DRN-5802244

The complaint

The estate of Ms C complains that NewDay Ltd trading as Debenhams irresponsibly provided Ms C with an unaffordable credit account.

What happened

NewDay provided the late Ms C with a catalogue shopping account in December 2014 with a £10,000 limit. NewDay has said the evidence available from the account being provided in 2014 is limited; but it has confirmed that this limit was never increased.

In 2024 the administrator of Ms C's estate (who I'll refer to as Mr A throughout this decision) made a complaint to NewDay about irresponsible lending. He said at the time NewDay approved Ms C with this account she was in receipt of a pension and couldn't reasonably have afforded this new line of credit. Mr A said reasonable checks at the time ought to have identified this, and that NewDay made an irresponsible lending decision when providing Ms C with this account.

NewDay didn't uphold the complaint. It said while the information from the sale in 2014 was limited, it confirmed that its checks would have been proportionate to the terms of lending being provided, and what it identified about Ms C's financial circumstances. It says it therefore considers it made a fair lending decision when providing Ms C with this account and opening credit limit.

Unhappy with NewDay's response Mr A referred the complaint to our service for review.

Our investigator considered the details of the complaint and didn't uphold it. He ultimately concluded, based on the available information, that while he couldn't agree NewDay's checks had been reasonable at the time of lending; that it had gone on to make a fair lending decision. Our investigator reached this view after considering information that would likely have been available to NewDay through proportionate checks.

NewDay didn't respond to our investigator's view; Mr A responded and disagreed. He provided bank statements from Ms C's account covering three months leading up to NewDay's lending decision and said:

- The statements support his position that this lending wasn't affordable for Ms C.
- The rules and regulations NewDay needed to follow should have prevented it from considering savings within its affordability assessment.
- A separate complaint they are administering for Ms C about a similar product against a different lender has been upheld by our service, and they draw parallels to the details of this complaint.

Mr A asked for an ombudsman's review, so the complaint has been passed to me to decide.

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.

The information in this case is well known to Mr A and NewDay, so I don't intend to repeat it in detail here. While my decision may not cover all the points or touch on all the information that's been provided, I'd like to assure both parties I've carefully reviewed everything available to me; but I've focused my findings on what I consider to be the key points and facts relevant to this complaint. I don't mean to be discourteous to Mr A or NewDay by taking this approach, but this simply reflects the informal nature of our service.

We've set out our approach to complaints about irresponsible and unaffordable lending as well as the key rules, regulations and what we consider to be good industry practice on our website; and I've seen our investigator made Mr A and NewDay aware of this approach within his view.

Essentially NewDay needed to take reasonable steps to ensure the lending it provided Ms C was responsibly lent. The relevant rules, regulations, and guidance in place at the time NewDay made its lending decisions required it to carry out reasonable and proportionate checks. These checks needed to assess Ms C's ability to afford the credit limit being provided and repay it sustainably, without causing her financial difficulties or harm.

There isn't a set list of checks a lender needs to carry out, but they should be proportionate, considering things like the type, amount, duration, and total cost of the credit, as well as the borrower's individual circumstances; and it must consider the information obtained from these checks to make a fair lending decision.

I've followed this approach and set out my findings below.

NewDay has said it has limited information available from the point of this lending decision in 2014, and I don't consider that to be unreasonable, given the record management obligations on it. But that does mean where the evidence is missing or inconclusive, I've needed to in part reach my findings on balance, that is to say what I consider was more likely to have happened, or to have been fair or reasonable, in the circumstances.

Although NewDay has said within its final response letter addressed to Mr A that its checks were proportionate and that it went on to make a fair lending decision; it hasn't been able to provide any evidence of the data sitting behind its checks to support this conclusion.

So, it therefore follows I can't be satisfied that NewDay did complete proportionate checks before approving Ms C with this credit account. I've therefore gone on to consider what more detailed checks would likely have identified.

NewDay could have obtained information to assess Ms C's affordability of this credit limit in a number of ways; as the rules it needed to have followed aren't prescriptive. Our service's general approach is to ask a customer to provide us with their main bank statements showing their income and expenditure covering a period of three months leading up to a lending event. We generally find that this allows us to recreate what proportionate checks would more likely than not have shown a lender, had it completed them at the time.

Mr A has provided us with Ms C's bank statements covering the three months leading up to this lending decision. In the absence of any other contradictory information, I've considered these statements to understand what NewDay would more likely have identified through proportionate checks.

The statements show Ms C's income averages around £600 per month. This appears to be made up of two separate payments from a private pension and state pension credits. These credits appear to be paid slightly more regularly than monthly, meaning in some months they may be duplicated. I've therefore factored this in to the average income I consider Ms C received on a monthly basis.

Ms C appears to have minimal non-discretionary expenditure evidenced. There's payments to insurances, utilities and usual household bills. On average these total around £180 per month.

Ms C doesn't appear to have any housing costs evidenced within the statements, such as a mortgage or rent. I acknowledge that Mr A has said Ms C had an interest only repayment mortgage at the time of this lending; and that family and friends were making these payments for her, as well as towards her council tax, due to her financial difficulties.

While I don't doubt the testimony Mr A has provided, the evidence within the statements doesn't suggest Ms C had any housing costs; and I've gone on to explain below why I consider it would have been reasonable for NewDay to not have questioned this further through more detailed checks.

NewDay hasn't been able to provide us with the data it obtained from Credit Reference Agencies (CRAs) before it made its lending decision. However, NewDay does complete monthly reviews of a customer's account and obtains information from CRAs on an ongoing monthly basis. So, while after the event, I've reviewed the information NewDay obtained from CRAs in the months that followed its lending decision, to look to build a picture of what it more likely than not would have identified from the credit check it obtained before lending.

The credit monitoring in the months that followed doesn't report a mortgage balance or monthly repayment to a mortgage. In fact, it isn't until mid 2018 that a mortgage balance and monthly mortgage payment is reported. And as we know Ms C wasn't renting, NewDay reasonably wouldn't have identified any rent payments.

The credit checks following the lending decision do on occasion report an outstanding credit card balance, which would appear to be a total balance across all active credit card accounts. Within the 18 months following this lending decision, there is only a balance reported in three of the months, and this never exceeds £100. For the other 15 months the balance is reported as zero, suggesting in the majority of months Ms C repaid her total credit card debt in full.

I consider this is supported by Ms C's statements covering the three months leading up to this lending decision. I say this because within these statements there's no obvious payment to other credit. Mr A has made reference to payments going to another account in Ms C's name held with the same bank; however, it's not clear from the statements what type of account this was, and whether it was lending or savings, for example. And I don't consider proportionate checks by NewDay would have extended to it questioning this; or delving any deeper than what was apparent from the statements.

So, on balance, I consider it's more likely NewDay would have identified Ms C had a modest to nil balance reported on the credit check it completed before agreeing this lending.

The Consumer Credit Sourcebook (CONC) which NewDay needed to follow set out how calculation of reasonable repayment of a running credit facility should be factored into an affordability assessment.

CONC 5.3.1 [01/04/2014] G states:

"*(8) For a regulated credit agreement for running-account credit the firm, in making its creditworthiness assessment or the assessment required by CONC 5.2.2R (1):*

(a) should consider the customer's ability to repay the maximum amount of credit available (equivalent to the credit limit) under the agreement within a reasonable period;

(b) may, in considering what is a reasonable period in which to repay the maximum amount of credit available, have regard to the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the credit limit;"

I consider NewDay could reasonably have considered a personal loan equal to the £10,000 credit limit would be repaid over a considerable amount of time, likely more than four years. This would therefore equate to around £200 per month. I note that in any event Ms C's contractual monthly payments appear to have been around 2.5% of the statement balance, which I consider adds important context. So, as a minimum Ms C would have been required to pay around £250 per month.

Although NewDay wouldn't have had knowledge of Ms C's utilisation of the limit before its lending decision; it's evidenced from the statements I've seen that Ms C's balance never exceeded £3,100. So, in any event Ms C's minimum contractual monthly payments never exceeded more than £100.

I note that within the bank statements we've been provided in support of the unaffordability argument, that Ms C's bank account balance ran in credit, largely in the thousands. There's evidence of Ms C making payments of a couple of thousand pounds on two occasions to an account with the same bank, seemingly in her name as I've set out above, as well as to another financial business which is known to provide savings and investment accounts.

Mr A has said while proportionate checks may have led NewDay to have identified Ms C's account was largely running with a healthy credit balance in the lead up to its decision, that it wouldn't have been reasonable for it to have taken that into account as part of its creditworthiness assessment. He's said this because he considers it's against the rules and regulations as set out within CONC 5.3.1.

I've considered a number of criteria when thinking about this case as I'm required to do, including relevant law, rules and regulations in place at the time of this lending event, and good industry practice.

CONC 5.3.1 [01/04/2014] which was the relevant version in place at the time of this lending event provides for savings to be considered as part of an affordability assessment:

"*(6) For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:*

…

(c) out of income and savings without having to realise security or assets;"

As such I can't agree with Mr A's statement, as NewDay could reasonably have taken into account savings as part of its lending assessment. I'm also mindful, as I've set out above, that the rules aren't prescriptive in terms of what information NewDay should have considered as part of its creditworthiness assessment. So, I can't safely say it would have reviewed Ms C's statements as part of its proportionate checks in any event. However, had it done so, I consider it could reasonably have taken into account the healthy credit balance evidenced within Ms C's statements, and what appears to be at least one relatively large payment to a savings or investment financial provider, as part of its review. And I consider this would reasonably have provided it with confidence that this would have only increased Ms C's ability to sustainably afford this new line of credit.

I acknowledge Mr A has drawn parallels to another complaint being considered by our service. However, I would set out that each complaint is decided on its individual details. And, given the different financial providers involved in these cases, it's reasonable that different information would likely have been available through existing relationships, which may reasonably have needed to have been taken into account as part of proportionate checks.

So, based on the documentary evidence available to me, and what I consider NewDay would more likely have identified through proportionate checks, I consider it would have reasonably concluded this credit limit was sustainably affordable for Ms C. So, it therefore follows I don't consider NewDay made an unfair lending decision when approving Ms C with this credit.

I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

I am sorry to hear of the financial situation Mr A has told us Ms C was in when being provided with this credit. I don't doubt that Ms C's actual financial situation in the lead up to NewDay's lending decision may well have been different to the picture that is painted and I have obtained from the evidence now available. However, my role here is to consider what NewDay ought reasonably to have identified through proportionate checks at the time, and whether it made a fair lending decision based on the outcome of those checks. Based on what I consider NewDay ought reasonably to have identified through proportionate checks, I consider it would have reasonably concluded this credit limit was sustainably affordable for Ms C.

So, for the reasons set out above it follows I'm not directing NewDay to take any further action in resolution of this complaint.

My final decision

For the reasons set out above my final decision is that I don't uphold this complaint about NewDay Ltd trading as Debenhams.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms C to accept or reject my decision before 30 October 2025.

Richard Turner
Ombudsman