

The complaint

Ms L complains that NewDay Ltd (NDay) lent to her irresponsibly.

What happened

In March 2016, NDay agreed to give a credit card to Ms L, and then offered and applied increases in the limit as shown:

Limit increase number	Date	Limit
	March 2016 (new account)	£300
1	June 2016	£1,050
2	January 2017	£2,100
3	June 2017	£2,600
4	October 2017	£3,350
5	August 2018	£4,300
	<i>August 2019 - Account repaid</i>	

Ms L complained. She said NDay couldn't have carried out the necessary checks. She had a lot of other debts at the time, was struggling to make ends meet and was juggling various credit cards to meet the payments. She ended up in a spiral of debts which has led to depression and being signed off work.

She says NDay should refund all the interest and fees she has paid, plus interest at 8% per annum.

NDay didn't uphold her complaint. The firm said they'd carried out the necessary and proportionate checks each time. When Ms L applied for the card, she said she had income of £22,000 per annum and unsecured debts of £1,000. There were three defaults, but the latest one was old – 34 months before. There were no arrears on her other accounts and only £39 of pay day loans. When each increase was given, NDay said they looked at how she was conducting /repaying her debts, as well as the debt with NDay. They said they were satisfied adequate checks were done at each stage.

Ms L brought her complaint to us. Our investigator upheld it from the point of the third increase to £2,600 in June 2017. He said that by then, Ms L's debts had increased to over £7,300 and NDay should then have asked to see bank statements. Ms L had given these to us and they showed that Ms L's income was around £1,400 per month. Against that, her

credit costs and bills were £800, leaving £600 to make payments to her debts.

He said interest and fees should be refunded from 2 June 2017, and any adverse information deleted from Ms L's credit file.

Ms L agreed with this but NDay didn't. They said it was reasonable to assume that minimum payments of 4-7% on borrowing of £7,300 was fair – i.e. £292. That left Ms L with over £300 per month for essential living costs. And NDay noted that she had made all her payments to NDay before and at the time of the limit increase in June 2017.

NDay asked that an ombudsman look at Ms L's complaint and so it has come to me.

I made a provisional decision which upheld Ms L's complaint with effect from October 2017:

All lenders have an obligation to lend money responsibly. We have to check whether NDay acted in line within the Financial Conduct Authority (FCA) rules on creditworthiness assessment as set out in its handbook, (CONC) section 5.2. These say that a firm must undertake a reasonable assessment of creditworthiness, considering both the risk to it of the customer not making the repayments, as well as the risk to the customer of not being able to make repayments. We look at:

- Whether the lender completed reasonable and proportionate checks to satisfy itself that the borrower would be able to repay any credit in a sustainable way?
- If reasonable and proportionate checks were completed, did the lender make a fair lending decision bearing in mind the information gathered and what the lender knew about the borrower's circumstances?
- And a reasonable and proportionate check would usually need to be *more* thorough:
 - the lower a customer's income, and the higher amount to be repaid.
 - the greater the number of loans and frequency of loans.
 - the longer the term of the loans

It's important to note that the checks must be proportionate to the amount being lent – so the higher the amount, the greater the checks must be, and the lower the amount, then fewer checks can be made.

I noted that the first five lending decisions (up to and including October 2017) are out of time - as they took place more than six years before Ms L brought her complaint to us. But, NDay gave their consent to look at these.

I looked at the first issue of the credit card and the limit increases.

Issue of credit card – March 2016:

- Ms L declared income of £22,000 per annum. NDay could see she had other debts of only £1,000 and payday loan debts of only £39. She had no accounts in arrears or CCJs.
- Ms L had three defaults recorded against her for £700 – but the last one was 34 months before.
- So, it was reasonable for NDay to issue the card.

Limit increases – June 2016, January 2017:

- I can see that Ms L made all her payments to NDay.
- She hadn't gone over her limit, nor incurred any late payment fees.

- Her statement balances were well within her limits.
- She was making all the necessary payments to her other debts – which had increased to about £4,000 by the time of the NDay increase in January 2017.
- But – looking at Ms L's overall situation, I don't think NDay needed to be concerned about increasing her limit or making other inquiries about her circumstances.

Limit increase – June 2017:

Our investigator said this was the point at which NDay should've done more checks, but I disagree here.

- Ms L had continued to make all her payments to NDay.
- She hadn't gone over her limit or made late payments to NDay.
- Her NDay balances were well within her limit – only around £1,000 debit.
- She was making all the necessary payments to her other debts – even though these had increased to £7,300.
- In this regard, I don't consider that total debts of that amount as against Ms L's salary of £22,000 (i.e. around 30% of gross salary) – meant that NDay needed to ask more questions of Ms L.
- So here, I don't agree that NDay lent irresponsibly in June 2017.

Limit increase – October 2017:

- However, by this time we would have expected NDay to ask Ms L more about her circumstances but didn't.
- Her other debts had increased to over £20,000 – a significant increase from only four months before.
- I accept that she was still making the payments to her NDay card and other lenders, but such a large increase in debts in such a short time should've reasonably caused NDay to ask to see an income and expenditure analysis from Ms L, and/or ask to see her bank statements.
- If they had (and we have seen her bank statements) they would've seen that this time, she had income of around £1,400 per month and was making payments to lenders of about £1,100. She had rental/housing costs of £265 – so her income was fully spent already, leaving no room to pay more money to lenders (including NDay).
- Ms L showed us her credit file – and there were three credit card debts for about £5,000, £3,000 and £2,200 with high street credit card providers, and a loan for about £11,000 – so that accounts for most of the debts that NDay would've seen.
- And I think it's reasonable to say that where a customer has unsecured debts of over £20,000 as against a salary of £22,000 (gross), then a lender should ask more questions about their circumstances.
- The three credit cards were later defaulted – but of course, I can't expect NDay to have known that would happen. And it suggests that Ms L's problems got worse later on.
- NDay have said no questions were asked – and for the reasons I've given, I think NDay should reasonably have done more before lending more money to Ms L.

Therefore, I think NDay should refund all interest and charges and any insurance premiums paid on balances over £2,600 from the limit increase in October 2017 to the date of settlement.

And as Ms L has repaid the debt, then NDay should add interest of 8% per annum simple to the refunds.

NDay should also remove any adverse marks added to Ms L's credit file after October 2017.

Responses to the provisional decision:

Ms L accepted the provisional decision. NDay didn't make any comments.

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 Ms L accepted the provisional decision, and NDay didn't make any comments – my final decision is unchanged from it. And so NDay must do what the provisional decision said.

My final decision

I uphold this complaint. NewDay Ltd must:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £2,600 and from October 2017.
- As Ms L has already repaid the debt, interest of 8% per annum simple should be added to the refunds from the date of their payment to the date of settlement.
- Remove any adverse markers added to Ms L's credit file from October 2017.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 17 December 2024.

Martin Lord
Ombudsman