

The complaint

Mr K complains that NewDay Ltd irresponsibly lent to him.

What happened

Mr K was approved for a NewDay branded credit card (which I will refer to as A in this decision), in January 2011 with a credit limit of £500. I have detailed the credit limit changes below:

June 2011	£500 to £750
April 2018	£750 to £1,550
August 2018	£1,550 to £2,550
February 2019	£2,550 to £3,550
July 2019	£3,550 to £4,650

Mr K was approved for another NewDay credit card (which I will refer to as B in this decision), in November 2018 with a credit limit of £500. I have detailed the credit limit changes below:

May 2019	£500 to £1,250
August 2019	£1,250 to £2,000
August 2020	£2,000 to £3,000
December 2020	£3,000 to £4,000
May 2021	£4,000 to £5,750
September 2021	£5,750 to £6,750
February 2022	£6,750 to £8,000

Mr K was approved for another NewDay branded credit card (which I will refer to as C in this decision), in December 2018 with a credit limit of £450. I have detailed the credit limit changes below:

June 2019	£450 to £1,700
September 2019	£1,700 to £3,700

Mr K says that NewDay irresponsibly lent to him. Mr K made a complaint to NewDay, who did not uphold his complaint as they said their lending was responsible. Mr K brought his complaint to our service.

Our investigator partially upheld Mr K's complaint. She said NewDay shouldn't have increased Mr K's credit limit to £750 on A, but she thought all of the lending decisions on B and C were responsible.

Mr K said he agreed with our investigator's position regarding A, but he asked for an ombudsman to review his complaint regarding irresponsible lending for B and C. He said

that as NewDay had used Current Account Turnover (CATO) to assess his income, this was a flawed method as his income wasn't as high as what NewDay said it was.

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 K, 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.

Lending decisions for A

As Mr K and NewDay have both agreed to our investigator's view regarding A then I am not minded to interfere with this. Therefore I have not investigated the lending decisions for A on this basis.

Acceptance for B

I've looked at what checks NewDay said they did when initially approving Mr K's application for B. I'll address the further lending decisions later on but I will list them in date order. NewDay said they looked at information provided by Credit Reference Agencies (CRA's) and information that Mr K had provided before approving his application. The information showed that Mr K had declared a gross annual income of £36,750.

The checks showed that Mr K was not in any arrears on any of his accounts at the point of his application, and there were no arrears on his accounts in the six months prior to his application. There were also no defaults or County Court Judgements (CCJ's) being reported by the CRA NewDay used.

Mr K was showing a debt to gross annual income ratio of 16% which would have equated to him having around £5,880 of unsecured debt. NewDay also completed an affordability assessment using the income Mr K told them, and a mixture of information from the CRA and modelling to estimate Mr K's outgoings. The affordability assessment showed that Mr K would have enough disposable income to sustainably meet repayments on B.

So I'm persuaded that the account opening checks were proportionate for B and NewDay made a fair lending decision to approve the £500 credit limit.

Acceptance for C

I've looked at what checks NewDay said they did when initially approving Mr K's application for C. NewDay said they looked at information provided by CRA's and information that Mr K had provided before approving his application. The information showed that Mr K had declared a gross annual income of £36,750, which is the same as he declared for his application for B.

The checks showed that Mr K was not in any arrears on any of his accounts at the point of his application, and there were no arrears on his accounts in the six months prior to his application. There were also no defaults or CCJ's being reported by the CRA NewDay used.

Mr K was showing a debt to gross annual income ratio of 17.31% which would have equated to him having around £6,361 of unsecured debt. NewDay also completed an affordability assessment using the income Mr K told them, and a mixture of information from the CRA and modelling to estimate Mr K's outgoings. The affordability assessment showed that Mr K would have enough disposable income to sustainably meet repayments on C.

So I'm persuaded that the account opening checks were proportionate for C and NewDay made a fair lending decision to approve the £450 credit limit.

May 2019 credit limit increase for B - £500 to £1,250

I've looked at what checks NewDay said they did as part of this lending decision. The data from a CRA shows that Mr K had unsecured borrowings (£16,103) which were higher than when B was approved. This could be because NewDay used one CRA for the account opening checks, but when they completed their checks for this lending decision they had access to data from three CRA's. Different lenders may not report accounts to all of the available CRA's, therefore this is why the data between CRA's can be different.

NewDay received data from a CRA regarding how much Mr K was spending for his credit commitments. And they used this information and modelling to estimate Mr K's disposable income.

NewDay used CATO data to assess Mr K's income. While I've noted what Mr K has said about NewDay using this method to assess his income, it is an industry standard way of helping assess income. But that being said, if there were obvious discrepancies, I would expect NewDay to make further checks.

At this lending decision the CATO was showing as £2,493, which was not too dissimilar to what the net monthly income was at the account opening checks. As the estimated disposable income was showing as £1,072 after the affordability assessment, then I'm not persuaded that NewDay needed to make further checks for this lending decision based on the affordability assessment.

NewDay would also have been able to see how Mr K managed his account since it had been opened. The data showed that Mr K incurred no late or overlimit fees. He completed a balance transfer which may have helped him save interest also. Mr K often paid more than his minimum repayment.

So I'm persuaded that the checks which NewDay carried out prior to this lending decision were proportionate, and that NewDay made a fair lending decision to increase the credit limit on this account.

June 2019 credit limit increase for C - £450 to £1,700

I've looked at what checks NewDay said they did as part of this lending decision. The data from a CRA shows that Mr K had unsecured borrowings (£16,933) which were higher than when C was approved. This could be because NewDay used one CRA for the account opening checks, but when they completed their checks for this lending decision they had access to data from two CRA's. Different lenders may not report accounts to all of the available CRA's, therefore this is why the data between CRA's can be different.

NewDay received data from a CRA regarding how much Mr K was spending for his credit commitments. And they used this information and modelling to estimate Mr K's disposable income.

NewDay used CATO data to assess Mr K's income. At this lending decision the CATO was showing as £2,505, which was not too dissimilar to what the net monthly income was at the account opening checks. As the estimated disposable income was showing as £1,053 after the affordability assessment, then I'm not persuaded that NewDay needed to make further checks for this lending decision based on the affordability assessment.

NewDay would also have been able to see how Mr K managed his account since it had been opened. The data showed that Mr K incurred no late or overlimit fees. He completed a balance transfer which may have helped him save interest also.

So I'm persuaded that the checks which NewDay carried out prior to this lending decision were proportionate, and that NewDay made a fair lending decision to increase the credit limit on this account.

August 2019 credit limit increase for B - £1,250 to £2,000

I've looked at what checks NewDay said they did as part of this lending decision. The data from a CRA shows that Mr K had unsecured borrowings (£25,035) which were a lot higher than at the last lending decision.

NewDay received data from a CRA regarding how much Mr K was spending for his monthly credit commitments. And they used this information and modelling to estimate Mr K's disposable income.

NewDay again used CATO data to assess Mr K's income. At this lending decision the CATO was showing as £3,063, which was a lot higher than before. Based on NewDay having Mr K's net monthly income as being £2,123.45 only nine months earlier at the account opening checks, and the increase in the unsecured debt Mr K had since the last lending decision, I'm persuaded that they should have completed further checks to ensure the affordability assessment was accurate.

The CATO and the unsecured debt was around 50% higher than what it was at the last lending decision, and while I can't rule out Mr K getting a promotion, or moving to a role with a higher income, Mr K did appear to be more reliant on credit at this point.

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 K to check with him the income was correctly assessed and to check why his debt had increased so much in a relatively short period of time. 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 K if he could provide his bank statements leading up to this lending decision which is something NewDay could have asked him based on what their data showed. Mr K told us that his net monthly income wasn't as high as what NewDay assessed his income to be, and he forwarded a number of bank statements from a number of different bank account providers prior to this lending decision.

Mr K's income is shown on a July 2019 bank statement as being £2,397.16. So it was substantially less than what NewDay had assessed for him around this time. Mr K does make several transfers between his accounts. But in summary, I've noted that over the three

month period Mr K is often overdrawn on multiple accounts, sometimes as much as four figures. On another account where he has a £1,000 overdraft Mr K does go close to the limit.

Mr K has another account which it doesn't appear to offer an overdraft, but he constantly enters an overdraft due to direct debits debiting his account, but I did note he managed to transfer money from other accounts in his name to cover these direct debits later that day, but that indebted him further on his other accounts.

So I'm not persuaded that Mr K could sustainably afford repayments for a £2,000 credit limit, and if NewDay would have made further checks based on the reasons I gave earlier, then I'm persuaded that they wouldn't have increased the credit limit on B to £2,000.

Further lending decisions on B and C

If Mr K's credit limit was not increased to £2,000 on B, I think there is an argument for saying that Mr K's complaint about the subsequent lending decisions 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 2019, I'm not persuaded Mr K would've been able to add to the credit.

As this lending decision was made in August 2019, I think there is an argument for saying that Mr K's complaint about the September 2019 lending decision on C should also 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 2019, I'm not persuaded Mr K would've been able to add to the credit on C just a month later.

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 K 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. Mr K 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 (only if they haven't already done so);

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 £500 after 29 June 2011;

If the rework results in a credit balance, this should be refunded to Mr K 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 K's credit file recorded after 29 June 2011;

Or, if after the rework the outstanding balance still exceeds £500, NewDay should arrange an affordable repayment plan with Mr K for the remaining amount. Once Mr K has cleared the balance, any adverse information recorded after 29 June 2011 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;

End the agreement and rework the account removing all interest, fees, charges, and insurances (not already refunded) that have been applied to balances above £1,250 after 20 August 2019;

If the rework results in a credit balance, this should be refunded to Mr K 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 K's credit file recorded after 20 August 2019;

Or, if after the rework the outstanding balance still exceeds £1,250, NewDay should arrange an affordable repayment plan with Mr K for the remaining amount. Once Mr K has cleared the balance, any adverse information recorded after 20 August 2019 in relation to the account should be removed from his credit file.

Card C:

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 £1,700 after 3 September 2019;

If the rework results in a credit balance, this should be refunded to Mr K 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 K's credit file recorded after 3 September 2019;

Or, if after the rework the outstanding balance still exceeds £1,700, NewDay should arrange an affordable repayment plan with Mr K for the remaining amount. Once Mr K has cleared the balance, any adverse information recorded after 3 September 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 K how much they've taken off. They should also give Mr K 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 K to accept or reject my decision before 9 June 2025.

Gregory Sloanes
Ombudsman