

## The complaint

Mrs L is complaining about NewDay Ltd trading as BIP because she says it lent irresponsibly by providing her a credit card she couldn't afford and going on to increase the limit several times.

## What happened

In September 2021, following her application, NewDay gave Mrs L a credit card with a credit limit of £900. The limit was increased to £1,900 in January 2022, £3,150 in May 2022, £4,150 in October 2022, £4,500 in April 2023, and £5,000 in August 2023.

After the complaint was referred to me, I issued my provisional decision setting out why I believed it should be partly upheld. My reasons were as follows:

Before lending to Mrs L, NewDay was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider in respect of each lending decision are:

- Did NewDay complete reasonable and proportionate checks to establish Mrs L would be able to repay the credit in a sustainable way?
- If so, was the decision to lend fair and reasonable?
- If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

The rules, regulations and good industry practice in place at the time the credit was approved required NewDay to carry out a proportionate and borrower-focused assessment of whether Mrs L could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant NewDay had to satisfy itself that making payments to the credit wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of her making payments, it had to consider the impact of the repayments on Mrs L.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

In general, I think a reasonable and proportionate assessment should be more thorough:

- the lower the customer's income, reflecting that it could be more difficult to make repayments from a lower level of income;

- the higher the amount due to be repaid, reflecting that it could be more difficult to meet a higher repayment from a particular level of income;
- the longer the term of the credit, reflecting the fact that the total cost is likely to be greater and the customer is required to make payments for an extended period; and
- the greater the instances and frequency of credit, and the longer the period of time during which a customer has been given credit, reflecting the risk that repeated refinancing may signal borrowing has become unsustainable.

There may also be other factors that could influence how detailed a proportionate check should have been for a given application, including any indications of borrower vulnerability or foreseeable changes in future circumstances.

I'll now look at each lending decision in turn:

#### *Application in September 2021*

NewDay has confirmed that its decision to offer Mrs L a card was based primarily on the information she provided in her application and obtained from a credit reference agency (CRA).

In NewDay's application data, Mrs L's employment status was recorded as 'N/A' and her declared annual income was as £14,000. She doesn't appear to be disputing this figure. In respect of her existing commitments, NewDay's credit check showed she had existing debt of £2,900 and no recent arrears or defaults.

After considering this information carefully, I don't think there was any indication Mrs L was struggling financially at this point. She wasn't heavily indebted compared to her declared income and seemed to be managing her existing commitments well. In view of this information and given the initial credit limit was relatively low, I think NewDay took a proportionate approach in this case.

I've also considered NewDay's lending decision based on the information obtained and I believe it was entitled to believe the new credit repayments would be affordable and that the decision to lend was a reasonable one.

#### *First limit increase in January 2022*

In considering whether to increase the limit, NewDay took account of updated information for the CRA and Mrs L's management of her card account since it was opened. The CRA data appeared to show her overall debt had actually decreased to around £1,000 and that there had been no recent arrears or defaults. She also appeared to be managing her card account well, with the balance below the limit and monthly repayments well above the minimum required. She also hadn't incurred any over limit or late payments fees or used the card to make cash withdrawals.

Again, in view of the credit limit being offered and the information that was obtained, I'm satisfied NewDay was entitled to believe repayments were affordable.

#### *Second limit increase in May 2022*

After carefully reviewing the information available to NewDay at this time, I think there were factors that should have prompted it to carry out further checks before increasing the limit and I don't agree the affordability assessment was reasonable and proportionate in this case. In particular, I'm conscious the increased limit of £3,150 was high, especially

in comparison to Mrs L's declared income. And while she was maintaining repayments to the cards, her balance and overall debt had increased significantly (from £1,000 to £1,700) in the short period since the previous increase in January 2022.

I can't know exactly what further checks NewDay might have carried out at the time, but I think a consideration of Mrs L's actual income and expenditure would have been reasonable. So we've obtained copies of her bank statements for the period prior to the lending to establish what information could reasonably have been discovered.

A review of the statements shows Mrs L's account was continuously overdrawn by between £1,000 and £2,000 throughout the period and never achieved a positive balance. Overdrafts are generally an expensive way of borrowing and are only intended for short-term use. The fact Mrs L was effectively living in her overdraft suggests she was living beyond her means and, if NewDay had seen this information, it's my view that it shouldn't have lent further.

#### *Later credit limit increases*

The next increase followed shortly after in October 2022 and the limit was raised by a further £1,000 to £4,150. Again, this represented a significant amount of debt compared to Mrs L's income and I think further checks were warranted. I also note NewDay was aware Mrs L's overall debt had increased significantly from £1,700 to £4,400 in a relatively short period of time.

A review of Mrs L's bank statements for the period prior to this increase appears to show her situation hadn't improved. As before, the account was continuously overdrawn. The statements also show that she took a loan of £2,000 with Lendable at the end of August 2022, which effectively repaid the overdraft and returned the account to a zero balance for that day. But within three weeks the account was overdrawn again by around £1,200.

As before, I think this information shows signs of financial difficulty and that Mrs L wasn't managing her finances well. If NewDay had seen this information, it's my view that it shouldn't have lent further.

A review of Mrs L's NewDay account shows her balance never exceeded the £4,150 limit agreed in October 2022. This means she wasn't disadvantaged by later limit increases and I haven't considered the merits of those decisions here.

#### *In summary*

I'm satisfied the decisions to offer Mrs L a card initially and then increase the credit limit to £1,900 in January 2022 were reasonable. But after that, I think NewDay should have carried out a more detailed affordability assessment. If it had adequately assessed whether the repayments were affordable and sustainable, it's my view it shouldn't have lent further to Mrs L. It's for this reason that that I'm currently proposing to partially uphold this complaint.

Both parties responded to confirm their agreement with my 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 has made any further submissions in response to my provisional decision,

my findings haven't changed from those I set out previously.

### **Putting things right**

The principal aim of any award I make must be to return Mrs L to the position she'd now be in but for the errors or inappropriate actions of NewDay. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think NewDay should have lent further to Mrs L after the first limit increase in January 2022, I don't think it's fair for her to pay interest or charges on any additional amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, NewDay should take the following steps:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since the limit increase in January 2022 on balances over £1,900.
- If the reworking results in a credit balance, this should be paid to Mrs L with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires NewDay to deduct tax from any interest. It must provide Mrs L with a certificate showing how much tax has been deducted if she asks for one. If NewDay intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance in excess of £1,900, NewDay should arrange an affordable payment plan with Mrs L for the shortfall.
- Remove any adverse information recorded on Mrs L's credit file after January 2022 relating to this credit, once any outstanding balance over £1,900 has been repaid.

If NewDay no longer owns the debt, it should liaise with whoever does to ensure any payments Mrs L has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mrs L in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

### **My final decision**

For the reasons I've explained, I'm partly upholding Mrs L's complaint. Subject to her acceptance, NewDay Ltd trading as BIP should now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 7 August 2024.

James Biles  
**Ombudsman**

