

Complaint

Miss W has complained about credit cards and credit limit increases which NewDay Ltd ("NewDay") provided to her. She says the credit cards as well as the limit increases were irresponsibly provided.

Background

NewDay provided Miss W with a total of three credit cards across different brands. Miss W's borrowing history with NewDay is as follows:

"Fluid" branded credit card:

April 2019 – card provided with an initial limit of £1,200.00
March 2020 – limit increased to £1,800.00
October 2020 – limit increased to £2,400.00
February 2021 – limit increased to £3,200.00
July 2021 – limit increased to £3,800.00*

"Pulse" branded credit card:

August 2020 – card provided with an initial limit of £500
September 2020 – limit increase to £700
February 2021 – limit increase to £1,150.00
April 2021 – limit increase to £2,650.00*

"Aqua" branded credit card:

February 2022 – card provided with an initial limit of £600*

In October 2023, Miss W complained to NewDay that all of her credit cards had been provided irresponsibly. NewDay accepted that it hadn't always acted fairly and reasonably towards Miss W and that it had irresponsibly agreed to provide credit on some occasions. So it partially upheld her complaint. Miss W remained dissatisfied and referred her complaint to our service.

One of our investigators reviewed what Miss W and NewDay had told us. And she thought that what NewDay had already agreed to do was fair and reasonable in all the circumstances of her case. So she didn't recommend that Miss W's complaint be upheld.

Miss W disagreed and asked for an ombudsman to look at the complaint.

As the parties are in agreement that Miss W should not have been provided with the Aqua card at all, as well as the final limit increases on the Fluid and Pulse cards, I have not looked into these matters. Therefore, this decision is solely considering whether NewDay acted

* indicates a card or limit increase which NewDay accepted it shouldn't have provided Miss W with in its final response.

fairly and reasonably towards Miss W when providing the Fluid card and the first three credit limit increases as well as the Pulse card and its first two credit limit increases.

My findings

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

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 satisfied that what NewDay has already agreed to do to put things right for Miss W is fair and reasonable in all the circumstances. So I don't think that it needs to do anything more and I've not been persuaded to uphold this complaint. I'll explain why in a little more detail.

Given Miss W's response to our investigator's assessment, I think that it would be helpful for me to set out that we consider what a firm did to check whether repayments to credit were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used.

It simply sets out the types of things that a lender could do. It is a for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that the lender did enough to establish whether the repayments to an agreement was affordable, this doesn't on its own meant that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances were we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

I kept this in mind when deciding Miss W's complaint.

NewDay says it agreed to Miss W's initial applications and limit increases after it obtained information on her income and carried out credit searches. And in its view the information obtained would have indicated that Miss W would be able to make the monthly repayments due for this. Due to Miss W's Fluid and Pulse accounts being relatively well managed she was then offered her credit limit increases.

On the other hand Miss W says that she shouldn't have been lent to.

I've considered what the parties have said.

Fluid Card

What's important to note is that Miss W was provided with a revolving credit facility rather than a loan. This means that to start with NewDay was required to understand whether a credit limit of £1,200.00 could be repaid within a reasonable period of time, rather than all in one go. And a credit limit of £1,200.00 didn't require especially large monthly payments in order to clear the full amount owed within a reasonable period of time.

I can see that Miss W declared an annual income of £12,000.00. NewDay's credit check didn't highlight any recent significant adverse information recorded against Miss W. I understand that there was a default recorded against Miss W but this was over four years prior to this application. Furthermore, Miss W didn't have too much in the way of recent active credit at that time either as she only owed a total of around £2,000.00.

So, in these circumstances, I don't think that it was unreasonable for NewDay to rely on what Miss W said about her income and what it had in relation to her expenditure, particularly in light of the not especially high monthly repayments she would be required to repay on a balance of £1,200.00, within a reasonable period of time.

As this is the case, I'm satisfied that the checks carried out before Miss W was initially provided with her Fluid credit card were reasonable and proportionate and NewDay didn't act unfairly when opening Miss W's account.

For the credit limit increases, it appears as though NewDay relied on Miss W's account having been managed well since it had been opened. In the first instance I should make it clear that it isn't immediately apparent to me how it is automatically the case that a borrower can afford a higher amount of credit simply because they might not have defaulted on a lower amount.

It seems to me that this logic would suggest that credit limit increases should continue to be granted until after a customer has struggled to make repayments – even though the regulations require a lender to carry out reasonable enquiries to ensure that this doesn't happen.

In any event, Miss W's credit limit was being increased to £1,800.00, £2,400.00 and £3,200.00. So I would have expected NewDay to have found out more about Miss W's income and regular living expenses before providing these credit limit increases. This is particularly as the second and third credit limit increases were provided after Miss W had been provided with her Pulse credit card.

As NewDay has been unable to evidence having done this for either of these increases, I don't think that the checks it carried out before it increased Miss W's credit limit on the Fluid credit card on the first three occasions were reasonable and proportionate.

I'll now review whether the checks on the Pulse Card were reasonable and proportionate before returning to whether reasonable and proportionate checks are likely to have made a difference to NewDay's decision to provide the first three limit increases on the Fluid Credit card.

Pulse Card

When NewDay provided the Pulse card and the first limit increase it was required to understand whether credit limits of £500 and £700 could be repaid within a reasonable period of time. I think that credit limits of £500 and £700 didn't require especially large monthly payments in order to clear the full amount owed within a reasonable period of time.

The credit checks that NewDay carried out didn't highlight any further adverse information having been recorded against Miss W. Furthermore, Miss W had been managing what she did owe reasonably well. Therefore, I'm satisfied that NewDay was reasonably entitled to believe that Miss W could repay what she could owe on credit limits of £500 and £700 within a reasonable period of time.

As this is the case, I'm satisfied that the checks carried out before Miss W was initially provided with her Pulse credit card and first credit limit increase were reasonable and proportionate and NewDay didn't act unfairly when granting this credit.

For the second credit limit increase, it appears as though NewDay continued to rely upon Miss W's Pulse account having been managed well since it had been opened. However, when Miss W's credit limit was being increased for the second time it was being increased to an amount in excess of £1,000.00 and this was in circumstances where this was a second NewDay credit card.

So much like I would have expected NewDay to have found out more about Miss W's income and regular living expenses before providing the credit limit increases on the Fluid card, I would also have expected it to carry out similar checks before offering the second limit increase on the Pulse card.

As I can't see that NewDay did this, I don't think that the checks it carried out before it increased Miss W's credit limit on the Pulse credit card for the second time were reasonable and proportionate.

I'll now turn to what I think proportionate checks for the first three credit limit increases on the Fluid card and the second credit limit increase on the Pulse card, are likely to have shown.

Why I don't think that carrying out further checks would have prevented NewDay from providing the first three credit limit increases on the Fluid card and the second credit limit increase on the Pulse card

As I think that NewDay ought to have done more, I've gone on to decide what I think NewDay is more likely than not to have seen had it carried out further checks before the limit increases in question.

As previously explained, given the circumstances, I would have expected NewDay to have had a reasonable understanding about Miss W's regular living expenses as well as her income and existing credit commitments before providing the first three credit limit increases on the Fluid card and the second credit limit increase on the Pulse card.

I've considered the information Miss W has provided on her circumstances at the respective times and I don't think that NewDay attempting to find out further information about Miss W's actual living costs, rather than relying on assumptions like it did, would have made a difference here.

I say this because I've not seen anything that shows me that Miss W's committed regular living expenses, other non-discretionary expenditure and her existing credit commitments meant that she did not have the funds to make sustainable repayments to any combination

of balances that could have been owed, as a result of having these limit increases, at the time that the credit was offered. Indeed, the statements provided actually show credit balances sufficient to make sustainable payments at the end of the relevant months.

I say this in the knowledge that any difficulty Miss W might have gone on to have making her payments wasn't due to her regular living expenses and other non-discretionary expenditure being significantly different to any assumptions NewDay relied on. And it's possible – but by no means certain – that if NewDay had seen what I have now seen, as a result of reviewing the bank statements Miss W has provided, it may have made a different decision on whether to provide these credit limit increases to Miss W.

Nonetheless, what is important to note is that NewDay wasn't aware of the extent and nature of Miss W's additional spending. And the truth is, given the circumstances here as well as what I think that NewDay needed to find out, I don't think that reasonable and proportionate checks would have extended into obtaining bank statements – especially as bank statements weren't the only way that NewDay could find out about Miss W's regular living expenses in the first place.

In my view, delving into the detail of the bank statements Miss W has now provided us with, isn't commensurate with a proportionate check for credit limits of the amounts granted, bearing in mind what the rest of the information that NewDay gathered showed.

I'm therefore satisfied that NewDay taking further steps to find out more about Miss W's living expenses won't have led it to determine that the possible repayments on the first three credit limit increases on the Fluid card or the second credit limit increase on the Pulse card were unaffordable for Miss W.

Furthermore, I have to consider all of this against the backdrop of NewDay's credit checks and the activity on Miss W's Fluid and Pulse cards, didn't show that Miss W's credit commitments were increasing exponentially. Miss W didn't appear to have any new significant adverse information recorded against her in this time either.

I've also not seen any evidence of any new defaulted accounts or county court judgements recorded between March 2020 and February 2021. So I don't think that NewDay ought reasonably to have realised that it may have been increasing Miss W's credit limits in circumstances that were unsustainable or otherwise harmful for her.

I know that Miss W has queried how it is possible for us not to uphold this complaint when another investigator has already upheld a separate complaint about a different lender that provided her with a credit card.

I can understand why Miss W might find it strange that she's received different outcomes on complaints which she perceives to be materially the same. But we consider complaints on an individual basis and looking at the individual circumstances. As I've previously explained, what will constitute a proportionate check will very much depend on the particular circumstances of the individual application. And a proportionate check, even for the same customer, could look different for different applications.

I'm also not bound by the outcomes reached by investigators, or for that matter other ombudsmen. Ultimately, I'm required to consider the facts of a case and reach my own conclusion. That said and with a view to providing some clarity and reassurance to Miss W, it might help for me to explain that there is a key difference between the facts of this complaint and her other one.

In Miss W's other case, the credit card was taken out at least a couple of years before the Fluid card and therefore much closer to the time that she had defaulted on a credit account. Whereas in this case, Miss W's previous difficulties were historic. Furthermore, there were also no issues with the way that Miss W's was managing her Fluid and Pulse cards at the respective times. This affected the level of checks required and that's why I don't think that proportionate checks would have led NewDay being aware of Miss W's additional spending. And I don't think it is fair and reasonable to expect NewDay to have taken into account facts that it wasn't aware of and couldn't reasonably be expected to be aware of either.

Therefore, while I'm required to consider each case on its individual facts and not simply rubber-stamp what might have happened on previous cases, nonetheless, I don't consider that the outcome I've reached on this case is inconsistent, or incompatible, with the outcome that Miss W received on her other case.

In reaching my conclusions I've also considered whether the lending relationship between NewDay and Miss W might have been unfair to Miss W under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I've not been persuaded that NewDay irresponsibly lent to Miss W or otherwise treated her unfairly in relation to the matters that I have considered. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

Overall, I'm satisfied that what NewDay has already done to put things right for Miss W is fair and reasonable in all the circumstances. So I don't think that it needs to do anything more and I've not been persuaded to uphold this complaint. I appreciate this will be very disappointing for Miss W. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

I'm satisfied that what NewDay Ltd has already done to put things right for Miss W is fair and reasonable in all the circumstances of her complaint. As this is the case, I'm not requiring it to do anything more and I'm not upholding Miss W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 20 December 2024.

Jeshen Narayanan
Ombudsman