

## The complaint

Mr C complains that NewDay lent to him irresponsibly.

## What happened

The facts of this case are familiar to both sides, so I don't intend to repeat everything in detail here. Instead, I'll provide a summary.

Mr C applied – and was accepted for – a credit card in September 2011. The initial credit limit was £800. The limit was subsequently increased seven times as follows:

Credit Limit Increase (CLI) Number	Date	Existing Limit	Increase/Decrease	New Limit
1	24/08/2012	£800	£300	£1,100
2	25/03/2013	£1,100	£400	£1,500
3	15/07/2013	£1,500	£750	£2,250
4	21/02/2014	£2,250	£1,150	£3,400
5	22/08/2014	£3,400	£1,050	£4,450
6	23/02/2015	£4,450	£1,350	£5,800
7	21/08/2015	£5,800	£1,750	£7,550

In May 2024, Mr C – via a professional representative (PR) - complained to NewDay about its decision to lend.

In July 2024, NewDay issued its final response letter in which it did not uphold Mr C's complaint. As a result, PR on behalf of Mr C referred the complaint to our service.

One of our investigators looked into the complaint and, in May 2025, issued their opinion in which they did not uphold the complaint. In short, our investigator said whilst they could not see that NewDay had completed reasonable and proportionate checks prior to agreeing to lend, such checks would not have alerted NewDay to the possibility Mr C would be unable to sustainably repaying the borrowing in question.

PR - on behalf of Mr C - didn't agree with our investigator's findings and, as an agreement couldn't be reached, the complaint has been passed to me to decide.

In November 2025, I issued a provisional decision in which I upheld the complaint in part. Here is what I had to say:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Having done so, I currently think this complaint should be upheld in part. I'll explain why I think it is a fair outcome in the circumstances.*

*But, before I do, I would like to make it clear that I'm aware that I've summarised this*

*complaint above in less detail than it may merit. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.*

*If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.*

*Lastly, I would add that where the information I've got is incomplete, unclear or contradictory, I've based my decision on the balance of probabilities.*

*The Financial Ombudsman Service has set out its general approach to complaints about irresponsible and unaffordable lending on its website.*

*In essence, NewDay needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr C could repay the loan repayments when they fell due and without the need to borrow further.*

*These checks weren't prescriptive, but could take into account a number of different things such as how much was being lent, the repayment amounts and the consumer's income and expenditure.*

*So, in keeping with the information on the Financial Ombudsman Service's website, I think there are a number of overarching questions I need to consider when deciding a fair and reasonable outcome given the circumstances of this complaint:*

- 1. Did NewDay carry out reasonable and proportionate checks to satisfy itself that Mr C was likely to have been able to repay the borrowing in a sustainable way?
  - i. If NewDay carried out such checks, did it lend to Mr C responsibly using the information it had?*

*Or*

  - ii. If NewDay didn't carry out such checks, would appropriate checks have demonstrated that Mr C was unlikely to have been able to repay the borrowing in a sustainable way?**
- 2. If relevant, did Mr C lose out as a result of NewDay's decision to lend to him?*
- 3. Did NewDay act unfairly or unreasonably in some other way?*

*There are many factors that could be relevant when determining how detailed proportionate checks should have been. And while much will depend on the circumstances in question, the more obvious factors include – though aren't necessarily limited to:*

- The amount of credit;*
- The total sum repayable and the size of regular repayments;*
- The duration of the agreement;*
- The costs of the credit; and*
- The consumer's individual circumstances*

*As a result, the circumstances in which it was reasonable to conclude that a less detailed*

*affordability assessment was proportionate strike me as being more likely to be limited to applicants whose financial situation was stable and whose borrowing was relatively insignificant and short-lived – especially in the early stages of a lending relationship.*

*I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr C's complaint.*

#### *Initial lending decision*

*The investigator did not uphold Mr C's complaint about NewDay's decision to provide the initial lending. And, in response to the investigator's findings, PR only appear to disagree with what the investigator had to say insofar as it relates to CLI 1 onwards. Therefore, it seems the initial lending decision is no longer in dispute.*

*With that being the case, I see no reason to say much on the matter. However, for completeness, I agree with the outcome the investigator reached with regards to the initial lending decision.*

*I say this because, as the investigator concluded, there is insufficient information to safely say that NewDay carried out reasonable proportionate checks prior to agreeing to lend. But, I'm not persuaded the information NewDay likely would have seen would have given it cause to refuse to lend.*

*I say this noting the bank statements reveal that Mr C's average monthly income in the period prior to the initial lending decision was about £1,350. It appears Mr H was spending around £200 per month towards his existing credit commitments. There were no other obvious signs of financial hardship, such as reliance on payday lending or similar. With that being the case – and noting the size of the lending in question – I find it unlikely that if NewDay were able to provide the output from the checks it carried out at the time, I would find it had reasonable cause to refuse to lend.*

*I appreciate a forensic analysis of Mr C's bank statements – including an itemised income and expenditure assessment – might paint a different picture. But I think such a check would be disproportionate in the circumstances. I say this noting the size of the lending in question and the fact there appears to be no obvious indicators which ought to have given NewDay cause for concern.*

*Therefore, I think NewDay made a fair decision when it approved the initial credit card.*

#### *CLI 1*

*CLI 1 was applied in August 2012, so the Office of Fair Trading Irresponsible Lending Guide (OFT ILG) applied at the time.*

*The OFT ILG says that affordability checks should be "borrower-focused" – so NewDay needed to think about whether Mr C had the ability to sustain repayments and whether this would cause difficulties or adverse consequences for him. This means it wasn't enough for them to only think about the likelihood that they would get their money back without considering the impact of repayment on Mr C.*

*Prior to agreeing to the credit limit increases, NewDay says it would have gathered information about Mr C's income which it would have verified by checking his current account turnover (known as CATO). It says it would also have conducted an income and expenditure assessment which would have included, amongst other things, a review of*

*existing credit commitments based on credit reference agency data. And, it says, it would have also taken into consideration how the credit card in question was being managed.*

*Due to the amount of time that's passed no application data, credit file results or affordability checks from CLI 1 remains. Bearing in mind the length of time that has passed, it isn't surprising or unusual that NewDay doesn't have such information. And to be clear, I don't draw a negative inference from this. I wouldn't have expected NewDay to provide such information dating back some 13 years.*

*There is, however, evidence available about how Mr C was conducting the account in question.*

*On my reading of the information NewDay has been able to provide, it appears Mr C was consistently overlimit on the account in question from November 2011 up until June 2012 during which time he incurred overlimit fees every month. I can see that in July 2012, one month prior to approving CLI 1, Mr C had brought himself back within the agreed credit limit but did so by only 30p.*

*I do not think NewDay could be reasonably satisfied that Mr C would be "able to meet repayments under the credit agreement in a sustainable manner" (OFT ILG 4.2) and "without undue difficulty" (OFT ILG 4.3) when it decided to increase his credit limit bearing in mind he had been in breach of the agreement – at a lower credit limit - for a sustained period.*

*After all, the OFT ILG states that a "creditor's assessment should have regard to the borrower's ability to pay off the maximum amount of credit available (equivalent to the credit limit) over a reasonable period of time". And I simply do not see that a borrower who is over the agreed limit for eight of the last nine months has evidenced they will be in a position to repay a higher credit limit at all, let alone within a reasonable period of time.*

*This, in my view, should have been sufficient cause for NewDay to refuse to increase the credit limit further*

*However, for the sake of completeness, I've considered that the above ought to have given NewDay cause, at the very least, to make more searching in enquiries to establish Mr C's actual financial position.*

*I've turned to look at the bank statements Mr C has provided in order to build up a picture of what further enquiries might have shown NewDay. I've reviewed Mr C's bank statements covering the three months prior to the lending in question to build up an understanding of the information NewDay would likely have seen at the time it agreed to increase Mr C's credit limit. I'll refer to this as 'the Relevant Period'.*

*Having done so, it appears that Mr C's average monthly income - excluding sporadic receipts from what PR has said is borrowing family members and friends – was around £1,280 during the Relevant Period. Mr C's committed expenditure (this includes Direct Debits, Standing Orders and payments to his pre-payment card for gas and electricity) amount to about £970<sup>1</sup>.*

*Further, it looks like Mr C was spending around £300 each month in supermarkets and petrol stations during the Relevant Period.*

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<sup>1</sup> This includes a Direct Debit of £170 which appears a month prior to the lending in question. Mr C has confirmed this was the Sheriffs Office collecting outstanding Council Tax arrears. Mr C has said that he owed about £1,200 in Council Tax arrears at the time and, therefore, it represented an ongoing commitment.

Once all of this is deducted from his regular income, it appears Mr C would be left with next to no income with which to absorb any additional borrowing.

What's more, the bank statements show that in two of the three months during the Relevant Period, Mr C was left with just a few pounds at the end of the month on an account with no agreed overdraft facility. Indeed, in one of the months, I can see Mr C entered into an unarranged overdraft (albeit briefly). This corresponds with the income and expenditure assessment and, in my view, reinforces the notion that Mr C would be unable to sustainably repay additional borrowing without undue difficulty. Importantly, the bank statements do not contain anything which undermines or otherwise contradicts the conclusions drawn from Mr C's management of the account.

With all of that being the case, I am currently of the view that NewDay ought to have refused to increase the credit limit in light of the way Mr C was managing the account. However, even if I thought NewDay ought to have conducted further checks prior to agreeing to lend (which I don't), I would still reach the conclusion that it made an unfair lending decision when it agreed CLI 1 because Mr C did not, seemingly, have sufficient funds to sustainably repay the increased borrowing without undue difficulty.

Therefore, I do not currently think NewDay acted fairly when it approved CLI 1.

In reaching this conclusion, 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 below results in fair compensation for Mr C in the circumstances of his complaint. I'm satisfied that, based on what I've seen, no additional award is appropriate in this case.

#### Putting things right

Where credit has been provided when it shouldn't have been, it would be fair and reasonable for the lender to refund any interest and charges paid by the borrower. And the borrower would be expected to repay any remaining amount of the funds they were given. So, I'd expect Mr C to pay back the funds he was lent – when he used his credit card – but not the interest or any other charges that have been applied. I'd also expect NewDay to remove adverse information, if any, they have reported to the credit reference agencies about this account.

To put things right for Mr C, I'm provisionally minded to conclude that NewDay should :

- Rework the account, removing all interest, fees and charges that were applied to balances above £800 after 24 August 2012;
- If the rework results in a credit balance, this should be refunded to Mr C, 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 recorded after 24 August 2012 regarding this account from Mr C credit file, if any remains;
- Or, if after the rework there remains an outstanding balance, NewDay should arrange an affordable repayment plan with Mr C for the remaining amount. Once Mr C has cleared the outstanding balance, any adverse information recorded after 24 August 2012 in relation to the account should be removed from his credit file, if any remains.

\*HM Revenue & Customs requires NewDay Ltd trading as Aqua to take off tax from this

*interest. NewDay Ltd trading as Aqua must give Mr C a certificate showing how much tax it's taken off if he asks for one.*

## **Responses to my provisional decision**

I gave both parties an opportunity to respond to my provisional decision.

PR – on behalf of Mr C – accepted the provisional decision.

NewDay asked the investigator to provide a copy of the bank statements I referred to within my decision. The investigator duly sent these over to NewDay however, no further submissions have been forthcoming.

The deadline to provide further submissions was 11 December 2025. As that deadline has now lapsed, I've reviewed the complaint again.

## **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.

Having reconsidered the available evidence in this complaint – and in the absence of any further submissions or evidence from either party - I see no reason to depart from the findings set out in my provisional decision.

This being that I don't think NewDay acted unfairly when it approved the initial lending. However, I do not think NewDay acted fairly when it approved CLI 1. I say this because there were, in my view, clear signs through Mr C's management of the account that he was unlikely to be in a position to repay a higher credit limit at all, let alone within a reasonable period of time.

It follows that, for these reasons - and the reasons I've set out in my provisional decision (above) - I uphold this complaint in part and direct NewDay to take the following steps to put things right.

## **Putting things right**

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### **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 January 2026.

Ross Phillips  
**Ombudsman**