

## **The complaint**

Miss H complains that NewDay Ltd irresponsibly lent to her.

Miss H 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 Miss H herself.

## **What happened**

Miss H was approved for an NewDay credit card (which I will refer to as A in this decision), in February 2022 with a credit limit of £1,200, and the credit limit was increased to £2,100 in September 2023. Miss H was approved for another NewDay credit card (which I will refer to as B in this decision), in April 2023 with a credit limit of £900, and the credit limit was increased to £1,500 in August 2023. Miss H says that NewDay irresponsibly lent to her. Miss H made a complaint to NewDay.

NewDay partially upheld Miss H's complaint. They said they would uphold A from the credit limit increase to £2,100, but they said they made fair lending decisions for the other lending decisions. Miss H brought her complaint to our service.

NewDay told our investigator that they would now also uphold Miss H's complaint about the credit limit increase on B to £1,500, but they did not uphold her complaint points about the acceptance of A and B.

Our investigator agreed with NewDay's conclusion of Miss H's complaint. While she didn't think that NewDay's checks for the acceptance of A and B were proportionate, she couldn't conclude that proportionate checks would have affected the lending decisions. Miss H asked for an ombudsman to review the complaint.

## **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.

Before agreeing to approve or increase the credit available to Miss H, 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 (£1,200)*

I've looked at what checks NewDay said they did when initially approving Miss H's application for A. I'll address the other lending decisions later on. NewDay said they looked

at information provided by credit reference agencies (CRA's) and information that Miss H had provided before approving her application.

The information showed that Miss H declared a gross annual income of £20,500. While NewDay had used industry standard modelling figures to estimate Miss H's outgoings, including being able to see that Miss H was spending around £638 a month on her credit commitments, NewDay's data showed that Miss H's debt to income ratio was high at 75.2%, which would have meant that Miss H had around £15,416 of unsecured debt prior to A being approved.

So I'm persuaded that based on the high amount of unsecured debt Miss H had compared to her declared gross annual income, then NewDay should have carried out further checks to ensure that the repayments on a £1,200 credit limit would be affordable and sustainable for Miss H.

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 H to get an understanding of why her debt was high in comparison to her income. 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 H has provided her bank statements for the three months leading up to A being approved. Miss H's bank statements show her bank account is well ran, with no returned direct debits, and Miss H does not enter into an overdraft in the three months prior to the credit limit increase. It also appears that she transfers money to and from other accounts.

Miss H has provided a savings account statement for November 2021, which it appears she does have disposable income in order for her to have savings (although no further statements have been provided to see if Miss H continued to save, or whether this was for a limited period of time).

NewDay's checks also showed that Miss H had no accounts in arrears, she had no defaults, or County Court Judgements (CCJ's) being recorded on her credit file.

So if NewDay had completed further checks, which would have been proportionate to do so in this instance, then I'm persuaded that they still would have accepted her application for A, and I'm persuaded that they made a fair lending decision here.

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

I've looked at what checks NewDay said they did when initially approving Miss H's application for B. NewDay again said they looked at information provided by CRA's and information that Miss H had provided before approving her application.

The information showed that Miss H again declared a gross annual income of £20,500. NewDay's checks also showed that Miss H had no accounts in arrears, she had no defaults, or County Court Judgements (CCJ's) being recorded on her credit file.

While NewDay had used industry standard modelling figures to estimate Miss H's outgoings, including being able to see that Miss H was spending around £758 a month on her credit commitments, NewDay's data showed that Miss H's debt to income ratio was much higher than when A was approved, as the checks showed her debt to annual income ratio was 171.6% which would have meant that Miss H had around £35,178 of unsecured debt prior to B being approved.

So I'm persuaded that based on the high amount of unsecured debt Miss H had compared to her declared gross annual income, then NewDay should have carried out further checks to ensure that the repayments on a £900 credit limit would be affordable and sustainable for Miss H.

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 H to get an understanding of why her debt was high in comparison to her income. 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 H has provided her bank statements for some of the months leading up to B being approved. Miss H's bank statements show her bank account is well ran, with no returned direct debits, and Miss H does not enter into an overdraft on the statements that have been provided. It also appears that she transfers money to and from other accounts, so she may have access to other funds in other accounts. It does appear that Miss H is also able to afford to save up for a holiday, which would indicate she had disposable income.

As Miss H has not provided all of the statements our investigator asked for then I'm unable to determine whether the missing statements would have led to a different outcome here. 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 Miss H hasn't provided me with all of her statements that our investigator asked her for, then 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.

*August 2023 credit limit increase for B - £900 to £1,500*

As NewDay have upheld Miss H's complaint for this lending decision, then it would not be proportionate for me to make a finding on whether they made a fair lending decision here. NewDay have offered to settle this in line with our approach for these types of complaints.

*September 2023 credit limit increase for A - £1,200 to £2,100*

As NewDay have upheld Miss H's complaint for this lending decision, then it would not be proportionate for me to make a finding on whether they made a fair lending decision here. NewDay have offered to settle this in line with our approach for these types of complaints.

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 H 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.

### **Putting things right**

NewDay have suggested that they take the actions detailed below, which I think is reasonable in the circumstances if they haven't already done so. In addition to this, if NewDay do not own the remaining debt anymore, then they should also 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.

## **My final decision**

I uphold this complaint in part. NewDay Ltd should 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 £1,200 after 22 September 2023;

If the rework results in a credit balance, this should be refunded to Miss H 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 H's credit file recorded after 22 September 2023;

Or, if after the rework the outstanding balance still exceeds £1,200, NewDay should arrange an affordable repayment plan with Miss H for the remaining amount. Once Miss H has cleared the balance, any adverse information recorded after 22 September 2023 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 11 August 2023;

If the rework results in a credit balance, this should be refunded to Miss H 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 H's credit file recorded after 11 August 2023;

Or, if after the rework the outstanding balance still exceeds £900, NewDay should arrange an affordable repayment plan with Miss H for the remaining amount. Once Miss H has cleared the balance, any adverse information recorded after 11 August 2023 in relation to the account should be removed from her credit file.

*\*If NewDay considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss H how much they've taken off. They should also give Miss H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 4 February 2025.

Gregory Sloanes  
**Ombudsman**