

## The complaint

Ms D, through a representative, says NewDay Ltd irresponsibly lent to her.

## What happened

Ms D took out four credit cards from NewDay. A summary of her borrowing follows.

card	taken out	initial limit, £	limit increase	new limit, £
1	Nov-17	450	-	-
2	Aug-19	450	Mar-20	1,100
3	Dec-19	500	-	-
4	Mar-20	1,500	-	-

Ms D settled card 1 in March 2019. She failed to meet her contractual repayments on cards 2 and 3 and NewDay sold those debts to a debt collections agency in March/April 2021. Card 4 was never used.

Ms D says the lending was never affordable and this would have been clear to NewDay had completed adequate checks.

Our investigator said Ms D's complaint should be upheld in part. He found all lending from August 2019 onwards was irresponsible, explaining NewDay's checks most likely showed Ms D indebtedness had significantly increased since she applied for card 1; she was struggling to make her repayments for card 1 and was frequently overlimit on card 1.

NewDay disagreed, saying it acted fairly – it carried out sufficient checks and saw no indicators of financial difficulty.

As an agreement wasn't reached the complaint was passed to me to make a final 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.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website.

NewDay is required to lend responsibly. It needed to conduct checks to make sure that the credit facilities it was giving to Ms D were affordable and sustainable. Such checks need to be proportionate to things like the credit limits it offered Ms D, how much she had to repay (including interest and charges) each month, her borrowing history with it and what it knew about her. But there is no set list of checks it had to do.

This means to reach my decision I need to consider if NewDay carried out proportionate checks at the time of each card application and limit increase; if so, did it make fair lending decisions based on the results of its checks; and if not, what better checks would most likely have shown.

#### Card 1

When Ms D applied for the first card I can see NewDay asked about Ms D's employment, income and used third party data to make assumptions about her living costs. It completed an external credit search to check her credit history. And it has provided the data it collected at the time.

I've looked at the data and I can see Ms D told NewDay that she was employed on an annual income of £21,500. The credit file data shows that Ms D had other credit commitments, but the search results didn't reveal any information to indicate that Ms D had any defaults, adverse public records, or any accounts in arrears with other creditors.

I would flag here that NewDay's final response letter is inaccurate in that it states Ms D had unsecured debt of £1,391 and a mortgage of £21,200. The raw data it supplied shows that Ms D had unsecured debt of £21,200 and no mortgage. Her partner's income was £1,391.

That said, given this was Ms D's first application to NewDay, for a relatively low limit, and as her credit check did not return any adverse information, I don't think there was anything that I think should have prompted NewDay to think Ms D was in financial difficulty or that further checks were needed to verify what Ms D had told it. It follows that I don't think NewDay was wrong to give card 1 to Ms D.

#### Card 2

NewDay no longer has the results of its application checks for card 2. So I can't comment on what those checks showed NewDay. But irrespective, I don't think it made a fair lending decision based on information it had that I have had sight of - Ms D's account history for card 1. Whilst Ms D repaid the balance in full in March 2019, there were signs that she was having problems managing her money through the life of the account.

She missed the first the first two payments and the account was in arrears for the subsequent 15 months, incurring late fees. She exceeded the credit limit in May 2018 and the account remained overlimit, incurring fees, for eight of the subsequent nine months until the balance was settled. I can also see (from the September 2019 account data, and I think it's fair to rely on that as a proxy for August 2019 when Ms D applied) that Ms D's overall debt level remained high at £22,726. So given this, and the fact Ms D had recently demonstrated financial strain to NewDay, I think it was wrong to approve her application for card 2.

As this is my finding for card 2 it follows I find the credit limit increase in March 2020 was irresponsible. NewDay could see from the monthly external data it received from the credit reference agencies that Ms D's external borrowing was rapidly increasing, and she was in arrears on other accounts.

#### Cards 3 and 4

NewDay completed the same checks as for the card 1 and has provided the results. But it also had the monthly data for card 2 to use to inform its decision. So it could see that Ms D's external borrowing had increased to £29,561 and that she had recently needed to take out a payday loan. She had also been in arrears for four months on card 2. And all this was in the

context of an increased salary of £33,000. So, in the round, I think NewDay again ought to have realised there was a risk Ms D would not be able to sustainably repay her credit card. Indeed, Ms D went on to fall into long-term arrears on both cards 2 and 3 resulting in NewDay selling the outstanding balances to debt collecting agencies.

I would make the same observations about the lending for card 4. NewDay was aware Ms D's overall indebtedness was continuing to increase – now at £34,495. She had also started to use card 3 to withdraw cash – often an indicator of financial strain – and was in arrears on cards 2 and 3. It follows I find NewDay was wrong to give cards 3 and 4.

### **Putting things right**

For cards 2, 3 and 4 NewDay should:

- Refund all interest, fees and charges
- Once the above refunds have been made, NewDay should contact Ms D to discuss affordable repayment options.
- Or, if the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Ms D along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement.
- Amend Ms D's credit file to remove all adverse information recorded relating to loans 2, 3 and 4.

As the debt from cards 2 and 3 has been sold to a third party, NewDay should take steps to either buy it back or work with the new owner to achieve the same outcome as the steps set out above.

† HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Ms D a certificate showing how much tax it has taken off if she asks for one.

### **My final decision**

I am upholding Ms D's complaint in part. NewDay Ltd must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 19 July 2022.

Rebecca Connelley  
**Ombudsman**