DRN-5421092

The complaint

Mr H complains that NewDay Ltd trading as Marbles ('NewDay') lent to him irresponsibly when they provided him with a credit card and later credit limit increases ('CLI'). He said NewDay didn't check that he could repay the balance sustainably.

Mr H brought this complaint to us with the help of a representative, but for ease I'll refer to Mr H throughout.

What happened

In January 2021 Mr H applied for a credit card with NewDay. His application was successful and NewDay gave him an initial credit limit of £900. Between April 2021 and February 2023 his credit limit was increased four times until it reached £5,250. I've set out the details in the table below:

Date of CLI	Old credit limit	New credit limit
April 2021	£900	£1,900
September 2021	£1,900	£2,650
January 2022	£2,650	£3,900
February 2023	£3,900	£5,250

Mr H complained to NewDay in April 2024. NewDay investigated but didn't think they'd done anything wrong when agreeing to lend to Mr H. They said they'd undertaken appropriate checks and the data they gathered supported their decision to lend. NewDay added that they'd carried out similar assessments of Mr H's account before each credit limit increase. And so, they didn't uphold Mr H's complaint.

Mr H remained dissatisfied with NewDay's response and referred the complaint to our service, where it was considered by one of our investigators. The investigator thought NewDay had undertaken proportionate checks before opening Mr H's account and before the first CLI, and that they'd reached a fair lending decision.

Our investigator didn't think that NewDay's checks were proportionate from the second CLI onwards. She said she hadn't seen anything in the information available to her that indicated the second and third CLI were unaffordable. But she thought the fourth CLI likely wasn't affordable, because Mr H's income appeared significantly lower in the month before the increase. She also noted that Mr H's overall indebtedness had increased. So, our investigator recommended that the complaint should be upheld in part and set out what NewDay should do to put things right.

NewDay didn't respond to our investigator's view, and so the complaint came to me. I issued a provisional decision on 6 March 2025. In that I said:

> *"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I don't intend to uphold Mr H's complaint. I'll explain why below.*

What lenders must do

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation. CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

What's considered proportionate will vary on the specific circumstances of each application. Here, NewDay approved an initial credit limit and subsequently increased it over time. In cases such as this, it's more likely that more thorough checks will be required later in the lending relationship than at the beginning, to take account of the differences in the amount of credit being made available. And that the lending history and pattern of lending itself might demonstrate whether the lending is sustainable.

Did NewDay carry out proportionate checks?

Account opening

NewDay explained that for a new customer application they generally use current account turnover (CATO), data from the credit reference agencies (CRA) and customer declared costs to assess the applicant's disposable income.

Here, NewDay looked at Mr H's credit file and said this didn't reveal any concerning information. They noted Mr H had no County Court judgments (CCJ) recorded against him and he wasn't in arrears or active repayment arrangements. I can understand why this would have given NewDay some confidence in Mr H's ability to maintain payments. However, NewDay noted a default around three years prior.

I'd note here that the data also showed that Mr H had been in arrears on one of his accounts in the last six months – although it appears that this was resolved as all accounts showed as up to date at the time of application.

As part of the application process NewDay asked Mr H for his gross salary, which he said was £30,000 per year, giving him a net monthly salary of around £2,093. CONC 5.2A. 16G says it isn't generally sufficient for a firm to rely solely on a statement made by the customer of their current income. Instead, a firm should obtain some independent evidence. I haven't seen anything to show that NewDay verified Mr H's income. That, taken with some of the admittedly historic flags showing on his credit file, lead me to conclude that NewDay's checks were not proportionate before agreeing to open the account in January 2021.

Credit limit increases

NewDay said they assess whether a proposed CLI is affordable using a combination of internal data, information provided by the CRA, and NewDay's own affordability models. They've provided us with a summary of the information they gathered before each CLI, and I've considered this carefully.

As only around three months had passed between the initial account opening and the first CLI, I think it would have been reasonable for NewDay to have assumed Mr H's circumstances hadn't changed much since he'd applied for the card. NewDay's records show that they assessed Mr H's net monthly income as £3,467 prior to the *first CLI. I'm mindful here that Mr H told NewDay three months earlier that his net monthly income was around £2,093, which is significantly less. I haven't seen anything to suggest that NewDay verified Mr H's income, and I think they should have done.*

The proposed increase would bring Mr H's credit limit to £1,900. This was a much higher proportion of the income Mr H had previously declared so I'd expect NewDay to have undertaken more than just a credit check and an estimation of his outgoings. This might have been asking Mr H about his fixed expenditure such as rent and utilities.

Looking at the account usage between January 2021 and April 2021, I can also see that Mr H used his card to withdraw cash three times, totalling around £730. While Mr H repaid the balance on his card in full, I think the way Mr H used the card ought to have given NewDay pause for thought – and it should have prompted them to undertake further checks before increasing his credit limit.

I've got similar concerns about the checks NewDay undertook before the second, third and fourth CLI. The checks were broadly the same as the ones NewDay conducted in April 2021. They searched Mr H's credit file and assessed his likely disposable income using data from CATO and the CRA. NewDay's internal data would have shown them that Mr H continued to access cash using his card.

The information NewDay received from the credit searches suggests that Mr H's overall indebtedness was increasing. By February 2023 Mr H had an active revolving credit limit of £6,850, which he'd exceeded. He also had non-revolving debt of almost £11,000.

Overall, I think there were enough signs here that there was a potential risk around affordability for Mr H, and so NewDay needed to understand his actual situation much better to proportionately assess if he could afford the increases NewDay were offering.

In summary, based on the evidence I've seen so far, I'm inclined to say NewDay didn't carry out proportionate checks before agreeing to open the account and before each CLI.

<u>What would NewDay have found had they done proportionate checks?</u>

Having provisionally decided that NewDay didn't carry out proportionate check before any of their decisions to lend to Mr H, I've gone on to consider what proportionate checks would have shown.

<u>Initial account opening</u>

At account opening a proportionate check would have involved verifying Mr H's income. On review of Mr H's bank statements, I can see his income varied in the three months leading up to his application. He earned £2,556 in October 2020, £2,937 in November 2020 and £2,532 in December 2020. Based on this I'm inclined to say that if NewDay had verified Mr H's income they'd have found he earned an average of £2,675.

NewDay's credit search showed that Mr H had credit commitments of £34.64 and he wasn't in arrears. NewDay were looking to approve an initial limit of £900. Given Mr H's level of income and his low indebtedness I don't think NewDay needed to find out *more about his committed expenditure. All things considered, I think that after verifying Mr H's income NewDay would still have approved Mr H's application and I'm persuaded that they made a fair lending decision to do so.*

Credit limit increases

As explained above, I think NewDay needed to do more than simply verifying Mr H's income and conducting a credit check before increasing the credit limit in April 2021, September 2021, January 2022 and February 2023. This should have included finding out more about Mr H's committed expenditure.

There are different ways a lender can go about checking a prospective borrower's committed expenditure. I can't be sure what NewDay would have done had they decided to conduct further checks, or what Mr H would have told them. In the absence of anything else, I've asked Mr H to provide me with bank statements for the three months leading up to each CLI as an indication of what would most likely have been disclosed. I'll consider each CLI in turn.

First CLI – April 2021

Mr H's statements show that his monthly income varied, but that he had a net average income of £1,982. It's worth noting here that Mr H was paid weekly. He didn't receive payments at the start of January 2021, and therefore his overall monthly income in January 2021 came to just over £1,400. This in turn reduced his average net income over the three months leading up to the CLI.

Mr H appears to have had very little in terms of committed expenditure. The statements don't show payments for rent, council tax or utilities. I asked Mr H about his living arrangements, but he didn't respond – and so I can't say what NewDay might have found had they checked with Mr H.

NewDay's credit search showed Mr H had an outstanding revolving credit balance of £65 with another lender. CONC requires a firm to assume that revolving credit is repaid over a reasonable term. I'm inclined to say NewDay should have used at least 5% of the outstanding amount (around £4) to reflect that. On average, Mr H paid £77 to a mobile phone provider, £197 to a 'Buy now, pay later' (BNPL) provider and £132 to a debt collector each month.

So, Mr H's non-discretionary and committed expenditure was around £410 per month, out of a net monthly income of £1,982. Overall, I'm inclined to say that if NewDay had undertaken proportionate checks, it's likely they would have concluded the repayments would be affordable for Mr H. It follows that they could have fairly decided to lend to Mr H.

Second CLI – September 2021

Mr H's statements show that while his net monthly income varied slightly, it was around £2,227 on average. Mr H's outgoings had gone up slightly compared to the period leading up to the first increase. He still paid around £77 per month to a mobile phone provider. He was no longer paying the debt collection agency, which indicates he'd satisfied that debt. Mr H paid around £230 to a BNPL provider in the month before the CLI.

NewDay's record show that Mr H's revolving credit balance had increased from around £65 to around £1,614. I think NewDay should have included repayments of *around £81 to towards the outstanding balance. As mentioned above, Mr H had also taken out a loan, and the remaining balance was £978. While NewDay's notes don't show what the loan repayment was, I can see Mr H started paying around £103 per month to another lender in July 2021.*

Overall, I'm inclined to say that proportionate checks would have shown Mr H had an average committed expenditure of £490 against an average net monthly income of £2,227. Based on this I think NewDay would have still approved the credit limit increase to £2,650, and that reaching this decision was fair.

Third CLI – January 2022

Mr H's statements show he earned £2,940 in October 2021, £2,562 in November 2021 and £3,588 in December 2021, giving an average net monthly income of £3,030. In terms of outgoings, the statements show Mr H still paid £77 to a mobile phone provider. He also paid around £65 on average to a credit-builder card. And he continued to pay £103 towards a loan he'd taken out the previous year.

NewDay's credit check showed Mr H's revolving credit balance had increased from around £1,614 to £3,363. I think NewDay should have included repayments of around £168 to towards the outstanding balance. I'm inclined to say that proportionate checks would've found Mr H had committed expenditure of around £413.

In summary, if NewDay had conducted proportionate checks I think they'd likely have found that Mr H had sufficient disposable income to comfortably meet his existing commitments alongside the proposed CLI. It follows that I think they could have fairly decided to lend to Mr H.

Fourth CLI – February 2023

Just over a year had passed since the last CLI. I've explained above that Mr H was paid weekly, and this was still the case in the period leading up to the fourth CLI. It appears that, like in January 2021, Mr H wasn't paid in the beginning of the month leading to a lower income for that month. He earned £3,688 in November 2022, £3,536 in December 2022 and £1,908 in January 2023, giving an average net monthly income of around £3,044.

I could see that Mr H had started making payments labelled 'rent' to a third party. Those payments varied significantly from around £3 to around £120. Mr H didn't respond to my queries about his living situation, so I can't be sure about the true picture here. I've included £440 towards rent in my calculation, as this is the average Mr H transferred to the third party in the three months leading up to his application.

It's apparent from Mr H's statements that he'd purchased a car, and he was paying around £82 per week (£355 per month) to the motor finance lender. He paid around £76 for insurance and to the DVLA. And Mr H paid around £82 per month to a mobile phone provider.

In terms of other credit commitments, Mr H had repaid the 2021 loan. NewDay noted a non-revolving credit balance of £10,747. I haven't seen a copy of Mr H's credit report, but I think this is likely the car loan I mentioned above. NewDay noted an outstanding revolving credit balance of £7,027, and I think they should have allowed repayments of £352 towards this. Finally, Mr H was paying around £380 to a BNPL *provider, around £170 per month to a payday lender and around £45 to a credit-builder card.*

Based on the evidence, I think proportionate checks would have shown Mr H had committed expenditure of £1,900 against a net monthly income of around £3,044. So, I'm inclined to say that if NewDay had carried out proportionate checks they'd have been able to fairly conclude the lending was affordable.

For completeness, I can see from Mr H's statements that he had started using his overdraft occasionally from July 2021. On those occasions Mr H would be overdrawn by small amounts for a couple of days before he got paid. His wages then brought him back into a positive balance. So, I don't think the evidence suggests that he was reliant on his overdraft or couldn't afford the repayments on this account without borrowing elsewhere.

<u>Did NewDay act unfairly in any other way?</u>

I've also considered whether NewDay acted unfairly or unreasonably in some other way given what Mr H has complained about, including whether their relationship with Mr H might have been unfair under s.140A Consumer Credit Act 1974.

However, for the reasons I've already given, I don't think NewDay lent irresponsibly to Mr H or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here. "

Neither Mr H nor NewDay responded to my 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 has raised any additional arguments or provided further information for me to consider, I've got nothing further to add – my findings are unchanged from those set out above.

My final decision

For the reasons set out above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 April 2025.

Anja Gill
Ombudsman