

## **The complaint**

Miss J complains that NewDay Ltd (“NewDay”) irresponsibly granted her three credit accounts that she couldn’t afford to repay.

## **What happened**

Miss J entered into agreements with NewDay to have access to credit with three separate credit card accounts. The first, an Aqua account, was opened for her in December 2018 with a credit limit of £1,200. In July 2019 the credit limit was increased to £2,700. The second, an AO account, was opened for her in November 2019 with a credit limit of £900. The third, a Fluid account, was opened for her in December 2020 with a credit limit of £900.

Miss J says that NewDay didn’t complete adequate affordability checks when it opened each of these accounts. She says if it had, it would have seen that each of these agreements wasn’t affordable for her as she didn’t have enough income to make the repayments and was already in financial difficulty.

NewDay didn’t agree. It said that it carried out a reasonable and proportionate assessment to check Miss J’s financial circumstances before granting her the credit accounts for each card.

Our adjudicator didn’t recommend the complaint be upheld for the Aqua and AO accounts but said NewDay shouldn’t have agreed to give Miss J credit by way of the Fluid account.

Since Miss J didn’t agree with our adjudicator’s findings, the complaint has been passed to me for 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.

NewDay will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don’t consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

Before granting each of these accounts, NewDay needed to look into Miss J’s financial situation.

### ***Aqua***

Before opening the Aqua account, I think NewDay gathered a reasonable amount of evidence and information from Miss J about her ability to repay. This included completing a credit check that gave an indication of her financial situation. This showed she had around £4,700 in unsecured borrowing and ongoing credit commitments. It also showed there were

no accounts in arrears and that it was well over a year since there had been a default in any of her borrowing. So from what I've seen, I think these checks look to have been proportionate. But I still need to think about whether NewDay made a fair lending decision. I say this because even if I think it carried out proportionate checks, it doesn't automatically mean it made a fair lending decision. So, I've thought about what the evidence and information showed.

I've reviewed the information and evidence NewDay gathered. Having done so I'm satisfied that the checks that were completed showed the agreement was likely to be affordable to Miss J. I say this because Miss J's card application details showed her as having an annual income of around £25,500. So given her financial history and the income she'd declared alongside the relatively low credit limit she'd been given, I don't think NewDay acted unfairly when approving the finance application.

Looking at the credit limit increase to this account, I agree with our adjudicator that it would have been proportionate for NewDay to have taken steps to find out more about any changes to Miss J's income, as well as the level of committed expenditure she had at that time. I say this especially have seen that she the amount she owed around £15,112 in unsecured debt which that was ongoing by then. I've seen from the bank statements Miss J has given us that she likely had enough disposable income available each month to be able to at least meet her monthly minimum payment requirements. I say this having seen that she had a monthly income that worked out at around £1,700 per month. The bank statements show that Miss J's regular monthly committed outgoings were around £1400. I think this evidence shows that Miss J was likely in a position to be able to make sustainable repayments to the account with this increased credit limit. Therefore, if NewDay had completed proportionate checks, I think It may well have found this to be the case. That means I don't consider that NewDay acted unfairly in granting Miss J an increased limit for this account.

### *AO Finance*

At the time of granting the AO Finance account, Miss J had an annual declared income of around £27,000. I've seen that she was also now funding a small mortgage. Given that this account would have brought the amount of credit Miss J had with NewDay to £3,600, I think it would have been proportionate for NewDay to carry out better checks in order to understand Miss J's financial situation. So I think NewDay ought to have taken steps to find out more about Miss J's daily spending commitments, including her regular living costs.

I think that had NewDay carried out further checks, it would likely have found that she had enough disposable income available to meet her existing financial commitments whilst maintaining her new account. I say this because the bank statements I've seen from around this time show it's likely that Miss J had enough disposable income available each month to be able to at least meet her monthly minimum payment requirements. I say this given that I agree with our adjudicator that she had a monthly income that worked out at around £1,800 per month, with committed expenditure of around £1,400. If NewDay had completed proportionate checks by looking at these, I think it's likely it would have found this to be the case – although I note that she was beginning to make increased use of the overdraft facility on her bank account. That means I don't consider NewDay acted unfairly in giving Miss J the this credit.

### *Fluid*

At the time of granting the Fluid account – which was only a month after arranging the AO account - Miss J had an annual declared income of around £28,000. The application showed

her has having an unsecured debt balance of £12,300. The three NewDay accounts would now have given Miss J a total credit limit of £4,500. And given that Miss J had increased her level of debt further whilst having an apparent reduction in her income, I think it would have been proportionate for NewDay to carry out better checks in order to understand Miss J's financial situation at this point.

The bank statement information Miss J has provided show she had monthly committed expenditure, including daily living costs, of around £1,355, whilst her average monthly income was around £1,800. She was making increased use of her bank overdraft facility. And by this point Miss J's pattern of spending outside of this committed expenditure was likely at a level that she would be left with little, if any, disposable income. This included continuing use of gambling sites. On this basis I think Miss J wouldn't have been left with enough to cover her living costs and committed expenditure as well as making repayments to the Fluid account. I therefore agree that NewDay ought to have been aware that Miss J was not in a position to take on and manage this additional credit. It follows that I don't think NewDay should have granted Miss J the Fluid account.

### **Putting things right – what NewDay needs to do**

- Rework Miss J's account to ensure that all interest and charges should be removed from the Fluid account. All late payment and over limit fees should also be removed; and
- If an outstanding balance remains on the account once these adjustments have been made, NewDay should contact Miss J to arrange an affordable repayment plan for the account. Once Miss J has repaid the outstanding balance, it should remove any adverse information recorded on Miss J's credit file from 9 February 2016 onwards.

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 Miss J, along with 8% simple interest per year on the overpayments from the date they were made (if they were) until the date of settlement. NewDay should also remove any adverse information from Miss J's credit file from 3 December 2020, when the Fluid account was first opened.†

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

### **My final decision**

I therefore partially uphold this complaint and require NewDay Ltd to pay compensation in respect of the Fluid credit account only as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 5 August 2022.

Michael Goldberg  
**Ombudsman**