

complaint

Ms C says that NewDay Ltd allowed her to take out an unaffordable credit card and also increased her credit limit irresponsibly.

background

In June 2012 Ms C opened a credit card with NewDay. Her limit was £250. In November 2012 this limit was increased to £600. The limit was increased again in March 2013 to £1,000 and a further time to £1,750 in November 2013.

Ms C says that she didn't have the disposable income to afford the credit card in 2012 when it was given to her. And that all the credit limit increases were also unaffordable as she was in financial difficulty and in arrears on other credit. NewDay said that Ms C passed its affordability checks when she applied for the credit card. It said that she'd maintained her monthly repayments for the previous three months each time it increased her limit, so it considered these increases were affordable to her. It also said Ms C was given the opportunity to decline the increases but she didn't do this.

Our investigator partially upheld Ms C's complaint. She said she thought the credit card was affordable for Ms C in June 2012 and that Ms C's usage of the card up to October 2012 didn't suggest the November 2012 increase would've been unaffordable. However she said NewDay should've reviewed Ms C's credit score in March 2013. If it had done this she thought it would've determined this increase and so the November 2013 increase were both unaffordable based on Ms C's level of other debt and the arrears. She asked NewDay to refund Ms C all interest and charges on the account from the March 2013 increase.

Ms C disagreed that the credit card was affordable. But she did then agree to the outcome on the basis she received 8% interest on the contractual interest refunds, late payment fees would be refunded and the negative markers on her credit file removed. NewDay disagreed that the credit limit increases from March 2013 were unaffordable. So the complaint was passed to me for a decision.

I issued a provisional decision on this complaint in November 2018. I said I intended to partially uphold Ms C's complaint.

I reviewed Ms C's application for the credit card to assess whether it was affordable to her when she first applied. I saw she'd declared her income as £32,448. NewDay said that it reviewed Ms C's income and carried out a credit check, which showed no defaults or CCJs – and suggested she was up-to-date on her other debts at this time. It didn't do an expenditure check, which I would normally expect to see. But it pointed out that the credit limit offered was £250, so the minimum repayments would be proportionately low in comparison to her salary. And I factored in that Ms C had chosen to take out a credit card with a company which advertised itself as lending to people who may struggle to get credit from other companies.

Considering the limit of the card and Ms C's income and credit file, I thought NewDay did enough to check if the credit card was affordable before it was granted.

Ms C mentioned about payday lending complaints she had with us which were upheld for the above time period. In 2012 there weren't set rules on what a business *had* to do before increasing a limit. Instead it's set out that it should perform proportionate checks and lend

responsibly. So what I needed to decide was whether or not NewDay did this. It's not my role to assess Ms C's detailed financial situation at that time to determine what she could or couldn't afford. I considered the checks NewDay carried out were reasonable when looking at the amount offered. And I couldn't see that there was anything in Ms C's application or credit file which would've suggested to it that it needed to investigate her finances more thoroughly before agreeing credit.

I also looked at her usage of the card when she first took it out. She didn't reach her limit and made several payments considerably above the minimum amount required. She was also spending on virtual gaming, so using it for non-essential spending. Ms C told us she had no disposable income at this time and was in fact living at a deficit. But her usage of the card and in particular her over payments towards it didn't support that.

In November 2012 the limit was increased to £600. Ms C said she couldn't afford the repayments on this increase. NewDay said that it offered her the increase, so she had the option to decline it. And that it judged her affordability on how she had handled her account for the previous three months. Ms C had maintained her repayments and hadn't spent more than her limit, so it deemed the increase affordable.

Ms C's statement for September 2012 showed she paid £30 towards the card the previous month, even though her minimum repayment was £10.07. And her only spending on the card that month was to a virtual gaming website. In October 2012 she made the minimum payment.

I thought NewDay ought to have done more considering that it was more than doubling Ms C's limit, but this would've been something like reviewing her credit file. So I looked at her credit file from this time. While she has said she was using payday lenders, this isn't unusual for the type of consumer this card is often taken out by. And it seemed she was either up-to-date with or had settled most of these accounts in October 2012. Looking at her other accounts, she was making her agreed repayments on these too. So even if NewDay had checked her credit file, I didn't think this would've suggested it was unaffordable, so it still would've increased the limit.

In March 2013 NewDay increased Ms C's limit again to £1,000. At this time it again just looked back at her account management over the previous three months. I was in agreement with the investigator that at this time NewDay shouldn't have increased her limit.

When Ms C first took out the card, NewDay used her application information and a credit check to determine if she was able to afford a credit card and offered her a £250 limit. In March 2013 it increased her limit to four times that, but didn't carry out any checks, it just reviewed how she used the account to date. As I've set out, in 2012/13 there weren't set rules that had to be followed, but the Lending Code was available to businesses as well as other guidance on irresponsible lending. Considering this best practice and the large increase in the limit, I thought NewDay should've done more.

NewDay never determined Ms C's expenditure and hadn't reviewed her credit file since June 2012. Considering it was now offering her four times the original amount, I thought it should've carried out further checks before it offered this increase. And if it had, I didn't think it would've considered it appropriate to increase her limit.

I reviewed Ms C's credit file for March 2013. She had six accounts in payment arrangements and two further accounts coded as being in '*sustained arrears of over three months*'. Considering this, it didn't seem she could afford an increase, as she wasn't meeting eight existing borrowing commitments. So I didn't think it was reasonable for NewDay to allow Ms C to borrow even more money when she already couldn't afford to repay her other creditors.

NewDay also increased Ms C's limit again in November 2013. It raised the same point about checking her management of the account up to this date. But at this point it increased her limit to £1,750, so seven times the original borrowing and by an additional 75% of her limit at that time. I again didn't agree that it was proportionate or responsible to increase her borrowing by so much without checking her income and expenditure, or the status of her credit file first.

From reviewing Ms C's credit file at the time of this increase, she wasn't in an improved position. She was still in payment arrangements and/or sustained arrears on all the above mentioned accounts. So I didn't agree this increase was affordable either.

To assess how things should be put right I considered Ms C's usage of the card. I could see that she frequently spent money on a website predominately for books and also spent money on virtual gaming. So while I didn't agree that the March and November 2013 credit limit increases were affordable based on her financial situation as a whole, it didn't seem she was just using this card for essential spending. And Ms C has had the benefit of this money.

On that basis I considered NewDay should refund the interest and charges it applied to the account from the March 2013 credit limit increase.

Ms C asked 8% interest on this amount, but I didn't award this. As she'd not repaid the amount she spent it's not an amount she'd been out of pocket by. She also asked for any adverse information that was added to her credit file to be removed. I thought about what was most likely to have happened if the limit increases hadn't taken place. Based on the information I had, I thought it was most likely that she would've defaulted on this account in any event. So I didn't intend for the adverse information on her credit file to be amended, just the amount owing updated

I said that the above funds should be paid by NewDay to the third party that now owns the debt, not directly to Ms C. and I said NewDay should ask the third party to update the amount owing of Ms C's credit file as a result of this payment.

responses

NewDay responded asking for me to clarify the redress awarded. Following this it didn't provide any further response.

Ms C responding saying she didn't agree with the redress being paid to the third party. She provided me with information on a firm's right of 'set off'. She also explained that she's in dispute with the third party about the amount owed to it, so if these funds were paid to the third party it would prejudice her legal position.

my findings

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

As neither party provided any further information in relation to the outcome I reached, I see no reason to change my findings. So for the reasons set out in my provisional decision and summarised above, I partially uphold this complaint. I consider that the March and November 2013 credit limit increases were unaffordable for Ms C and shouldn't have taken place.

I've considered Ms C's points about the redress I proposed. She is correct that NewDay is unable to pay the third party through the right of 'set off'. But I'm not instructing it to do this and NewDay hasn't attempted to exercise this right. The information Ms C has provided relates to specific situations and doesn't apply in this case.

Ms C never repaid NewDay the additional funds she spent and she's confirmed she's also not repaid this money to the third party. So while she shouldn't have been lent this money, at this point she hasn't lost out financially as she hasn't paid it back. Her credit file has however been impacted as it shows a larger outstanding debt than it likely would have. So to put things right this debt needs reducing and her file updating.

It wouldn't be fair for Ms C to have spent the money, not paid it back and now to also receive these funds directly. So I'm still directing NewDay to calculate the amount of interest and charges applied to Ms C's account after the March 2013 increase. This amount should then be paid to the third party so it updates her current outstanding debt – meaning it more accurately reflects what it would've been if the unaffordable limit increases hadn't taken place.

my final decision

I partially uphold Ms C's complaint against NewDay Ltd.

NewDay Ltd should carry out the above actions with the third party within 28 days of receiving notice of Ms C's acceptance of this decision.

Ms C should note that if she accepts my decision, it will be legally binding on all parties and she probably then wouldn't be able to take legal action over this matter for additional compensation. If, however, she rejects the decision, although her legal rights will remain intact, it'll be purely a matter between her and NewDay Ltd as to whether the above redress is available.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 18 February 2019.

Amy Osborne
ombudsman