

## The complaint

Mr M complains that NewDay Ltd irresponsibly lent to him.

## What happened

Mr M was approved for a NewDay branded credit card in November 2020 (which I will refer to as A in this decision) with a £300 credit limit. The credit limit on A was increased a further three times. The further increases were to £1,300 (July 2021), £1,850 (February 2022) and £3,100 (April 2022).

Mr M was approved for another NewDay branded credit card in September 2022 (which I will refer to as B in this decision), with a £1,200 credit limit. Mr M says NewDay irresponsibly lent to him. Mr M made a complaint to NewDay, who did not uphold his complaint. NewDay said the affordability assessments they completed were proportionate and appropriate. Mr M brought his complaint to our service.

Our investigator did not uphold Mr M's complaint. She said that NewDay's checks were proportionate, and they made fair lending decisions. Mr M asked for an ombudsman to review his complaint. He made a number of points. In summary, he said that he had taken a personal loan out in March 2022, shortly before the last lending decision on A, which reduced his disposable income by £143 a month.

Mr M said the income that NewDay recorded for him was higher than what he actually earned, and he forwarded payslips to our service. He said his bank statements showed he was frequently overdrawn, and reliant on credit.

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 the credit available to Mr M, 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 in date order and whether I'm persuaded these checks were proportionate.*

### Acceptance for A

*I'll address the further lending decisions below. The data shows that Mr M declared a gross annual income of £18,000. A Credit Reference Agency (CRA) was reporting no public records, such as a County Court Judgement (CCJ) on Mr M's credit file. They also reported that Mr M had no defaulted accounts. But it does appear the CRA reported that Mr M had an Individual Voluntary Arrangement (IVA)/bankruptcy within the last three years, although I*

*note the CRA reported he was not currently bankrupt.*

*It may help to explain here that, while information like an IVA 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. I asked Mr M for details of his Insolvency Practitioner if he had been subject to an IVA, but he confirmed he hadn't been subject to an IVA before. So I've looked at what other checks NewDay made to see if they made a fair lending decision.*

*The information from a CRA showed that Mr M had no repayment plans, no payday loans, and he was not in arrears on any active accounts he held at the time of the checks for A, or for the six months prior to these checks. The checks showed that Mr M had an active debt to declared gross annual income ratio of 0%, which would have equated to Mr M having no active unsecured debt at the time of the checks.*

*NewDay also completed an affordability assessment, using information Mr M gave them (such as his income), information from a CRA regarding how much he was paying on a monthly basis for his credit commitments (£0 in this instance), and modelling to estimate Mr M's other outgoings, which is an industry standard way of estimating outgoings. The affordability assessment showed that Mr M should have a sufficient disposable income in order to meet sustainable and affordable repayments for a £300 credit limit.*

*So I'm persuaded that NewDay's checks for A were proportionate, and they made a fair lending decision to approve A with a £300 credit limit.*

*July 2021 credit limit increase on A - £300 to £1,300*

*A CRA reported that Mr M's active unsecured debt was £1,134, which was not significantly higher than at the account opening stage. Mr M had not been in arrears on any active accounts since the account opening checks.*

*NewDay would have also been able to see how Mr M managed A since it had been opened. Mr M incurred no late or overlimit fees on A since it had been opened. He often made repayments which were a lot higher than his minimum requested repayments, which I wouldn't expect him to be able to make if he was struggling financially at the time.*

*NewDay did complete an affordability assessment for this lending decision. NewDay used Current Account Turnover (CATO) to get an indication of Mr M's income. This is an industry standard way of estimating income. NewDay aren't required to request payslips/bank statements for each lending decision as this would not be proportionate.*

*Here, I'm not persuaded that it would have been proportionate for NewDay to request Mr M's pay slips/bank statements. Although Mr M's unsecured debt had increased, he managed the account well, paying a multiple of his requested minimum repayment often, and there was no recent adverse information being reported by the CRA.*

*So I'm persuaded that NewDay's checks were proportionate here, and they made a fair lending decision to approve the £1,300 credit limit.*

*February 2022 credit limit increase on A - £1,300 to £1,850*

*A CRA reported that Mr M's active unsecured debt was £3,293, which was not significantly higher than at the last lending decision, and this would have represented around 18.3% of Mr M's originally declared gross annual income. Mr M had not been in arrears on any active accounts since the last lending decision. I do note Mr M made transactions on A which incurred a cash advance fee, however, despite these transactions possibly being a more*

*expensive way to borrow, I need to be mindful they are a legitimate feature of the account.*

*Mr M incurred no late or overlimit fees on A since the last lending decision. He often made repayments which were a lot higher than his minimum requested repayments, which I wouldn't expect him to be able to make if he was struggling financially at the time, with the last two repayments totalling £385.38 and £611.10.*

*NewDay again completed an affordability assessment for this lending decision. NewDay again used CATO to get an indication of Mr M's income. And as I explained in the last section, NewDay aren't required to request payslips/bank statements for each lending decision as this would not be proportionate.*

*Here, I'm not persuaded that it would have been proportionate for NewDay to request Mr M's pay slips/bank statements. Although Mr M's unsecured debt had increased, he managed A account well, paying a lot more of his requested minimum repayment often, and there was no recent adverse information being reported by the CRA.*

*So I'm persuaded that NewDay's checks were proportionate here, and they made a fair lending decision to approve the £1,850 credit limit.*

*April 2022 credit limit increase on A - £1,850 to £3,100*

*A CRA reported that Mr M's active unsecured debt was £7,167, which was significantly higher than at the last lending decision, especially as Mr M's active unsecured debt had more than doubled in only a couple of months. Mr M had not been in arrears on any active accounts since the last lending decision. Mr M made three transactions which incurred cash advance fees in the month after the last credit limit increase.*

*Mr M incurred no late or overlimit fees on A since the last lending decision. But due to the increase in debt in a short period of time, I'm persuaded that NewDay should have completed further checks to ensure the increased lending would be affordable and sustainable for Mr M.*

*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 M to ask him why his active unsecured debt had increased as much as it had in such a short space 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.*

*Mr M has forwarded me two of his different bank account statements for the three months leading up to this lending decision. His secondary account, whilst on the surface may appear to have savings credited to the account as there is a reference of "SAVE" next to the majority of Mr M's credits from his main account, for all three months I viewed he was overdrawn for the full three month period (apart from two days). Two of the three statements showed more debits than credits, and the only month showing a positive cashflow was for only £2.71.*

*Mr M's main account does show signs of financial difficulty. Not only is he overdrawn by four figures for the majority of the three months I looked at, he did on more than one occasion exceed his £2,000 arranged overdraft. And for most of the three months he was around his arranged overdraft limit. Mr M's salary fluctuates, with a minimum of £319 a week. And based on what his statements showed, I'm not persuaded that Mr M could sustainably afford repayments for a £3,100 credit limit. So I'm not persuaded that NewDay made a fair lending decision here.*

## Acceptance for B

*Although I'm not persuaded that the last lending decision on A was a fair lending decision, I'm not persuaded that it should automatically follow that NewDay lent irresponsibly for B. I say this as Mr M's financial position could have improved since the last lending decision on A.*

*The data for B shows that Mr M declared a gross annual income of £19,950. A CRA was reporting no public records, such as a CCJ on Mr M's credit file. They also reported that Mr M had no defaulted accounts. The CRA reported that Mr M had not had an IVA/bankruptcy within the last three years, and he was not currently bankrupt.*

*The information from a CRA showed that Mr M had no repayment plans, no payday loans, and he was not in arrears on any active accounts he held at the time of the checks for B, or for the six months prior to these checks. The checks showed that Mr M had an active debt to declared gross annual income ratio of 39.17%, which would have equated to Mr M having around £7,814 of active unsecured debt at the time of the checks.*

*NewDay also completed an affordability assessment, using information Mr M gave them (such as his income), information from a CRA regarding how much he was paying on a monthly basis for his credit commitments, and modelling to estimate Mr M's other outgoings, which is an industry standard way of estimating outgoings.*

*But I note there were no housing costs included on the assessment despite the affordability assessment showing housing costs when he applied for A. It's possible that Mr M's housing situation could have changed since A and B were applied for, however, I'm persuaded NewDay should have looked closer into this.*

*NewDay would have also been able to see how Mr M had been managing A since the last lending decision to the application of B. I note that the data NewDay had on A, which the last data was gathered two days before Mr M applied for B, showed he incurred a late payment fee, which could be a sign of financial difficulty. Alternatively, it could have been an oversight from Mr M.*

*But based on the late payment only being two days before B was applied for, and the lack of housing costs on the affordability assessment, I'm persuaded that NewDay should have completed further checks to ensure that Mr M could afford sustainable repayments for a £1,200 credit limit.*

*Again Mr M has forwarded me his bank statements leading up to this lending decision. There are around three weeks missing from the three month period. Mr M has requested these twice from his building society, but they haven't sent them. But I'm not persuaded that this makes a material difference and I'll explain why.*

*Mr M's secondary bank account largely has the same amount of debits/credits over the three month period, and Mr M is overdrawn for the majority of the three month period.*

*Mr M still has a £2,000 arranged overdraft on his main bank account, which he often spends the majority of the three month period close to this limit. I identified a returned direct debit during the three month period also. So I'm not persuaded that Mr M's financial situation had improved sufficiently prior to B being opened, that he could sustainably afford repayments for a £1,200 credit limit. So I can't fairly say that NewDay made a fair lending decision here.*

*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 M 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 M 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:

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 to balances above £1,850 after 26 April 2022;

If the rework results in a credit balance, this should be refunded to Mr M 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 M's credit file recorded after 26 April 2022;

Or, if after the rework the outstanding balance still exceeds £1,850, NewDay should arrange an affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the balance, any adverse information recorded after 26 April 2022 in relation to the account should be removed from Mr M's 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 M 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 M's credit file;

Or, if after the rework there is still an outstanding balance, NewDay should arrange an

affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the balance, any adverse information in relation to the account should be removed from Mr M's 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 M how much they've taken off. They should also give Mr M 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 M to accept or reject my decision before 13 January 2026.

Gregory Sloanes  
**Ombudsman**