

## **The complaint**

Miss B complains that NewDay Ltd trading as Fluid have irresponsibly lent to her and have provided poor account management.

## **What happened**

Miss B applied for a Fluid credit card on 11 December 2019. Fluid accepted her application and issued a credit limit of £900. Miss B says that this credit limit was too high and she struggled to make her payments, often resulting in her account being over its credit limit and paying high interest rates. She notified Fluid of her financial difficulties and a repayment plan was set up.

Miss B complained to Fluid. They did not uphold her complaint. Fluid said that they had completed a credit check and this had showed she had a defaulted account 11 months prior to the application and a public record (such as a bankruptcy or county court judgment or other public record of a debt) which was 70 months ago, but her payments on her other credit agreements were up to date. Fluid also said that Miss B had declared she was working and had documented her total unsecured borrowings and Fluid accepted her application. They said that there was no reason to believe the borrowing would be unaffordable based on the information they had when they accepted the application. As a goodwill gesture, Fluid said they refunded the interest and fees from her last statement of £71.36.

Miss B brought her complaint to our service. Since her final response from Fluid she said that they had sent her a default notice, even though she had been on a payment arrangement with them. She said that she wants Fluid to apologise to her, refund all of the fees, charges and interest, award her compensation and remove any adverse credit data they've registered with the credit reference agencies.

Our investigator did not uphold Miss B's complaint. He said that the checks Fluid completed were proportionate to her income and the credit limit that was issued. Our investigator felt Fluid had treated her fairly and had arranged a repayment plan with her so he didn't think any compensation should be paid. Miss B asked for an Ombudsman to review her complaint. She also said that she had recently received a letter from Fluid informing her that they are going to register details of the default with credit reference agencies, despite her making a payment arrangement with them.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

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

*Miss B has made a number of points to this service and I've considered and read everything she's said and sent us. But, in line with this service's role as a quick and informal body I'll be focusing on the crux of her complaint in deciding what's fair and reasonable here.*

*I will only be able to look at the merits of this individual complaint that Miss B brought to our service about Fluid's decision to lend to her here. And as such I won't comment on issues that have risen recently such as her recent letter from Fluid informing her that they are going to register details of the default with credit reference agencies, despite her making a payment arrangement with them. Miss B will be able to raise a separate complaint for these issues if she wishes to do so.*

*Before agreeing to approve the credit limit for Miss B, Fluid needed to make proportionate checks to determine whether the credit was affordable and sustainable for her. 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 looked at what checks Fluid said they did prior to accepting Miss B's application. They said at the time of applying for the credit card, they considered the information that Miss B had gave them, such as being self employed, earnings of £14,500 and they looked at the information on her credit file. Fluid said that Miss B's credit file showed she had external unsecured outstanding debt of £800.*

*But that's not all the credit file showed. It showed that Miss B had defaulted in the past and had a public record. The most recent default was 11 months ago and the public record was 70 months ago. So Fluid would have been aware that Miss B had previously not maintained her agreements. But the data also showed she had no accounts in arrears, no repayment plans and that the adverse credit data was at least eleven months old.*

*So I've considered if the checks that Fluid carried out were proportionate to the level of credit that Miss B was given. And despite the credit limit not being high in relation to Miss B's unverified income, I'm persuaded there are other factors which should have persuaded Fluid to make further checks and I'll explain why below.*

*Fluid's data shows that Miss B has a high indebtedness and low income. Miss B's employment status was showing as self employed but for a "null" time period. So I'm persuaded that given Miss B's financial difficulties earlier in the year when an account defaulted and the uncertainty of time she had been self employed, then Fluid should have made further checks as part of a proportionate check on Miss B's individual circumstances to see if the credit limit they intended to approve would be sustainable for Miss B.*

*I think these factors should have prompted some further questions or checks from Fluid. Fluid will have also seen that she had defaulted on an agreement which was less than a quarter of the credit Fluid were initially going to offer her, so they should have carried out further checks to see if she had the affordability to manage a £900 credit limit. Miss B's credit file also showed that a credit card with a third party provider started the day before her Fluid credit card started and a mail order agreement started the same day as her Fluid credit card – although it is unlikely that Fluid would have been able to see this information when they completed their checks.*

*I asked Miss B to send me her credit file so I could see how she had managed her accounts. I'm persuaded that as a proportionate check, based on the issues which I've previously mentioned that this is something Fluid should have done to get a better understanding of how Miss B managed her accounts. Miss B's credit file shows that in 2019, the year her account was approved, there were several indicators that Miss B may not be able to sustain payments to a Fluid credit card. While Miss B did bring her accounts back in order, her credit file also reflected that at various points during 2019 she had:*

- A credit card which she was in arrears by three payments
- A loan which she was in arrears by six payments
- A telecommunications agreement which she was in arrears by three payments
- A mail order agreement which she was in arrears by five payments
- A credit card which she was in arrears by six payments
- A mail order agreement which she was in arrears by six payments then made an arrangement to pay with the company
- A telecommunications account which defaulted

So I asked Miss B about her financial circumstances at the time she was accepted for her Fluid credit card. This is a step that I'm persuaded that Fluid should have done as part of a proportionate check when there appeared to be inconsistencies or potential issues showing on the data. Miss B confirmed that due to a family bereavement she received an inheritance in 2019. So I'm persuaded that because she received lump sums of money that she was able to bring all of the aforementioned accounts up to date, and that is why they showed as being up to date from Fluid's checks and not because they were affordable for her. So by Fluid granting a credit limit which was more than the total of her unsecured debt she had before she was accepted for the Fluid credit card, then I'm persuaded that this added to her financial difficulty.

I asked Miss B further details about her personal circumstances at the time of the application, which I'm persuaded that Fluid should've done as part of a proportionate check. This led to Miss B providing her bank statements leading up to the application date. Even by looking at Miss B's November statement, the month before she was accepted for the Fluid credit card, her bank statement showed that she didn't have enough money to pay a direct debit mid November, and later on in the month she had a direct debit returned. Miss B's December statements show that the week before she was approved for the Fluid credit card, she had borrowed £1,500 from a third party company and on the day she applied for the Fluid credit card she was overdrawn, despite her account not having an overdraft.

So in light of Miss B's previous credit issues, then I'm persuaded that as part of a proportionate check to validate Miss B's income and expenditure then Fluid should have requested information from Miss B to discuss her finances, for example, one of the things they could have requested were her recent bank statements. So I'm persuaded that had Fluid looked at her bank statements for example as part of a proportionate check at the application stage then they shouldn't have approved her application without discussing her finances first.

Then I'm satisfied it would have come to light that Miss B had only recently been self employed (October 2019), the previous balances on her third party accounts were only brought up to date through the inheritance she received and that she had recently borrowed £1,500 from a third party company and applied – and was accepted for a credit card/mail order credit with third party companies. I then think it would be irresponsible for Fluid to approve a £900 credit limit in light of these circumstances. So it follows I will be asking Fluid to put things right.

I've also considered what Miss B has said about Fluid sending her a default notice in March 2021, shortly after she raised her irresponsible lending complaint with Fluid. I know she thinks this seems deliberate. But I've seen no evidence of this. As Miss B hadn't been able to make her contractual monthly payment for a number of months, then Fluid are able to issue a default notice even if there is an arrangement in place as the arrears have built up over a prolonged period. So I'm not persuaded they've made an error here.

I've considered how to put things right for Miss B. She is looking for Fluid to refund all of her

*charges, fees and interest, remove any adverse credit information that Fluid has reported and give her additional compensation. I do think it is fair that Fluid remove any fees, charges and any adverse credit information they reported to any credit reference agencies. But I'm not persuaded that any additional compensation should be provided. I say this as my provisional decision would put her back in the same position she would have been in had Fluid not accepted her application. While Miss B shouldn't have been lent this money – it remains that she did spend it. So it's difficult for me to say that this has caused her distress or inconvenience in a way that'd be fair for me to tell Fluid to pay compensation for."*

I invited both parties to let me have any further submissions before I reached a final Decision. Fluid said that in respect of credit file removal, a refund of interest, charges and fees would not clear the balance and Ms B has not repaid purchases that she has had the benefit of. They said that Miss B is currently on a £5 per month repayment plan and if she wants to pay that in full then they can arrange for the adverse information to be removed, but if she can't pay in full and wants to continue with the plan, the credit information should remain because it is an accurate reflection of how she is maintaining payments on a valid outstanding balance.

Miss B accepted my provisional decision but asked a number of questions. In summary she asked if I could confirm the refunds apply to all fees, charges and interest that hadn't been reversed already for the duration of the account. She also asked if I would be asking Fluid to remove all the payments she's made for the duration of the account. Miss B asked if any amounts which exceed the £900 credit limit given to her are the amounts which will be refunded along with interest at 8% per year simple on any overpayments from the date they were made to the date of settlement (which would also include fees and charges). Finally, Miss B asked if the removal of any adverse data from her credit files includes the removal of her default.

### **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.

I've considered what Fluid have said regarding removing the adverse credit information if Miss B does not pay off the full outstanding balance once they have refunded any interest, charges and fees that they haven't already refunded. But my decision here was that Fluid should not have lent to Miss B originally. Had they not lent to her, no data would be showing on Miss B's credit file from Fluid – which includes adverse information that would disadvantage her. My decision here is to ensure that Miss B isn't disadvantaged by Fluid's choice to lend to her – and that includes any adverse impact on her credit file. But when looking at what's fair from both sides, I think it's fair that Miss B repays Fluid anything she's borrowed from them. How any outstanding amounts are managed moving forward will be a matter for Fluid and Miss B to discuss and agree together. So I'm satisfied that as part of my final decision, Fluid should still remove any adverse information, including the default, from Miss B's credit file.

As touched on above, I must make it clear to Miss B that as she's had the benefit of spending on the credit card, it is only fair that she pays all of this money back to Fluid, even if she spent more than the credit limit – but this will be without paying interest, charges or fees on the outstanding balance after Fluid have refunded any fees, charges and interest that has already been paid. So if there is an outstanding balance remaining after her payments, interest, fees and charges have been removed from the total money she's spent then she will still need to maintain any arrangement to pay this money back to Fluid.

I can confirm to Miss B that the removal of the interest, fees, charges and repayments would be from the account opening. The 8% per year simple interest paid to her would only apply if she had paid more to the balance than the total of the repayments, interest and charges that were applied. Indications from Fluid is that there is still likely to be a balance outstanding once these are refunded and if that's the case, then this interest won't be relevant, but she would be able to get this calculation directly from Fluid.

### **Putting things right**

In my provisional decision I said I intended to ask NewDay Ltd trading as Fluid to remove interest charged, any late payment or over limit fees (which they haven't done so already) and the payments Miss B made on the account. Any extra that was paid should be treated as overpayments and refunded to Miss B with interest added at 8% per year simple on any overpayments, if there were any, from the date they were made to the date of settlement. They should also remove any adverse credit information for the Fluid credit card from Miss B's credit file. I'm still satisfied this is a fair outcome for the reasons given previously.

### **My final decision**

I uphold the complaint. NewDay Ltd trading as Fluid should remove interest charged, any late payment or over limit fees (which they haven't done so already) and the payments Miss B made on the account. Any extra that was paid should be treated as overpayments and refunded to Miss B with interest added at 8% per year simple on any overpayments, if there were any, from the date they were made to the date of settlement. They should also remove any adverse credit information for the Fluid credit card from Miss B's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 11 November 2021.

Gregory Sloanes  
**Ombudsman**