

The complaint

Miss D complains that NewDay Ltd trading as Fluid irresponsibly gave her two credit cards she couldn't afford to repay.

What happened

In July 2021, Miss D applied for a credit card with NewDay. She was given an initial credit limit of £1,200. The limit was increased twice so that by March 2022 it was £4,200. Miss D then applied for a second credit card with NewDay and was given a credit limit on that account of £1,200.

Miss D complained to NewDay in October 2022 to say that the credit had been unaffordable to her from the outset and that appropriate affordability checks weren't completed before lending to her. NewDay didn't agree it had acted unfairly when lending to her.

Our adjudicator recommended the complaint be upheld. He didn't think that NewDay made a fair lending decision when opening the account in July 2021. He said that its checks ought to have revealed that Miss D had insufficient income to be able to sustainably afford repayments towards more credit. He said that NewDay should rework both credit cards to remove all interest, fees, charges and insurances that had been applied.

NewDay didn't respond to our adjudicator's assessment of the complaint, so it 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.

Prior to lending, NewDay were required to ensure the borrowing would be affordable to Miss D. There isn't a set list of checks it had to complete, but any checks it did needed to be proportionate in the circumstances. What is considered proportionate will vary with each lending decision and in deciding how thorough the checks needed to be, NewDay needed to take into account things such as (but not limited to): the credit limit, the size of any reasonable regular repayment if the full limit was utilised, the cost of credit and Miss D's circumstances.

As part of the application for the first card, Miss D declared an annual income of around £20,000. NewDay used credit reference agency data to check whether this was likely to be broadly accurate. NewDay also completed a credit check which showed that Miss D had around £26,000 in unsecured debt as well as a mortgage. There was no evidence of arrears or repayment difficulty on her existing debts. NewDay hasn't provided a detailed breakdown of what its credit check showed, down to individual account level. So, I've relied on a more recent copy of Miss D's credit report to establish what I think is likely to have been visible to NewDay when it did its check.

I can see that Miss D's mortgage was joint with her partner and the total monthly repayment

was £708. She's told us she was responsible for half of this, and I think this would have been a reasonable conclusion for NewDay to draw from the application and credit file data it received. NewDay could also see that Miss D was paying a further £381 per month towards a loan and a hire purchase agreement and that she held around £3,500 in existing credit card debt. In addition to this, Miss D was also regularly borrowing up to £2,000 on her overdraft facilities with at least two banks.

When considering Miss D's existing credit card debt and the new proposed credit card limit it was going to provide her with (taking into account in particular CONC 5.2A.27R and 5.2A.28G), NewDay would have seen that Miss D would be repaying around £950 per month towards her unsecured credit commitments and mortgage. This figure doesn't include her overdraft borrowing, which she would have been expected to reduce over time as well.

NewDay understood that Miss D's monthly income was around £1,350. Therefore, she would have been left with around £400 to meet her other bills and essential expenditure, such as for food, clothing and travel, as well as repaying her overdraft borrowing. I think it ought to have been clear to NewDay that this would not have been sufficient to ensure she had enough disposable income to sustainably repay the credit to NewDay without potentially needing to borrow more. For this reason, I don't think it made a fair lending decision when it opened the credit card account in 2021.

For the same reasons, I don't think it made a fair lending decision when it agreed to extend further credit to her, both on that first card and by opening a second account. I say this because it was clear from the credit checks NewDay did, that her financial circumstances hadn't significantly improved. As I don't think it made a fair lending decision it should therefore put things right.

As I don't think Miss D should have been provided with any credit by NewDay, I think it's fair that it refunds all interest, fees, charges and insurances that it applied to the borrowing. However, as Miss D has spent what she borrowed, I think it's fair and reasonable that she repays the capital. Once the capital is repaid, NewDay should also remove any adverse information from her credit file that it may have recorded in relation to these accounts.

My final decision

For the reasons given above, I uphold this complaint and direct NewDay Ltd trading as Fluid to:

- Re-work both credit cards removing all interest, fees, charges and insurances not already refunded.
- If the re-work results in Miss D having paid more than the amount of capital she borrowed, any overpayments should be refunded to her. NewDay should add 8% simple interest per year on those refunds from the date of each overpayment to the date of settlement. It should also remove any adverse information recorded on her credit file.
- Or, if the rework results in there still being a capital balance outstanding then NewDay should agree an affordable and sustainable repayment arrangement for the outstanding amount. When Miss D has repaid the capital NewDay should then remove any adverse information it has recorded on her credit file.

If NewDay considers tax should be deducted from the interest element of my award it should provide Miss D with a certificate showing how much it has taken off, so that she can reclaim that amount, if she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 26 October 2023.

Tero Hiltunen
Ombudsman