

## The complaint

Mr H complains that NewDay Ltd irresponsibly lent to him.

## What happened

Mr H was approved for two NewDay credit cards which I will refer to as A and B. I have detailed the initial credit limits and the credit increases for A below.

Card A – approved October 2014, with an initial £250 credit limit:

June 2015	£250 to £400
October 2015	£400 to £1,000

Card B – approved January 2020, with an initial £300 credit limit.

Mr H made a complaint to NewDay that they had irresponsibly lent to him. NewDay did not uphold Mr H's complaint. They said that when Mr H applied for A, he had declared an income of £15,000 gross per year, and he had unsecured debt of £1,000. They said that there were no defaults, one County Court Judgement (CCJ) of £800 which was registered 18 months prior to his application, no payday loans, and no accounts in arrears.

NewDay said when Mr H applied for B, he had declared an income of £33,000, and he had unsecured debt of £10,500. They said that there were no defaults, no adverse public records, no payday loans, and no accounts in arrears. Mr H brought his complaint to our service.

NewDay made an offer to proactively settle Mr H's complaint. They told us that they shouldn't have approved B for Mr H as they could see he was on a repayment plan at the time he opened B, so they feel this may not have been suitable for him. They offered to refund interest and fees from account opening, which would leave a credit balance, then pay 8% interest on any overpayment, and they also offered to remove any adverse information with the Credit Reference Agencies (CRA's) for B. Their position on A was unchanged. Mr H rejected the offer.

Our investigator partially upheld Mr H's complaint and she said NewDay's offer was fair. She said NewDay's information regarding the credit limit increases on A was limited due to the time that's passed, but Mr H was also unable to provide his bank statements from this time. She said Mr H managed A well as he made payments in excess of the minimum payment and didn't utilise high amounts of his credit limit.

Mr H asked for an ombudsman to review his complaint. He made a number of points. In summary, he said NewDay failed to consider his management of A when approving credit limit increases, despite clear evidence that he was only making minimum repayments and utilising a high percentage of his credit limit. He said they did not account for his ongoing financial struggles (including rent arrears, council tax arrears, and debts to government bodies). He said he had a gambling problem and NewDay's credit was being used to fund his gambling addiction. Mr H told us about his health and financial difficulty.

Mr H says that in 2017 NewDay wrote to him about persistent debt, but they went on to lend him more money and the payments were financed by his overdraft. He sent us letters from 2016 which he says shows severe financial difficulty and his bank statement from April-May 2016 which showed him being overdrawn during this period.

### **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.

Firstly, I'm aware that I've only summarised Mr H's complaint points. And I'm not going to respond to every single point made by him. No discourtesy is intended by this. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair outcome.

Before agreeing to approve or increase the credit available to Mr H, NewDay needed to make proportionate checks to determine whether the credit was affordable and sustainable for him. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances. I've listed below what checks NewDay have done and whether I'm persuaded these checks were proportionate.

#### *Acceptance for A - initial credit limit (£250)*

I've looked at what checks NewDay said they did when initially approving Mr H's application for A. I'll address the credit limit increases later on. NewDay said they looked at information provided by credit reference agencies and information that Mr H had provided before approving his application.

I'm persuaded that the account opening checks were proportionate. I say this as the information showed that while Mr H had total unsecured borrowings at the time of £1,000, he also had a gross salary of £15,000. But that's not all NewDay's data showed. The data also showed that Mr H had a CCJ for £800 18 months prior to his application.

It may help to explain here that, while information like a CCJ on someone's credit file may often mean they're not granted further credit – they don't automatically mean that a lender won't offer borrowing. Here, NewDay considered the information that Mr H had on his credit history and still made a decision to lend which, in the circumstances, I think was reasonable.

I say this because this information is not all that NewDay had access to. The credit checks showed that Mr H had no defaults registered, no payday loans, and there were no accounts in arrears. The £250 credit limit was less than 2% of his declared gross annual income, and if he utilised the full amount of this combined with the £1,000 unsecured debt he had at the time of his application, this would have been just over 8% of his declared gross salary.

So I'm satisfied that the checks NewDay carried out here, prior to approving the initial £250 credit limit were proportionate and that NewDay made a fair lending decision to approve Mr H's application for A.

#### *June 2015 credit limit increase for A - £250 to £400*

I've looked at the information that NewDay had available to them when they increased Mr

H's credit limit. The increase here was an extra £150. This increase was around eight months after NewDay had initially accepted his application. So NewDay would have been able to see how Mr H managed his account prior to increasing his credit limit.

Due to the time that's passed, NewDay don't have data for Mr H's credit file. And although Mr H has sent us his credit file which was produced on 14 December 2022, this does not cover the period prior to the June 2015 credit limit increase.

Based on what Mr H has said about his gambling, using a high utilisation of his available credit and only making minimum repayments, I've reviewed the available data of how he was managing his account between A being approved and the June 2015 credit limit increase.

The data shows that for several months, Mr H did not use the credit on A. There were no cash transactions, so it doesn't appear that Mr H used A to gamble with, therefore I wouldn't expect NewDay to be aware of any gambling from Mr H. There were only two times out of the eight months that Mr H had a statement balance. But the data shows that Mr H had made large repayments with some statement periods showing repayments of £328.72 and £133.92.

This would indicate Mr H was spending on his card, but he was also repaying the balance before his statement date at times. It would appear to NewDay that from the repayments that Mr H had been making, he would be able to afford the increase. If Mr H was in financial difficulties during this time, I would not expect him to make the repayments that the data reflects he did make during this time.

Due to the time that's passed and the missing credit file information, I'm not able to say that the checks NewDay performed prior to the credit limit increase were proportionate or not, or whether they made a fair lending decision here (although I don't think they would have had any cause for concern for how Mr H was running his account prior to the credit limit increase). I simply do not have sufficient evidence to conclude that NewDay did not make a fair lending decision when they increased his credit limit to £400.

#### *October 2015 credit limit increase for A - £400 to £1,000*

I've looked at the information that NewDay had available to them when they increased Mr H's credit limit. The increase here was an extra £600, which more than doubled his credit limit. This increase was around four months after NewDay had last increased his credit limit and this was around a year since they initially accepted his application. So NewDay would have been able to see how Mr H managed his account prior to increasing his credit limit.

Due to the time that's passed, NewDay don't have data for Mr H's credit file. And although Mr H has sent us his credit file which was produced on 14 December 2022, this does not cover the period prior to the October 2015 credit limit increase. Mr H also doesn't have access to his bank statements during this period, so I'm unable to see what his financial position was around this time. Although Mr H has sent us letters from 2016 about his financial difficulty, these were after the credit limit increase, and not before.

Based on what Mr H has said about his gambling, using a high utilisation of his available credit and only making minimum repayments, I've reviewed the available data of how he was managing his account between the last credit increase and the October 2015 credit limit increase.

The data shows that again there were no cash transactions, so it doesn't appear that Mr H used A to gamble with. The September 2015 statement balance (the month before the increase in October 2015) shows that his account was in credit by £5.06. So based on Mr H

not owing NewDay anything not long before the credit limit increase, I can't fairly say there were any obvious signs of financial difficulty that NewDay should have been aware of based on how he was managing the account.

In the 12 months that A had been opened prior to the credit limit increase, Mr H incurred no late payment fees, no cash fees, no overlimit fees, made repayments which were higher than his minimum repayment and the majority of the time didn't utilise a large amount of his available credit. The largest his statement balance was for the 12 months prior to the £1,000 credit limit increase was £248.66 (when his credit limit was £400). All of his statement balances were lower than the initial £250 credit limit. Even after the £248.66 statement balance, his next statement balance was £3.74.

Due to the time that's passed and the missing credit file information, I'm not able to say that the checks NewDay performed prior to the credit limit increase were proportionate or not, or whether they made a fair lending decision here, although I don't think they would have had any concern for how Mr H was running his account prior to the credit limit increase. I simply do not have sufficient evidence to conclude that NewDay did not make a fair lending decision when they increased his credit limit to £1,000.

If Mr H is experiencing financial difficulties then I would urge him to contact NewDay to discuss what options they have available to assist him.

#### *Acceptance for B - initial credit limit (£300)*

As NewDay have said they shouldn't have approved B for Mr H as he was showing as being on a repayment plan, then I'm satisfied their checks weren't proportionate here, and they should put things right for Mr H on this account.

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 at the end of this decision results in fair compensation for Mr H in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

#### **Putting things right**

NewDay have suggested they refund interest and fees from the account opening for B, which would leave a credit balance, then pay 8% interest on any overpayment, and they also offered to remove any adverse information with the CRA's for B, which I think is reasonable in the circumstances.

#### **My final decision**

I uphold this complaint in part. NewDay Ltd should take the following actions on B:

Rework the account removing all interest, fees, charges, and insurances (not already refunded) that have been applied;

If the rework results in a credit balance, this should be refunded to Mr H 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 regarding this account from his credit file;

Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mr H for the remaining amount. Once Mr H has cleared

the balance, any adverse information in relation to the account should be removed from his credit file.

\*If NewDay consider that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr H how much they've taken off. They should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 August 2024.

Gregory Sloanes  
**Ombudsman**