DRN-4975210

The complaint

Miss M is complaining about NewDay Ltd trading as Fluid because she says it lent irresponsibly by providing her with a credit card she couldn't afford.

What happened

Miss M opened a credit card account with NewDay in March 2021. The account was set up with a credit limit of £1,200 and this was never increased.

Our investigator concluded the complaint should be upheld. She felt NewDay should have carried out a more thorough affordability assessment and decided against lending to Miss M.

NewDay didn't accept the investigator's assessment. It maintains it carried out appropriate checks before lending and doesn't agree that a review of Miss M's bank statements shows further credit was unaffordable.

The complaint has now been referred to me for review.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. I haven't necessarily commented on every single point raised but concentrated instead on the issues I believe are central to the outcome of the complaint. This is consistent with our established role as an informal alternative to the courts. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Before lending to Miss M, NewDay was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:

- Did NewDay complete reasonable and proportionate checks to establish Miss M would be able to repay the credit in a sustainable way?
- If so, was the decision to lend fair and reasonable?
- If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

The rules, regulations and good industry practice in place at the time the credit was approved required NewDay to carry out a proportionate and borrower-focused assessment of whether Miss M could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant NewDay had to satisfy itself that making payments to the credit wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of her making payments, it had to consider the impact of the repayments on Miss M.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

NewDay has described the information it gathered to assess whether Miss M's credit was affordable before it was approved. This included:

- information contained in her application, including residential status, employment status and her income, which was separately verified;
- information obtained from a credit reference agency (CRA), giving details of her existing credit arrangements and any past issues with credit; and
- an expenditure assessment using a combination of modelled data for key expenses, along with actual data from the CRA about the cost of her existing credit arrangements.

NewDay maintains its affordability assessment was proportionate to the credit being given and demonstrated it was affordable.

After carefully reviewing the information NewDay obtained, I think there were factors that should have prompted it to carry out further checks before approving Miss M's credit and I don't agree the affordability assessment based mainly on modelled statistical data, rather than her actual circumstances, was reasonable and proportionate in this case. In particular, I note the application recorded Miss M's annual income was £55,000 and NewDay's credit check showed she already had unsecured debts totalling over £50,000. I believe this information suggests she was already heavily indebted and further checks were required to complete a proportionate affordability assessment.

I can't know exactly what further checks NewDay might have carried out at the time, but I think a consideration of Miss M's actual income and expenditure would have been reasonable. So we've obtained copies of her bank statements for the three months prior to the lending to establish what information could reasonably have been discovered.

Based on the figure stated in her application, NewDay estimated Miss M's net monthly income to be £3,538. A review of her bank statements shows she was actually receiving much less than this. In the three months before the account was opened, she received an average income from employment of £2,353 plus a monthly DWP PIP payment of £238. This means her total income was around £2,591 on average.

NewDay calculated the monthly cost of Miss M's existing credit commitments was £1,986. If anything, I think this was probably too low. The evidence we have suggests around £36,000 of her debt was revolving credit. To be able to repay this amount over a reasonable period, I think it's reasonable to believe she'd have needed to repay around 5% of the balance each month, which equates to £1,800. Repayments on the additional £19,000 of non-revolving credit would have been on top of this.

NewDay estimated Miss M's living costs to be £513 per month and I don't think there's anything in the bank statements provided to indicate they were any less than this. If NewDay's figure is used for the cost of existing credit, this brings Miss M's total expenditure to £2,499. This meant she was left with less than £100 for unexpected and other expenditure and it's not clear how she could have been expected to afford repayments on further credit.

As I've already said, I think NewDay's estimates of the cost of Miss M's existing credit arrangements is likely to have been too low and that the situation was probably worse than this. The bank statements show Miss M was using her overdraft facility each month and I think this reinforces my view that she was already living beyond her means and that she couldn't afford credit repayments.

If NewDay had seen this information, it's my view that it shouldn't have lent to Miss M.

In summary, if NewDay had adequately assessed whether the credit repayments were affordable and sustainable, it's my view it shouldn't have lent to Miss M. It's for this reason that that I'm upholding this complaint.

Putting things right

The principal aim of any award I make must be to return Miss M to the position she'd now be in but for the errors or inappropriate actions of NewDay. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think NewDay should have lent to Miss M, I don't think it's fair for her to pay interest or charges on the amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, NewDay now needs to take the following steps:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since the account was opened.

- If the reworking results in a credit balance, this should be paid to Miss M with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

  HM Revenue & Customs (HMRC) requires NewDay to deduct tax from any interest. It must provide Miss M with a certificate showing how much tax has been deducted if she asks for one. If NewDay intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance, NewDay should arrange an affordable payment plan with Miss M for the shortfall.

- Remove any adverse information recorded on Miss M's credit file relating to this credit, once any outstanding balance has been repaid.

If NewDay no longer owns the debt, it should liaise with whoever does to ensure any payments Miss M has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Miss M in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

My final decision

My final decision is that I uphold this complaint. Subject to her acceptance, NewDay Ltd trading as Fluid should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 10 October 2024.

James Biles
Ombudsman