

## **The complaint**

Ms M complains that NewDay Ltd irresponsibly provided her with an unaffordable credit card.

## **What happened**

NewDay provided Ms M with a Debenhams branded credit card in 2015 with an opening limit of £1,000. NewDay has confirmed the credit limit was never increased.

Ms M complained to NewDay in May 2025 about unaffordable lending. She said that NewDay's checks at the time hadn't reasonably considered her financial circumstances; and that had it done so it would have identified this lending wasn't affordable for her.

NewDay issued a final response in early June 2025 in which it didn't uphold Ms M's complaint, saying it wouldn't refund any interest or charges. It also said Ms M's complaint had been made outside of the regulatory timescales for complaining, and that it didn't agree to our service considering the complaint.

Unhappy with NewDay's response Ms M referred her complaint to our service. One of our investigators looked at the details of this complaint and considered it was reasonable to interpret it to be about the fairness of Ms M's relationship with NewDay. As such they went on to review the details of the complaint on this basis. Having done so, they didn't consider NewDay had acted unfairly in its lending decision, or in any other way in relation to Ms M's account. So, they didn't uphold the complaint.

NewDay didn't respond to our investigator's view; Ms M responded and disagreed. She provided bank statements setting out her financial situation around the time of NewDay's lending event, as well as maintained her position that better checks should have led to it concluding the credit card wasn't sustainably affordable for her.

Ms M 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 Ms M and NewDay, so I don't intend to repeat it in detail here. I acknowledge the detailed submissions Ms M has provided in support of her complaint, both pre and post our investigator's view, setting out sensitive personal information and her finances around the time of the lending. I would like to start by saying I am sorry to hear of the personal and financial circumstances Ms M has made us aware of. I'd like to assure both Ms M and NewDay that I've carefully reviewed everything available to me; however, because I've focused my decision on what I consider to be the key points of this complaint, I haven't commented on every point. I don't mean to be discourteous to either party by taking this approach, but this simply reflects the informal nature of our service.

Initially I think it's helpful for me to set out that there are time limits for bringing a complaint to our service, and NewDay has said this complaint was referred to us late. Our investigator set out within their view why they didn't think we could look at the complaint about NewDay's lending event as it took place more than six years before Ms M made the complaint.

But our investigator went on to explain why it was reasonable to interpret Ms M's complaint as being about an unfair relationship as described in section 140A (s.140) of the Consumer Credit Act 1974 (CCA); and why they therefore considered Ms M's complaint about an allegedly unfair lending relationship had been made to us in time.

I don't intend to go into the detail our investigator has already set out within my decision here, but for the avoidance of doubt I agree with our investigator that I have the power to look at Ms M's complaint on this basis. I say this because I'm satisfied Ms M's complaint is about NewDay providing her with unaffordable lending, which potentially created an unfairness in the relationship.

The provision of this credit card may have made the relationship unfair, as Ms M may have paid more in interest and charges than she could afford. I acknowledge NewDay doesn't agree we can look at any events which took place more than six years before Ms M's complaint was made, but as I'm not upholding this complaint, I won't be commenting on this further.

In deciding what's fair and reasonable I'm required to take into account, amongst other matters, relevant law. As I consider Ms M's complaint is about the fairness of her relationship with NewDay, relevant law in this case includes s.140A-C of the CCA.

S.140A says a court may make an order under s.140B if it determines that the relationship between the creditor (NewDay) and the debtor (Ms M), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement.
- the way in which the creditor has exercised or enforced any of his rights under the agreement.
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. NewDay has provided evidence that this agreement was terminated in early 2023; so, the relationship was ongoing within six years of Ms M making this complaint.

S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given the details of Ms M's complaint, I need to consider whether NewDay's decision to lend to her, or any other actions it may have taken, created an unfairness in the relationship between her and NewDay; and if it did, whether NewDay took reasonable steps to remove that unfairness.

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. I've followed this approach when considering Ms M's complaint.

Having considered everything, I'm not upholding Ms M's complaint as I've decided this credit was provided fairly. I say this because:

- I can't conclude the checks NewDay completed before providing the credit card were reasonable and proportionate, given that it hasn't been able to provide any data relating to its checks from the lending event (which isn't unreasonable given the timescales involved and the data retention policies it must adhere to).
- I've therefore gone on to review what I consider NewDay would more likely than not have identified through proportionate checks at the time. I would set out that I don't consider it would have been proportionate for NewDay to have verified Ms M's actual financial circumstances, by way of obtaining her bank statements at the time, for example. And I'm mindful that the rules aren't prescriptive in terms of what information NewDay needed to have considered to make its lending decision. But, I consider proportionate checks ought to have led to it understanding Ms M's income and expenditure, by way of declarations or statistical data, for example.
- Ms M has provided a number of bank statements from many accounts in her name to evidence her financial circumstances around the time of this lending, and therefore show what NewDay would likely have identified through proportionate checks. However, these statements are scattered across the period I'd have expected NewDay to have obtained information about; some statements I consider are too historic to the lending event, or are dated after the lending event. So, while I've looked to piece together a picture of Ms M's financial situation in the lead up to this lending, I find I'm unable to safely understand her full financial situation.
- I acknowledge the statements appear to show Ms M was managing her finances to a tight budget, including the use of overdraft facilities. And Ms M has provided us with her own income and expenditure assessments created around the time. However, based on the level of checks that I consider would have been proportionate, I'm not persuaded that this credit limit would have appeared unaffordable.
- There are multiple regular credits evidenced across the many statements (including what appear to be cash and cheque deposits), as well as some transfers between the accounts she held with multiple financial providers. Ms M has said these transfers were her managing her accounts and moving money between them; while I acknowledge this, these transfers would, I consider on balance, likely have inflated what I consider would have been proportionate income validation checks at the time. There are a handful of regular non-discretionary expenses evidenced, as well as some repayments to existing credit accounts.
- Taking into account the evidence available from the time, and what I consider NewDay ought reasonably to have identified through proportionate checks, I don't think it's likely it would have obtained information which suggested it was unfair to provide Ms M with this lending.
- I consider proportionate checks for this amount of credit wouldn't have required NewDay to have considered Ms M's financial situation to the extent I believe she expects, by scrutinising her finances by way of bank statements, for example. While I acknowledge proportionate checks to the terms of lending being provided here

wouldn't likely have identified Ms M's actual financial situation, that doesn't mean that NewDay didn't go on to make a fair lending decision.

This means I don't think NewDay did anything wrong when it provided Ms M with this credit card account.

I've also considered whether the relationship might have been unfair in any other way.

I've seen Ms M made NewDay aware of financial difficulties in late 2017; and that it agreed a repayment arrangement at this time, with interest and charges being suppressed to the account from early 2018 onwards. Ms M was also unable to use the account from this time for purchases, and the balance was repaid in 2021, with the account being terminated in 2023. As such, no interest or charges were applied since early 2018, and therefore within six years of Ms M making this complaint.

Ms M has said the credit agreement she has a copy of is unsigned, and therefore she questions the validity of the agreement. I would set out to Ms M that there could be many reasons why the copy of the agreement she has in her records is unsigned; and that this itself doesn't lead me to conclude the agreement is invalid. There's no disagreement that this credit card was in Ms M's name, and that she had the use of the facility. From a fair and reasonable point of view, I consider her use of the account indicated her acceptance of the terms of the agreement.

Ms M has also made reference to a separate issue relating to data protection that she raised with NewDay. I would set out that NewDay had investigated and issued its final response to Ms M's unaffordable lending complaint prior to her concerns about data protection.

I've seen that NewDay responded to Ms M with assurances in response to these concerns. It also set out that a final response would be issued, which was separate to the unaffordable lending complaint. While I acknowledge Ms M's testimony around these concerns and don't doubt they caused some distress and inconvenience, I haven't been presented with any persuasive information that leads me to reasonably conclude they've led to Ms M experiencing a financial loss, or her data being compromised. So, I'm not persuaded that I can reasonably ask NewDay to pay Ms M compensation here.

If Ms M's concerns about NewDay's data handling haven't been addressed to her satisfaction, she may wish to contact the Information Commissioner's Office, the regulatory body responsible for data protection and information rights law.

For the reasons I've set out above, I'm not persuaded that NewDay lent irresponsibly to Ms M, or otherwise treated her unfairly in relation to this credit agreement. I therefore haven't seen anything to suggest that s.140A or anything else would, given the facts of this complaint, lead to a different outcome here.

I acknowledge my decision will be disappointing to Ms M; it's clear how engaged she is with the details of this complaint, and the unfair and unreasonable actions she considers NewDay has taken. In no way is my decision here intended to downplay Ms M's strength of feeling in these matters, or the historic and current personal and financial circumstances she's made us aware of. But for the reasons set out above, I don't uphold this complaint, and it therefore follows that I don't direct NewDay to take any further action in resolution of the complaint.

### **My final decision**

My final decision is that I don't uphold Ms M's complaint about NewDay Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 27 February 2026.

Richard Turner  
**Ombudsman**