

complaint

Miss M complains that NewDay Ltd irresponsibly gave her a credit card she couldn't afford to repay.

Miss M is represented in this complaint by her relative. For ease, any comments or submissions made by her representative will be referred to as if made by Miss M herself.

background

Miss M applied for a credit card with NewDay in October 2016. She was initially approved for a credit limit of £900. The credit limit was later increased to £1,900 in February 2017, to £2,900 in June 2017, to £3,900 in November 2017 and finally to £5,400 in November 2018

Miss M says she couldn't afford the credit card and the limit increases had caused her financial difficulties. She says NewDay also increased the interest rate which made things more difficult. She says this impacted her mental health and NewDay didn't offer any support to help her manage her debts.

Miss M said that she had over £40,000 in other unsecured debts at the time she took out the credit card. She says she'd only recently graduated and her income wasn't enough to cover all of her existing commitments.

NewDay didn't think it had acted unfairly. They said they sent Miss M letters well in advance of the increases to her interest rate and she could have opted out of the increases, but she chose to keep the card instead. They said appropriate affordability checks were carried out when Miss M applied for the card and each time it increased her credit limit. It said there weren't any indications to suggest she couldn't afford the borrowing.

I sent Miss M and NewDay my provisional decision on 30 September 2020. I explained why I thought the complaint should be upheld in part. My provisional findings are attached and form part of this final decision. In summary, I said that I didn't think NewDay had carried out reasonable and proportionate checks when assessing Miss M's ability to sustainably repay the borrowing. However, had reasonable and proportionate checks been completed – such as verifying her income and expenditure – it's likely this would have still showed the initial credit limit and the subsequent increases were likely to be affordable to Miss M.

I said NewDay had treated Miss M unfairly when dealing with her concerns around her financial difficulty and that it should pay her £175 compensation for the distress and inconvenience its actions caused.

NewDay accepted my provisional decision but Miss M didn't. In summary, she said:

- the rental income wasn't hers and that her actual income couldn't sustain the repayments on the credit card. Her outstanding debt at the time of applying for the card was over £45,000. It isn't normal for a credit card company to continue increasing the credit limit every four months or so.
- She was unable to pay her rent and bills because of the excessive amount of debt she was in. She did have rent and bills to pay but her relative was responsible for them and her contribution would often be deducted from other transactions between their two accounts.

- NewDay didn't complete adequate checks and if they had they would have seen this was unaffordable. The income wasn't hers to use and due to family difficulties at the time money was exchanging between family members regularly and this shouldn't be used as a source of regular income.
- Because NewDay didn't do appropriate checks the lending shouldn't have been granted. It isn't her fault that they increased the credit limits. They had created an unfair relationship by trapping her into further debt. NewDay was in breach of legislation in the way it has acted.
- They would have seen repeat borrowing on the credit checks. All interest and charges should be refunded as she gave accurate information in the application and it should have been clear she couldn't afford it.
- NewDay haven't been forthcoming with information and it seems unlikely the relevant call recordings are no longer available.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusion I reached in my provisional decision, and for the same reasons. For completeness, I'll address the additional points Miss M has raised.

Miss M has referenced various bits of legislation that she says NewDay were in breach of. In deciding what's fair and reasonable, I'm required to take into account (amongst other things) the law. And I want to assure Miss M that I've taken into consideration the legislation she has referred to when thinking holistically about whether NewDay acted fairly in their dealings with her.

In doing that, I've concluded that NewDay didn't carry out reasonable and proportionate checks each time it granted Miss M credit, or when it advanced her further credit. Miss M is of the view that this means the complaint ought to be upheld. But I disagree. While NewDay didn't carry out the appropriate checks, I also need to consider what lending decision NewDay would likely have reached if it had carried out the appropriate checks. As explained in my provisional decision, I think it would have likely concluded that Miss M could afford the borrowing.

I want to make it clear to both NewDay and Miss M that I think NewDay ought not to have lent to Miss M on the basis of her declared salary alone. This coupled with the amount of debt it knew she already had, should have indicated further borrowing was unlikely to be affordable and sustainable. I agree with Miss M that the increases to the limit were frequent and substantial. I don't think NewDay acted responsibly in the way it increased these limits with minimal understanding of Miss M's circumstances.

Having said that, in the very specific circumstances of this case, I think closer scrutiny of Miss M's finances (which is what I think NewDay ought to have done before lending) would most likely have led NewDay to conclude she had further sources of income on top of her salary and could comfortably afford the increases in credit.

I note Miss M has said this additional income wasn't hers. However, I don't think that would have been clear to a prospective lender if they were to review her statements. It appears many of her other credit commitments were regularly being paid by money coming into her accounts from other sources other than the salary from her job. There were also no regular

payments going out for rent or utility bills and this wouldn't have caused any concern given she declared she was living at home with parents.

Miss M has also said that money was regularly being exchanged between family members to help each other out. I can see that Miss M was transferring money out of her accounts too, but I think this would appear to a prospective lender that money was available for her to use as and when she needed it. I can accept the rental income and the money sent to her accounts from relatives may not have been intended as her income. However, it was available for her to use and it appears she did use it to pay many of her credit commitments on a regular basis.

As this was a regular and consistent feature in her accounts, I don't think it would have been unreasonable for NewDay to have used this money as income when assessing what was affordable to her. Further, as her outgoings appeared to be limited to just her credit commitments, which appeared to be comfortably serviced by the regular amounts of money coming into her accounts, I don't think had NewDay carried out proportionate checks that it ought to have reasonably concluded the lending was likely to be unaffordable and unsustainable.

Lastly, Miss M has said that NewDay has failed to provide copies of the call recordings as it knows the information it contains would paint them in a bad light. I agree its disappointing NewDay haven't retained copies of the calls, particularly as Miss M raised concerns about those calls promptly at the time. I think NewDay ought to have done better.

In the absence of being able to listen to what was said, I have found, on balance, that it was more likely than not NewDay didn't conduct themselves appropriately during that call. It is for that reason and their failure to deal with Miss M's concerns properly, that I think it should pay £175 compensation for the distress and inconvenience its actions have caused.

my final decision

For the reasons given above, I uphold this complaint and direct NewDay Ltd to:

- Pay Miss M £175 compensation (if it hasn't already) for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 14 February 2021.

Tero Hiltunen
ombudsman

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so, I've considered – amongst other things – the rules and guidance for lenders set out in the Consumer Credit Sourcebook ("CONC") within the Financial Conduct Authority's handbook.

I think there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of this complaint. These questions are:

- 1. Did NewDay complete reasonable and proportionate checks to satisfy itself that Miss M would be able to repay the borrowing in a sustainable way?
 - a. If so, did it make a fair lending decision?*
 - b. If not, would reasonable and proportionate checks have shown that Miss M could sustainably repay the borrowing?**
- 2. Did NewDay act unfairly or unreasonably in some other way?*

If I think Miss M has been disadvantaged in any way by NewDay's actions, I'll go onto consider what I think is a fair way to put things right.

Did NewDay complete reasonable and proportionate checks to satisfy itself that Miss M would be able to repay the borrowing in a sustainable way?

Before granting credit, NewDay were required to carry out a reasonable and proportionate assessment of Miss M's ability to sustainably repay the debt. This is often referred to as an 'affordability check'. This check had to be borrower-focussed. This means it needed to be concerned with whether Miss M could sustainably afford the borrowing (considering her specific circumstances), rather than how statistically likely she was to repay. The latter, is the risk posed to NewDay as the lender, or its 'credit risk' but this is not necessarily the same as an assessment of affordability.

What's considered reasonable and proportionate will vary depending on a number of factors such as, but not limited to:

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

What this means is that there isn't a one-size-fits-all approach to what is considered proportionate as any of these factors (or others) might influence what a reasonable and proportionate check ought to be.

NewDay initially approved a credit limit of £900. While this isn't a significant amount of credit it was an open-ended running account facility with a high interest rate of almost 30% for standard purchase transactions. NewDay was also aware that Miss M had around £38,000 in unsecured debt elsewhere which included one loan, an overdraft and several other credit cards. So my starting point therefore is that a proportionate check ought to have been relatively thorough, given the type of credit, it's cost and Miss M's individual circumstances.

As part of the initial application NewDay asked Miss M to self-declare her income which she said was around £17,000 per year. NewDay says it verified this through one of the credit reference agencies, although it hasn't provided anything to show exactly what information it received. In any event, from the evidence I've seen from Miss M, it appears this was likely to be an accurate reflection of her income at the time.

NewDay said it calculated that Miss M had around £69 in disposable income each month after the new maximum monthly repayment of £90 was taken into account. It says Miss M comfortably met its lending policy and the application was therefore approved correctly. But I have some concerns with NewDay's decision to lend to Miss M based on what it knew.

NewDay has focused on Miss M's application meeting its lending criteria, but this isn't necessarily the same as ensuring the lending was affordable to Miss M's specific circumstances. This is supported by the fact that NewDay has continually referred to relying on statistical data from credit reference agencies or the Office of National Statistics to estimate income and expenditure. While NewDay is entitled to use statistical data in some cases when assessing applications, it shouldn't do so when it knows or ought to know that it is unlikely to give an accurate picture of a particular individuals circumstances. I think that was the case here.

NewDay was already aware that Miss M was heavily indebted elsewhere. She had an outstanding personal loan for a significant amount (NewDay says this was for around £23,000, but from what I've seen it was likely to be substantially higher and closer to £30,000), as well as having regular repayments on at least three other credit cards. While Miss M may have been able to ensure these accounts hadn't fallen into arrears, that didn't automatically mean her current level of borrowing was sustainable or further borrowing was likely to be. I think given the relatively low income Miss M appeared to have compared to the high amount of debt she was already in, NewDay ought to have carried out more thorough checks before agreeing to lend to her.

Would reasonable and proportionate checks have shown that Miss M could sustainably repay the borrowing?

I think NewDay ought to have verified what income and expenditure Miss M had before granting her the borrowing. I can't be sure what evidence or information NewDay would have used to do this. But in the absence of anything else, I've relied on Miss M's bank statements from the time which I think show what NewDay would likely have found out had it asked for further evidence of income and expenditure.

Miss M held three current accounts at the time as well as at least one savings account. NewDay would likely have seen she held these three current accounts when it completed a credit check. One of her accounts ("account 1") was consistently overdrawn, on average around £1,700, however her other two current accounts were in a positive balance. On closer inspection account 1 was a student/graduate account and it appears it attracted no interest at the time Miss M applied for the NewDay credit card. There also appeared to be very little in the way of essential spending – such as on bills or living expenses.

Accounts 2 and 3 show that in addition to her salary of around £1,250 per month, she was also in receipt of regular income through other sources. Account 2 had regular credits from family members ranging between £200 to £1,000 per month. These appeared to be used to pay existing loan and credit arrangements Miss M had. Account 3 had some form of rental income which in some months could be as much as £2,500. Miss M says this wasn't income

for her but for a relative and she would pass this money on to them. But having looked through her account statements it appears she would retain several hundred pounds at least of this income for herself. And in some months the majority of that income was used to service her own debts. So I'm not persuaded this wasn't income intended for her.

From everything I've seen it appears Miss M's essential spending was limited to a loan, several credit cards, a mobile phone contract, a television contract and an insurance policy. She had stated she was living at home with her parents and this appears to have been accurate given I've seen no evidence of rent, utility bills or council tax payments that she was responsible for. She will no doubt have had travel expenses for work and understandably some food and clothing costs too. But taking into account all of this, her salary and the other regular income she appeared to receive, I don't think NewDay ought to have come to a different lending decision had it carried out reasonable and proportionate checks when initially granting the credit card.

I say this because it appears the initial credit limit was affordable to Miss M taking into account her committed monthly expenditure and disposable income. I accept this did vary from month to month given the nature of the payments from the rental income and family members. However, it appears she had sufficient disposable income to meet all of her existing committed expenditure and the new credit card NewDay provided.

Limit increase 1

NewDay increased the credit limit four times, so I've considered whether the checks it carried out at each increase were reasonable and proportionate, and if not what reasonable and proportionate checks would have shown.

With each credit limit increase it doesn't appear NewDay asked for any further information about Miss M's income and expenditure than what it had collected during the initial application. It does however appear to have carried out a new credit check each time and it says it assessed her usage of the NewDay credit card account too. Given everything I set out earlier, I don't think this was reasonable or proportionate as NewDay ought to have gathered more thorough information about Miss M's ability to repay the borrowing.

The first increase in February 2017 was to £1,900. This was a significant increase and in that time Miss M had only made four monthly repayments to NewDay. Further, the monthly repayments Miss M had been making towards the credit card had decreased in size considerably in the two months leading up to the increase.

Overall I don't think NewDay carried out reasonable or proportionate checks given how much it had increased the limit by and particularly because its previous data suggested Miss M could only just about afford to sustainably repay the initial limit. NewDay ought to have realised that an increase of this size was likely to have a detrimental impact, if Miss M's circumstances were what it believed it was.

However, had it carried out a reasonable assessment of her ability to repay, it's likely it would have discovered similar information to what I've set out earlier in the decision as her financial circumstances hadn't significantly changed in that four month period. From everything I've seen, I think Miss M could still afford to sustainably pay the increased limit, taking into account her committed expenditure and income. Several of her expensive credit commitments were being serviced by payments she received from family and through rental

income. This meant the majority of her salary from her work appeared to be disposable income.

Limit increase 2

In June 2017, NewDay increased the limit by a further £1,000 to £2,900. Given it had now granted her £2,000 more than the initial limit it approved and it thought she only had enough disposable income to cover a limit of around £900 it ought to have done a more thorough job of assessing her ability to sustainably afford the borrowing. Further, Miss M's overall debt exposure hadn't decreased by any significant margin since the card was first given to her, so it seems she hadn't been actively reducing what she owed.

However, had more thorough checks been done to verify Miss M's income and expenditure, it appears her circumstances hadn't changed since the previous increase. And despite the additional borrowing NewDay provided, Miss M still had enough disposable income to service a sustainable monthly repayment on the credit card due to the large amounts of additional income she was receiving.

Limit increase 3

NewDay increased the limit by a further £1,000 to £3,900 in November 2017. As before it only checked her usage of her NewDay credit card and carried out a credit search. However, over a year had passed and it had increased her limit by £3,000 in that time as well as it being aware that Miss M's overall debt exposure was broadly similar to a year ago, I think it ought to have carried out more thorough checks before agreeing to lend.

It seems that Miss M opened a new credit card account the same month with another lender, which had an initial credit limit of £5,600. It's unclear whether NewDay would have seen this at the time it increased her limit on this credit card but based on the timings and from what I've seen I think it's unlikely. However, had it attempted to verify her income and expenditure as I think it ought to have, then I think it's likely it would have discovered this additional facility.

It seems Miss M was still in the same employment earning the same salary. In addition, she continued to receive the rental income I previously mentioned and, in most months, used large proportions of these payments to cover her own debt repayments. I've not seen any evidence of Miss M making payments towards rent or household bills during this time, so her expenditure hadn't significantly changed either, other than the addition of a new credit card.

While the amount of borrowing Miss M was taking might have given NewDay cause for concern, it appears that she continued to have sufficient disposable income to be able to maintain sustainable repayments towards all of her existing commitments as well as the increased limit.

Limit increase 4

The final increase was in November 2018 and this brought the credit limit up to £5,400. As before I don't think NewDay carried out a reasonable and proportionate assessment of Miss M's ability to sustainably repay the borrowing.

While I can see that in the previous year, she had made two large payments towards the card (both in excess of £1,500), this in itself wouldn't adequately demonstrate her ability to

sustainably repay. Particularly because of the large amount of debt she had accrued elsewhere. And it seems at least one of those payments was a balance transfer to a different card, so she hadn't paid it from her own income.

I've also considered that NewDay increased Miss M's interest rate a few months earlier because of a change in risk when it reviewed her account management and other credit commitments. So this limit increase was inconsistent with what NewDay appears to have thought about Miss M and her ability to repay debt only a few months earlier.

Had NewDay carried out a proportionate assessment of her ability to repay, I think it's likely it would have discovered that Miss M was now in a new job with a slightly larger salary. She earned roughly an additional £100 per month than she did before. Her rental income also appeared to continue as well as the ad-hoc payments from relatives. From looking at her statements I haven't seen any new additional expenditure on top of what I've listed previously.

While a sustainable repayment on a credit card with a limit of £5,400 would likely be sizeable. It appears Miss M continued to have sufficient disposable income to be able to sustainably repay this and her other committed expenditure. I've seen from her credit report that she made sizeable repayments towards some of her other credit cards on a regular basis which were far in excess of any minimum payment. Having reviewed her bank statements it seems this was from the rental income she received and the regular payments from relatives. I think this further supports that Miss M did have large amounts of disposable income, it may just be that she directed them towards other priorities.

I note that when Miss M filled in an income and expenditure document in 2019 she says in addition to the expenditure I've mentioned, each month she was paying £400 in rent, £40 for utility bills, £100 for food and housekeeping, £10 for house and buildings insurance and £250 for travel expenses.

I don't doubt what she's said, but when she applied for the card she told NewDay she was living at home with her parents and it seems this was the case. I've also not seen any evidence of any of these costs in her three current accounts during the relevant time. So even if NewDay had sought to verify Miss M's income and expenditure, I'm not persuaded it would have found evidence of any of these costs. And it's for that reason I don't think it's acted unreasonably in granting the credit, despite its checks not being proportionate or adequate when increasing her limit.

Taking everything into account, I don't think NewDay carried out reasonable and proportionate checks on Miss M's ability to sustainably repay the borrowing. However, if it had done so, I don't think it ought to have led it to a different lending decision.

Did NewDay act unfairly or unreasonably in some other way?

Miss M says that NewDay didn't treat her fairly when she was in financial difficulty in 2019. She says she reached out for assistance as she was struggling to pay off the debt. She says the payments she was making were only just covering the monthly interest charge.

I've reviewed NewDay's contact notes which show a record of when Miss M has spoken with them and what was discussed. It seems the first time NewDay were notified of Miss M's financial difficulty was when our service forwarded Miss M's complaint to it in January 2019.

NewDay sent a final response letter to Miss M in March 2019 asking her to call them to discuss her situation in more detail.

Miss M then missed a payment in March 2019 as her direct debit had been cancelled and she called to make a manual payment. Despite her calling them, NewDay appears to have failed to discuss her financial difficulty at this time.

It seems that further conversations about Miss M's financial difficulty were had in May 2019. Miss M was asked to complete an income and expenditure form so that NewDay could look into a suitable repayment plan. It's not clear if Miss M returned this form to NewDay or not, but it seems that Miss M wasn't prepared to enter into any kind of repayment plan anyway. The notes say that Miss M didn't want her credit file adversely impacted and NewDay had said it would be if she entered into a repayment plan. Since raising her complaint to our service Miss M has also reiterated that she didn't want her credit file impacted.

If NewDay were to waive or reduce the interest on the credit card account and/or accept lower payments than were contractually due, it would have been entitled to record this arrangement on Miss M's credit file. The credit file is intended to accurately reflect how Miss M was managing the account and if she had agreed to no longer meet her contractual obligations it would have been fair for NewDay to report that to the credit reference agencies.

I do think NewDay missed an opportunity to intervene at an earlier stage when Miss M first called in March 2019. However, I think the £75 compensation it has offered to pay for the inconvenience and upset caused for this error is fair. This is because even if it had intervened earlier, it doesn't appear Miss M was willing to accept any repayment proposal from NewDay as it would impact her credit file.

Miss M says that NewDay spoke to her unprofessionally during one particular call which upset her greatly. I haven't been able to listen to the call she refers to (as NewDay can't locate it) but I can see from NewDay's contact notes that at one time she did raise concerns about the way she was spoken to on a previous call. I can't be certain what was discussed or whether NewDay acted inappropriately and it's disappointing NewDay don't have a copy of this call, particularly as it should have responded to these issues at the time. I think it could have done more at this stage and Miss M was clearly very upset with what had happened. I think in the circumstances it ought to pay a further £100 for the upset and inconvenience it caused.

I've considered that Miss M has reported getting into financial difficulty only a few months after NewDay increased her credit limit in November 2018. Having reviewed the contact notes, it seems that Miss M initially told NewDay she was struggling because she wasn't working due to her health. She later explained she was working but had overcommitted on her expenditure since the increase to her credit limit.

But her overall debt exposure hadn't changed during that time and the outstanding balance on her credit card was broadly the same in January 2019 as it was in October 2018 (around £2,300). While it did briefly increase in between that time, she had managed to bring it down again. So given what she's said about her work and her overall debt situation, I'm not persuaded the final limit increase did impact her financial difficulty. It seems it was more likely to do with a change in her personal circumstances at the time.

Lastly, Miss M says NewDay increased her interest rate unfairly which caused her more difficulty in paying off her debts. The terms and conditions of the credit card allow NewDay to increase the rate of interest under certain circumstances. Where it does so it should notify the cardholder and give them the opportunity to opt out of that increase. I can see that NewDay did so here. Miss M could have chosen to not accept the interest rate increase and just pay off the credit card at the old rate, however this would have prevented her from spending further on the card. It doesn't appear that Miss M opted to take this option. Taking into account all the circumstances I've not seen any reason to say NewDay acted unfairly in increasing the interest rate.