

The complaint

Miss N complains that NewDay Ltd have irresponsibly lent to her.

What happened

Miss N was approved for an NewDay credit card (which I will refer to as A in this decision), in April 2010 with a credit limit of £350. I have detailed the credit limit changes below:

August 2010	£350 to £600
March 2011	£600 to £1,000
October 2011	£1,000 to £1,400
July 2013	£1,400 to £2,450
February 2014	£2,450 to £3,200
July 2014	£3,200 to £3,950
February 2015	£3,950 to £5,150
July 2015	£5,150 to £6,700
December 2015	£6,700 to £7,450
May 2016	£7,450 to £8,000

Miss N was approved for another NewDay credit card (which I will refer to as B in this decision), in January 2024 with a credit limit of £4,000. Miss N says that NewDay irresponsibly lent to her. She also said NewDay sent two letters with the letter placed in the envelope upside down, resulting in her data being shown to anyone who handled the letters. Miss N made a complaint to NewDay, who did not uphold her complaint. Miss N brought her complaint to our service.

Our investigator partially upheld Miss N's complaint. She said NewDay shouldn't have increased the credit limit on A to £5,150 in February 2015. 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.

I must make Miss N aware that I can't consider her complaint point about how NewDay sent her two letters with the letters being placed upside down. This is because this wasn't part of her original complaint to NewDay, and they haven't made a finding on this point in her final response letter. So Miss N would need to complain to NewDay about this point if she is unhappy with what happened here.

Before agreeing to approve or increase the credit available to Miss 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 (£350)

I've looked at what checks NewDay said they did when initially approving Miss N's application for A. I'll address the credit limit increase later on, and the application for B. NewDay have said that due to the time that's passed, they have no information regarding the application for A. So I can't see what their checks would have shown. Therefore I'm not able to say that the checks they performed prior to the £350 credit limit being approved were proportionate or not, or whether they made a fair lending decision here.

Miss N's current credit file would not show the data which NewDay would have likely seen in 2010 either, due to how long has passed since then. Ultimately, I simply do not have sufficient evidence to conclude that NewDay did not make a fair lending decision when they approved Miss N's initial application for £350.

August 2010 credit limit increase for A - £350 to £600

I've looked at what checks NewDay said they did when increasing the credit limit on A from £350 to £600. Data is again limited for this lending decision, but given this was over 14 years ago, I don't find this to be unusual.

But NewDay would have a history of how Miss 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 Miss N appeared to be managing the credit well.

But Miss N had made transactions which attracted a cash advance fee. So this could indicate that Miss N was having financial difficulties if she was incurring cash advance fees. But I do note that Miss N sometimes made repayments that were a lot higher than her minimum repayment, which wouldn't indicate Miss N was having financial difficulties.

So while I don't have the information to say that NewDay's checks that they carried out here, prior to approving the £600 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 £600.

March 2011 credit limit increase for A - £600 to £1,000

I've looked at what checks NewDay said they did when increasing the credit limit on A to £1,000. Data is again limited around this time. So I've looked to see if there was any concerning data which might suggest the lending was irresponsible

I've looked at how Miss N managed A since her last credit limit increase. I can see that Miss N did incur an overlimit charge in both October and December 2010. And she had incurred a cash advance fee. So this could indicate she was having financial difficulties prior to the lending decision. But these also could have been genuine oversights from Miss N.

It does appear that the overlimit fees may have been an oversight from Miss N. I say this as there's no other obvious signs of financial difficulty prior to the credit limit being increased to £1,000. Miss N was often paying more than twice her minimum repayment, so it does appear she could afford repayments for an increased credit limit.

So while I don't have the information to say that NewDay's checks that they carried out here, prior to approving the £1,000 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 £1,000.

October 2011 credit limit increase for A - £1,000 to £1,400

I've looked at what checks NewDay said they did when increasing the credit limit on A to £1,400. Data is again limited around this time. So I've looked to see if there was any concerning data which might suggest the lending was irresponsible

I've looked at how Miss N managed A since her last credit limit increase. I can see that Miss N did incur two overlimit fees, and a late fee. And she incurred several cash advance fees. So this could indicate she was having financial difficulties prior to the lending decision, or at least she was mismanaging her account.

But to be fair to both sides, I note Miss N was often paying more than twice her minimum repayments. So if Miss N was financially struggling, I wouldn't expect her to be able to do this. So it does appear she could afford repayments for an increased credit limit.

So while I don't have the information to say that NewDay's checks that they carried out here, prior to approving the £1,400 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 £1,400.

July 2013 credit limit increase for A - £1,400 to £2,450

I've looked at what checks NewDay said they did when increasing the credit limit on A to £2,450. Data is again limited around this time. So I've looked to see if there was any concerning data which might suggest the lending was irresponsible

I've looked at how Miss N managed A in the 12 months prior to the increase to the credit limit to £2,450. Miss N did not incur any overlimit or late fees in the 12 months leading up to the July 2013 credit limit increase. I can see Miss N incurred a cash advance fee, but this is a legitimate use of the card. I'm not persuaded that this one transaction in isolation meant Miss N was financially struggling, as her repayments prior to the credit limit increase to £2,450 showed she was making repayments between £195-£290 in statement periods in four of the six months prior to her credit limit being increased.

So while I don't have the information to say that NewDay's checks that they carried out here, prior to approving the £2,450 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 £2,450.

February 2014 credit limit increase for A - £2,450 to £3,200

I've looked at what checks NewDay said they did when increasing the credit limit on A to £3,200. There is more data from this lending decision. I can see that Miss N has £2,758 of credit card balances prior to the £3,200 credit limit increase. But her credit file is showing a worst status of "I". So I asked NewDay what this meant. NewDay told me that there was normally reduced payments.

So this would indicate that if Miss N needed to arrange reduced payments with a lender, then she would be having financial difficulties, otherwise there would be no other reasonable explanation of why she needed to do this.

While it does appear Miss N sometimes made higher repayments than her minimum repayment, she often re-uses the available credit – and more. NewDay's data shows that since the last credit limit increase, Miss N incurred £48 in overlimit fees, and while £24 of these were refunded to her, this still indicates Miss N exceeded her credit limit on four occasions (4 x £12 overlimit fee).

So based on the reduced payments on another agreement, and how Miss N was managing her account prior to the credit limit increase to £3,200, I'm not persuaded that it was responsible for NewDay to increase the credit limit to £3,200 here, as this would not appear affordable or sustainable for Miss N. So I'm persuaded NewDay made an unfair lending decision here.

Further credit limit increases on A

If Miss N's credit limit was not increased to £3,200, I think there is an argument for saying that Miss N's complaint about the subsequent lending decisions on A 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 February 2014, I'm not persuaded Miss N would've been able to add to the credit.

Acceptance for B - initial credit limit (£4,000)

As B was approved in 2024, I'm not persuaded that it's fair to say that the account should not have been opened just because I think NewDay made an unfair lending decision many years earlier. After all, Miss N's financial situation could have improved over the years. I've looked at what checks NewDay said they did when initially approving Miss N's application for B.

NewDay gathered Miss N's gross annual income, which was recorded as £24,000. But they would have also seen that she had defaulted on at least one agreement 53 months prior to the application for B. The total defaulted balances were showing as £1,100.

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. So I've looked at what other checks NewDay made to see if they made a fair lending decision.

NewDay's checks showed that Miss N had £5,100 of unsecured debt. But the credit limit they were approving for her was for £4,000. So Miss N's total active unsecured debt available to her would increase substantially once she was approved for B.

So I'm persuaded that due to the credit limit being a high proportion of her gross annual income, and the total debt would be just under half of her gross annual income if she used the credit available to her on B straight away (and she would still be expected to pay the £1,100 defaulted balance), then NewDay should have completed further checks to ensure B was affordable and sustainable for Miss N.

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 N to get an understanding of how she would be able to afford a large credit limit given her existing debt, and her past financial difficulty. 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 N has provided us with her bank statements for the three months leading up to the account being approved. The bank statements show Miss N managed her account well. She

did not enter an unarranged overdraft during the three month period, and she wasn't overdrawn at all. There were no returned direct debits during this period also.

Miss N was able to save some money over the three month period (albeit this was not a large amount of money), but she did show she had disposable income after her essential outgoings had been met.

Looking at her credit agreement for B, I can also see that there was a promotional offer for balance transfers for nine months at 0% interest. So based on Miss N's bank statements showing payments to other credit card providers, if she was paying interest on other credit cards then she may have been able to transfer these balances to B and save herself interest for a period of time, so her credit usage may not substantially rise if she transferred credit card balances to B and closed her other accounts.

So if NewDay had completed further checks for the reasons I set out prior to B being approved, I'm satisfied they still would have approved the application for Miss N, and they would have made a fair lending decision in doing so.

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 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. Miss N 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 £2,450 after 13 February 2014;

If the rework results in a credit balance, this should be refunded to Miss 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 Miss N's credit file recorded after 13 February 2014;

Or, if after the rework the outstanding balance still exceeds £2,450, NewDay should arrange an affordable repayment plan with Miss N for the remaining amount. Once Miss N has cleared the balance, any adverse information recorded after 13 February 2014 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 Miss N how much they've taken off. They should also give Miss 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 Miss N to accept or reject my decision before 11 February 2025.

Gregory Sloanes
Ombudsman