

## The complaint

Mr H complains that NewDay Ltd irresponsibly lent to him.

## What happened

Mr H was approved for an NewDay credit card (which I will refer to as A in this decision), in January 2020 with a credit limit of £450. I have detailed the credit limit changes below:

June 2020	£450 to £700
September 2020	£700 to £1,450
July 2021	£1,450 to £2,200
February 2023	£2,200 to £3,050

Mr H was approved for another NewDay credit card (which I will refer to as B in this decision), in August 2022 with a credit limit of £300. The credit limit on B was increased to £900 in January 2023. Mr H made a complaint to NewDay about irresponsible lending, who did not uphold his complaint. Mr H brought his complaint to our service.

Our investigator partially upheld Mr H's complaint. She said that NewDay shouldn't have increased the credit limit on A to £2,200, and they shouldn't have opened B as these lending decisions weren't affordable for Mr H, based on what Mr H's bank statements showed.

NewDay asked for a copy of the bank statements. But as they didn't respond to our investigator's view to let us know whether they accepted her view or not, the complaint was passed to me to make a decision on it.

## 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 Mr H, 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 H's application for A. I'll address the credit limit increases later on (including the lending decisions for B). NewDay looked at information provided by Mr H and information they received from a Credit Reference Agency (CRA).

Mr H declared a gross annual income of £26,000. The data from the CRA showed Mr H had

defaulted on at least one account, with the most recent default being 15 months prior to the application checks.

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 NewDay's other checks showed to see if they made a fair lending decision here.

Mr H was not in arrears on any of his active accounts at the time of the checks, and he hadn't been in arrears for the six months prior to the checks. He had no arrangement plans in place, and no active payday loans. There were no County Court Judgements (CCJ's) reported by the CRA.

NewDay's data showed that Mr H had a debt to annual income ratio of 0.89%, which would have equated to him having around £231.40 of active unsecured debt. NewDay also completed an affordability assessment. They used Mr H's declared gross annual income, and they calculated the net monthly income. They used information from a CRA, and modelling to calculate Mr H's outgoings.

The affordability assessment showed that Mr H would comfortably be able to afford sustainable repayments for a £450 credit limit. Based on the credit commitments being for £417.52 a month, and the debt to gross annual income being £231.40 a month, this does seem to be inconsistent. But in the absence of any recent adverse information from the CRA's, and the £450 credit limit being 1.73% of Mr H's declared gross annual income, I'm not persuaded that further checks would have been proportionate here.

So based on what all of NewDay's checks showed, I'm persuaded that their checks were proportionate, and they made a fair lending decision to approve A with a £450 credit limit.

#### *June 2020 credit limit increase on A - £450 to £700*

The checks NewDay completed for this lending decision showed that one CRA was reporting active unsecured debt of £4,938 which was a lot higher than at the account opening checks. So it does look like the debt to gross annual income ratio was inaccurate on the account opening checks (albeit I've noted in the previous section why further checks wouldn't have been proportionate).

Mr H had no active accounts in arrears at the time of the checks, and none of these had been in arrears since A had been opened. NewDay would have also been able to see how Mr H managed A since it had been opened.

Mr H had made transactions which incurred a cash advance fee. While this could be a sign of financial difficulty, I'm also mindful that making transactions which attract a cash advance fee are a legitimate use of the account.

Mr H incurred no late fees since his account had been opened, but he had incurred an overlimit fee. So this could be a sign of financial difficulty. But this also could have been due to an oversight from Mr H. Here I'm not persuaded that this was a sign of financial difficulty as in the month the fee was incurred, Mr H made repayments totalling £477.56 for that month.

In the following month (which was also the month NewDay completed their checks for this lending decision), Mr H made repayments totalling £730.72. His statement balance was actually in credit by £4.01. So Mr H had shown he could repay the full amount of credit, and it looked like a higher credit limit could be affordable and sustainable for him.

So I'm persuaded that NewDay's checks were proportionate for this lending decision, and they made a fair decision to increase Mr H's credit limit here.

#### *September 2020 credit limit increase on A - £700 to £1,450*

The checks NewDay completed for this lending decision showed that one CRA was reporting active unsecured debt of £3,165 which was a lot lower than at the last lending decision checks. So it does look like not only did Mr H have the affordability to service his debt, but to reduce this also.

Mr H had no active accounts in arrears at the time of the checks, and none of these had been in arrears since the last lending decision. NewDay would have also been able to see how Mr H managed A since the last lending decision.

Mr H incurred no overlimit or late fees since the last lending decision, and his repayments were for more than his required minimum repayments. So I'm persuaded that NewDay's checks were proportionate for this lending decision, and they made a fair decision to increase Mr H's credit limit here.

#### *July 2021 credit limit increase on A - £1,450 to £2,200*

A CRA reported that Mr H's active unsecured debt was £15,561, which was around five times more than what it was at the last lending decision. Mr H had incurred four overlimit fees and one late fee since the last lending decision. So I'm persuaded that all of these factors should have resulted in NewDay completing further checks to ensure the lending would be affordable and sustainable for Mr 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 Mr H to ask him why he had constantly exceeded his credit limit, why his debt had risen by so much in a relatively short period of time, and to ensure he could afford repayments for a higher 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.

Mr H has provided his bank statements leading up to this lending decision. The salary he received is significantly less than what NewDay assessed Mr H's income to be. Mr H's bank statements do not indicate he has an arranged overdraft, but Mr H does go overdrawn several times over the three month statements that I've looked at.

In addition to this, Mr H received money from a lender for £1,500 on 4 May 2021, which appears that the monthly repayment for this is £108.99. As it can take 4-6 weeks for a credit file to update, NewDay may not have been aware of this based on the information they received from the CRA's prior to this lending decision. But they would have been aware of this if they had completed further checks for the reasoning I gave earlier in this section.

So I'm not persuaded that NewDay made a fair lending decision to increase the credit limit to £2,200 for Mr H as further checks would have shown this would not be affordable and sustainable for him.

#### *February 2023 credit limit increase on A - £2,200 to £3,050*

If Mr H's credit limit was not increased to £2,200 for A, then it's probable that the further lending decision on A wouldn't have happened after this either. So I think there is an argument for saying that Mr H's complaint about the subsequent lending decision 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 July 2021, then I'm not persuaded that NewDay would've added to the credit.

### *Application for B*

I'm mindful that Mr H's circumstances could have improved between July 2021 and B being approved, therefore I don't think it would be fair to say this lending decision should automatically be upheld. So I've looked at what checks NewDay said they did when initially approving Mr H's application for B. Mr H declared a gross annual income of £27,700

The data also showed that Mr H had no CCJ's, and it had been 45 months since his last default. The checks showed that Mr H was not in arrears on any of his active accounts at the time of the checks, and he hadn't been in arrears on any of his active accounts in the six months prior to the checks.

Mr H was showing as having a debt to gross annual income of 56.64%, which would have equated to around £15,689. NewDay partially completed an affordability assessment. They used information from a CRA to assess Mr H's monthly credit commitments (£896.96). But they did not assess any other outgoings for Mr H. The nearly £900 a month of credit commitments would have equated to around half of Mr H's net monthly income. So I'm persuaded that NewDay should have completed further checks to ensure the lending would be affordable for Mr H.

As I've previously mentioned there's no set way NewDay should have done this. Mr H has again provided his bank statements for the three months leading up to this lending decision.

Mr H's bank statements show clear signs of financial difficulty and a reliance on credit. Mr H has a number of returned direct debits unpaid over the three months leading up to the acceptance of B.

Mr H has multiple credits into his account from a lender, sometimes for small amounts, but sometimes over consecutive days, indicating a reliance on borrowing. He also appears to have a new credit card just prior to B being accepted as the first direct debit for this new third party credit card is returned unpaid.

Again NewDay may not have been aware of the new third party credit card (or be able to factor in repayments for this) based on the information they received from the CRA's. But they would have been aware of this if they made further checks for the reasons I've already mentioned. So If NewDay would have completed proportionate checks prior to B being approved, I'm not persuaded that they would have approved B, and I can't conclude they made a fair lending decision to give Mr H a £300 credit limit here.

### *January 2023 credit limit increase for B - £300 to £900*

If Mr H's application for B wasn't accepted, then it's probable that the further lending decision on B wouldn't have happened after this either. So I think there is an argument for saying that Mr H's complaint about the subsequent lending decision on B 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 August 2022, then I'm not persuaded that NewDay would've added to the credit.

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 H 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.

### **Putting things right**

Our investigator has suggested that NewDay takes the actions detailed below, which I think is reasonable in the circumstances. In addition to this, if NewDay do not own the debt anymore for any of the accounts, 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 £1,450 after 26 July 2021;

If the rework results in a credit balance, this should be refunded to Mr 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 Mr H's credit file recorded after 26 July 2021;

Or, if after the rework the outstanding balance still exceeds £1,450, NewDay should arrange an affordable repayment plan with Mr H for the remaining amount. Once Mr H has cleared the balance, any adverse information recorded after 26 July 2021 in relation to the account should be removed from his 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;

Rework the account removing all interest, fees, charges, and insurances (not already refunded) that have been applied;

If the rework results in a credit balance, this should be refunded to Mr 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 his credit file;

Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mr H for the remaining amount. Once Mr H has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

*\*If NewDay considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr H how much they've taken off. They should also*

*give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 August 2025.

Gregory Sloanes  
**Ombudsman**