

The complaint

Mr L complains that NewDay Ltd irresponsibly lent to him.

Mr L is represented by a solicitor's firm in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Mr L himself.

What happened

Mr L was approved for a branded NewDay credit card (which I will refer to as A in this decision), in May 2016 with a credit limit of £600. I have detailed the credit limit changes below:

September 2016	£600 to £1,500
March 2017	£1,500 to £2,500
August 2017	£2,500 to £3,750

Mr L was approved for another NewDay branded credit card (which I will refer to as B in this decision), in January 2018 with a credit limit of £450, and the credit limit was increased to £1,700 on B in July 2019. Mr L was approved for a third NewDay branded credit card (which I will refer to as C in this decision), in February 2022, with a credit limit of £900, and the credit limit was increased to £1,700 on C in August 2022.

Mr L says that NewDay irresponsibly lent to him. Mr L made a complaint to NewDay, who partially upheld his complaint. They said they would uphold his complaint on A from the March 2017 lending decision. They did not uphold his complaint for the initial lending decision on A or any of the lending decisions on B or C. Mr L brought his complaint to our service.

Our investigator did not uphold Mr L's complaint as he said NewDay gathered a reasonable amount of evidence and information from Mr L about his ability to repay. He said they completed a credit check which showed no recent adverse information, and the limits that were granted were relatively low when compared to Mr L's income. Mr L asked for an ombudsman to review his 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 Mr L, NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable for him. 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

I've looked at what checks NewDay said they did when initially approving Mr L'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 Mr L had provided before approving his application.

The checks showed that Mr L declared a gross income of £31,000. But the checks also showed that Mr L had last defaulted on a credit agreement 14 months prior to his 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.

The checks also showed that Mr L had been in arrears on his mortgage within the six months prior to his application. So this could show Mr L was having financial difficulties. But I'm also mindful that this could have been an oversight on Mr L's behalf, so I've considered what else the checks showed to see if NewDay made a fair lending decision.

The checks showed that there were no accounts which were delinquent at the time of the application checks. So it does appear that the arrears could have been an oversight, and Mr L was able to bring this account up to date. He was not showing as having arrears on any of his unsecured borrowings in the previous six months, which also supports that the arrears on his mortgage could have been a genuine oversight.

The checks showed that Mr L had a debt to annual income ratio of 18.24%, so Mr L would have around £5,654 unsecured debt. The checks showed he wasn't on any arrangement plans, and that the total credit commitment, as shown by the checks was around £380 a month. The £600 credit limit was under 2% of Mr L's declared gross annual income.

So I'm satisfied that the checks NewDay carried out here, prior to approving the initial £600 credit limit were proportionate and that NewDay made a fair lending decision to approve Mr L's application for A.

September 2016 credit limit increase for A - £600 to £1,500

I've looked at the information available to NewDay when they increased Mr L's credit limit to £1,500. The information shows that Mr L appeared to make higher repayments than his minimum required payment, but despite this, there are signs of potential financial difficulty with how Mr L managed his account.

I say this because Mr L had made several transactions which incurred a cash advance fee, and while making these transactions are a legitimate use of the account, it could indicate Mr L was experiencing financial difficulties. In addition to this, Mr L exceeded his credit limit as he was charged an overlimit fee.

The data also showed that Mr L's unsecured borrowings had nearly doubled in only four months of his account being opened as the balances were showing as £9,951. So based on all of these factors, I'm persuaded that NewDay should have made further checks to ensure the lending was affordable and sustainable for Mr L.

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 Mr L to get an understanding of why he had

taken out a lot more credit in a short period of time since the account had been opened, and to ensure he was having no financial difficulties as he exceeded his credit limit. Or they could have asked for his bank statements as part of a proportionate check to ensure the lending was sustainable and affordable for him.

I asked Mr L if he could provide his bank statements leading up to this lending decision. But he did not provide these by the deadline given, even though I extended the deadline for him.

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 Mr L has not provided our service with the information I asked him for, 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 and August 2017 credit limit increases for A

As NewDay have upheld Mr L's complaint regarding the March and August 2017 lending decisions, and they have settled this broadly in line with how I would have instructed them to settle this, then I have not made a finding on these lending decisions. But if the repayments aren't affordable to Mr L, he should contact NewDay to set up an affordable repayment plan.

Acceptance for B

I've looked at what checks NewDay said they did when initially approving Mr L's application for B. NewDay said they looked at information provided by CRA's and information that Mr L had provided before approving his application.

The checks showed that Mr L declared a gross annual income of £35,000, and it had now been 34 months since Mr L had last defaulted on a credit agreement. The checks again also showed that Mr L had been in arrears on his mortgage within the six months prior to his application. So this could indicate Mr L was recently having financial difficulties. But I'm also mindful that this could have been an oversight on Mr L's behalf, so I've considered what else the checks showed to see if NewDay made a fair lending decision.

The checks showed that there were no accounts which were delinquent at the time of the application checks. The checks showed that Mr L had a debt to annual income ratio of 39.15%, so Mr L would have around £13,702.50 of unsecured debt.

NewDay would have also seen how Mr L was managing A prior to accepting this application. I am mindful that NewDay have since upheld the complaint on A now regarding the March and August 2017 lending decisions, so I've looked to see if Mr L's situation appears to have improved since then, as this lending decision was only a number of months after these now upheld lending decisions.

Mr L incurred a late fee on A not long before this lending decision, and his unsecured debt was showing as being higher than what it was on the opening checks for B (which can happen if different CRA's were used for different checks). But Mr L had also made repayments of £400, £400 and £600 on A in the three months prior to B being opened, which was more than 10% of his credit limit. So the late fee could have been an oversight.

But I'm persuaded that because of the increased debt since the last lending decision, and the recent mortgage arrears, that NewDay should have completed further checks to ensure the lending was affordable and sustainable for him.

So again I asked Mr L if he could provide his bank statements leading up to this lending decision. But he did not provide these by the deadline given, even though I extended this for him.

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 Mr L has not provided our service with the information I asked him for, 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 2019 credit limit increase for B - £450 to £1,700

I've looked at what checks NewDay completed for this lending decision. Mr L's unsecured debt was showing as being £16,293, which was higher than at the last lending decision. The data one from CRA shows that Mr L had defaulted on an agreement only nine months prior to the credit limit checks.

A different CRA had been showing the worst status on an account as being one month in arrears, then two months in arrears, then three months in arrears, then a default in the month the checks were completed for this credit agreement.

Since this account was opened Mr L incurred a number of overlimit and late fees. He also incurred several cash advance fees, with some of these being in the months prior to this lending decision. All of these signs could indicate financial difficulty.

I am mindful that Mr L did make repayments that were a lot higher than his minimum required repayments, however, he often re-used this credit. So based on the increased debt he had at this point, how he managed B since account opening, and his recent arrears on at least one third party account, then I'm persuaded that NewDay were unfair to approve this credit limit.

Acceptance for C

Just because I'm persuaded that NewDay made an unfair lending decision with their last credit limit increase on B, it doesn't automatically follow that any future lending NewDay approve would be irresponsible. I say this because C was approved in February 2022, therefore Mr L's financial situation could have changed in the years after their last lending decision.

So I've looked at what checks NewDay completed when they approved C for Mr L. The checks showed that Mr L told them he had a £25,000 gross annual income. This was a lot lower than what it was when B was approved for him. There was also a default showing as being registered only 15 months prior to the checks.

Mr L's debt to income ratio was showing as 21.08% which would equate to unsecured debt of around £5,270, which is significantly lower than what it was at the last lending decision on B.

But again, Mr L was showing as being in arrears on his mortgage at least once within the six months prior to the checks for C. So based on the decreased income, and the arrears, I'm persuaded that NewDay should have completed further checks to ensure the lending was affordable and sustainable for Mr L.

So again I asked Mr L if he could provide his bank statements leading up to this lending decision. But he did not provide these by the deadline given, even though I extended this for him.

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 Mr L has not provided our service with the information I asked him for, 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.

August 2022 credit limit increase on C - £900 to £1,700

I've looked at what checks NewDay completed when they approved this credit limit increase. Mr L's unsecured debt was slightly higher than what it was at the last lending decision as it was now showing as £6,652, which wasn't too much of a concern given that he had a £900 credit limit since the last checks were completed.

Mr L had incurred no overlimit, late, or cash advance fees since his account had been opened. He had no external active accounts in arrears at the point of this lending decision, and none of his active accounts had been in arrears since this account had been opened. So it does look like Mr L's financial situation may have improved.

NewDay had also used their own internal scoring and they had calculated that the credit limit increase would be affordable for Mr L. Based on all of the checks NewDay completed here, I'm not persuaded that they should have completed further checks, as I'm not persuaded they would have been proportionate for this lending decision. So I'm persuaded that NewDay made a fair lending decision here.

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 Mr L in the circumstances of his 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. Neither party responded 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 B only:

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 £450 after 11 July 2019;

If the rework results in a credit balance, this should be refunded to Mr L 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 Mr L's credit file recorded after 11 July 2019;

Or, if after the rework the outstanding balance still exceeds £450, NewDay should arrange an affordable repayment plan with Mr L for the remaining amount. Once Mr L has cleared the balance, any adverse information recorded after 11 July 2019 in relation to the account should be removed from his 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 Mr L how much they've taken off. They should also give Mr L a tax deduction certificate if he asks for one, so he 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 Mr L to accept or reject my decision before 7 April 2025.

Gregory Sloanes
Ombudsman