either. So I think there is an argument for saying that Mrs N'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 March 2017, I'm not persuaded that NewDay would've added to the credit.

While the March 2017 credit limit increase on B was before the credit limit increase to £5,400, I note that this was by one week, so I'm persuaded that the data NewDay had on B at this time would also be the same data from the CRA's on A in March 2017. So I can't fairly say the March 2017 credit limit increase on B was a fair lending decision, based on similar reasons I included in the previous section.

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 Mrs N 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. Mrs N said she had nothing further to add to 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 £4,300 after 31 March 2017;

If the rework results in a credit balance, this should be refunded to Mrs N 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 Mrs N's credit file recorded after 31 March 2017;

Or, if after the rework the outstanding balance still exceeds £4,300, NewDay should arrange an affordable repayment plan with Mrs N for the remaining amount. Once Mrs N has cleared the balance, any adverse information recorded after 31 March 2017 in relation to the account should be removed from her credit file.

Card B:

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 £900 after 24 March 2017;

If the rework results in a credit balance, this should be refunded to Mrs N 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 Mrs N's credit file recorded after 24 March 2017;

Or, if after the rework the outstanding balance still exceeds £900, NewDay should arrange an affordable repayment plan with Mrs N for the remaining amount. Once Mrs N has cleared the balance, any adverse information recorded after 24 March 2017 in relation to the account 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 Mrs N how much they've taken off. They should also give Mrs N 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 Ms N to accept or reject my decision before 19 December 2024.

Gregory Sloanes

Ombudsman