

The complaint

Miss W complains that NewDay Ltd trading as Fluid Credit Card (“NewDay”) irresponsibly lent to her. She says it gave her a credit card and credit limit increases that weren’t affordable.

What happened

Miss W’s application for credit was approved in August 2021 and NewDay provided her with a £900 credit limit.

NewDay increased Miss W’s credit limit in January 2022 to £1,900 and again in May 2022 to £3,400.

In March 2023, Miss W wrote to NewDay to complain about the facility. She said it never should have given her the card because had it done checks, it would’ve seen she had missed payments on another card, had a default and an increase in credit.

Miss W says that the spiralling of her financial situation had a serious impact on her mental health, and she had to give up her home. She explained she’s currently taking medication for her mental health and feels her circumstances are unlikely to change soon, so asked NewDay to write off the remaining balance outstanding.

NewDay didn’t respond to Miss W within the eight-week period it had to respond in line with the rules set by the Financial Conduct Authority (FCA), so she brought the complaint to our service to investigate.

An Investigator looked at Miss W’s concerns, but thought that NewDay acted responsibly when deciding to provide the credit card and increase the credit limit. It said while Miss W did have a large amount of credit which should have prompted further checks into her circumstances, overall, there was nothing that NewDay would’ve seen to suggest the credit it was providing her with was unaffordable.

NewDay didn’t dispute the Investigator’s view but Miss W did. She reiterated some of her previous points and asked for an Ombudsman’s decision. So, the case was passed to me to decide. Whilst I intended to reach the same outcome as the Investigator, this was for different reasons. So, I wanted to give both parties the opportunity to respond with anything else they wanted me to consider before I came to my final decision on the matter. I issued a provisional decision which said the following:

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

I’d like to start by acknowledging how difficult matters have been for Miss W and I thank her for being so forthcoming with information about how her finances have impacted her. We’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And I’ve used this approach to help me decide Miss W’s complaint.

Having carefully considered everything, I'm currently minded to not uphold Miss W's complaint. I'll explain why in more detail.

The rules and regulations in place at the time NewDay provided Miss W with the credit card and limit increases, required it to carry out a reasonable and proportionate assessment of whether she could afford to repay what she owed in a sustainable manner. This is sometimes referred to as an 'affordability assessment' or 'affordability check'.

The checks had to be 'borrower' focused. This means NewDay had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Miss W. In other words, it wasn't enough for NewDay to consider the likelihood of it getting the funds back or whether Miss W's circumstances met its lending criteria – it had to consider if Miss W could sustainably repay the lending it was providing to her.

Checks also had to be 'proportionate' to the specific circumstances of the lending. In general, what constitutes a proportionate affordability check will be dependent on a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, any indications of vulnerability or financial difficulty) and the amount/type/cost of credit it was seeking. I've kept all of this in mind when thinking about whether NewDay did what it needed to before lending to Miss W.

Miss W applied for the credit card in August 2021. NewDay told us Miss W declared an annual income of £27,000 and unsecured debts of £16,300. It carried out credit reference checks which didn't show any indicators of financial difficulties, such as defaults or missed payments. Having reviewed the checks it conducted, and considering Miss W's circumstances, as well as the fact £900 was a relatively moderate credit limit, I think the checks NewDay did were reasonable and proportionate, and it wasn't wrong to issue Miss W with a £900 credit card.

In January 2022, NewDay increased Miss W's credit limit from £900 to £1,900. NewDay said the data it had showed Miss W's external position hadn't worsened, and the account was managed well. I've reviewed the information available and can see between August 2021 and January 2022, Miss W was making the required repayments, sometimes paying slightly over the minimum payment, and she didn't show any of the usual indicators of financial difficulties, such as late payments, missed payments, or overlimit fees. Externally, Miss W's credit balances remained at a consistent amount, and she also didn't have missed or late payments elsewhere. Based on how the account with NewDay was being managed, and nothing new flagging externally, I think NewDay didn't act unreasonably when providing her with the credit limit increase.

In May 2022 the credit limit was increased again to £3,400. NewDay say by this point, Miss W had paid the majority of the balance to the credit card, and again there were no indicators of financial difficulty internally or externally.

Given NewDay was increasing the credit limit by a significant amount in the circumstances of Miss W's account, whilst also considering Miss W's debt to income ratio, I would've expected it to complete further checks to ensure this limit was affordable and sustainable for Miss W. I think it should have found out more about Miss W's circumstances before providing her with the increase, by asking her questions about her income and expenditure.

But just because I think NewDay's checks weren't proportionate, it doesn't mean I think it made an unfair decision to lend. I need to know what those checks would have likely shown had it found out more about Miss W's circumstances at the time.

The easiest way for me to do this now, given the time that's passed, is to review Miss W's current account statements from the months leading up to the increase and consider what would likely have been declared in an income and expenditure assessment.

Having reviewed Miss W's statements and considering what she would've likely been asked to declare during an income and expenditure assessment, the increase looks affordable for Miss W. I say this because Miss W looks like she would have likely had around £1,000 disposable income each month once her income and expenditure would have been declared.

I'm not persuaded there is anything that would've flagged to NewDay at the time that Miss W was unable to afford the additional credit it was providing her with. Miss W generally had a positive balance with a reasonable amount of disposable income. And so, while I think NewDay should've done more to check this was affordable for Miss W, had it done so I think it's likely it still would've lent to her.

I've gone on to think about if there were any clear points in time where Miss W was showing signs of financial difficulty that should've been a trigger for NewDay to step in. The rules that applied at the time lists a host of indicators that firms should be aware of when considering if their customer is in financial difficulty. These include, but aren't limited to, failing to meet repayments, failing to meet repayments when due, and adverse data entries on credit reports. Miss W had one late payment in July 2022, which was after the last increase, and payment was made. I've not been provided with evidence from either party to suggest that she contacted NewDay about her situation. As I understand it, she also repaid the majority of the outstanding balances in May 2022 and September 2022. I can't see any point in time prior to the complaint where NewDay would've been aware Miss W was struggling, and so I don't think it treated her unfairly with regards to forbearance either.

Whilst I'm not upholding the complaint, I understand Miss W is currently experiencing financial difficulties. Given what NewDay is now aware of, I want to remind it of its obligations to exercise forbearance moving forward. And I would encourage Miss W to get in touch with NewDay about the difficulties she's facing.

I know this is likely to come as a disappointment to Miss W, and I'm sorry for the challenges she's facing. But currently, I'm not minded to say NewDay lent to her irresponsibly."

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 responded to the provisional decision saying it had nothing further to add, but would like to remind Miss W that there are payment support options available to her both online and over the phone. It said the customer care team are best placed to discuss all forbearance measures with her.

Miss W didn't respond to the provisional decision within the deadline provided. We then allowed a further 12 days for Miss W to respond, but we didn't hear anything. So I assume there isn't anything else she wants me to consider.

Given that both parties haven't provided any new information to this service, I see no reason to depart from the findings I reached in my provisional decision.

It follows that I'm not upholding Miss W's complaint, because NewDay carried out proportionate checks for the account opening and limit increase one which showed the credit

would be affordable for Miss W. And for limit increase two, despite the checks not being proportionate, had NewDay done proportionate checks, the information it would have gathered would have likely shown Miss W could still afford the credit.

My final decision

It follows that I'm not upholding this complaint as I don't think NewDay lent to Miss W irresponsibly or unfairly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 12 June 2024.

Meg Raymond
Ombudsman