DRN-5126175

The complaint

Mrs G complains that NewDay Ltd trading as Fluid ("NewDay") was irresponsible to open a credit account for her and to later increase the credit limit.

Mrs G has brought her complaint via a representative but I will refer to her throughout for simplicity.

What happened

NewDay opened a credit account for Mrs G in February 2023 with a credit limit of £1,500. It increased the limit to £3,000 in October 2023.

Mrs G complained to NewDay in March 2024 that it didn't carry out proportionate checks when it offered her credit and it should have seen that she wouldn't be able to afford the repayments. Mrs G said NewDay was irresponsible to lend to her under these circumstances.

NewDay said that it carried out an assessment before it opened the account and before it increased the credit limit to check that the credit would be affordable for Mrs G. It said it was confident that the credit had been provided responsibly and didn't uphold her complaint.

Mrs G referred her complaint to us. Our investigator found that NewDay didn't carry out proportionate checks when it opened the account or when it increased the credit limit. They concluded such checks wouldn't have led NewDay to decline to open the account but that it wouldn't have increased the limit in October 2023. They recommended that Mrs G's complaint be upheld in part.

Mrs G accepted this recommendation but NewDay didn't. NewDay said that it didn't use bank statements in its affordability assessments nor was it required to. It said that its assessments sought to ensure that not only could a customer meet their contractual minimum payment (which was in line with the regulatory requirements) but also repay enough each month such that they were managing to repay the capital as well as repay the interest to avoid falling into persistent debt. NewDay also said that Mrs G met her repayments on time and hadn't opened any new accounts since the credit limit increase.

NewDay asked for the complaint to come to an ombudsman to decide and it came to me. I sent out a provisional decision on 17 October 2024 to explain why I thought Mrs G's complaint should be upheld and to share the information I'd relied on with both parties. Mrs G accepted my provisional decision and I haven't heard from NewDay.

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 reviewed the matter again, and having no new information or comments to consider, I see no reason to depart from my provisional conclusions. I'll set out again my reasons for upholding Mrs G's complaint in this final decision.

As before, I've had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as NewDay, need to abide by. NewDay will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise and refer to them where appropriate.

I'll begin by highlighting that the regulations didn't simply require NewDay to check that Mrs G could afford to meet her contractual minimum payments. Before entering into the credit agreement or significantly increasing the amount of credit offered, NewDay needed to check that Mrs G could afford to meet her repayments out of her usual means within a reasonable period of time, without having to borrow further, without failing to make any other payment she had a contractual or statutory obligation to make and without the repayments having a significant impact on her financial situation.

The checks carried out needed to be proportionate to the nature of the credit (the amount offered, for example) and to Mrs G's particular circumstances. Generally, more in depth checks might be proportionate the higher the credit amount offered or the longer the lending relationship, and NewDay needed to have proper regard to the outcome of its assessments in respect of affordability risk.

The overarching requirement was that NewDay needed to pay due regard to Mrs G's interests and treat her fairly. CONC 2.2.2G(1) gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

NewDay disagreed with our investigator's findings regarding proportionate checks for the account opening and the credit increase. I've reviewed both of these lending decisions to come to an independent view of the complaint.

My main considerations are did NewDay complete reasonable and proportionate checks when assessing Mrs G's application and before increasing her credit limit to satisfy itself that she would be able to make her repayments without experiencing adverse consequences? If not, what would reasonable and proportionate checks have shown? Was there anything of concern in the checks NewDay did carry out and did it make fair lending decisions? Did NewDay treat Mrs G unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974?

NewDay provided the information it relied on when making its decision to open the account, which included what Mrs G said about her income and information from the credit reference agencies (CRAs).

Mrs G said her gross annual income was £11,968, in other words her net monthly income was around £1,000. NewDay noted that Mrs G spent £567 meeting her existing unsecured credit commitments. It didn't record a figure for Mrs G's total debts but it did note that her debt to income ratio was 99%.

NewDay told us that it either used CRA information about an applicant's current account turnover to check their income level and estimate their disposable income (EDI), or it used its internal models to sense-check their income level against similar customer data and calculate an affordability score or likelihood. NewDay hasn't recorded either an EDI or an affordability score for this assessment.

While the CRA information NewDay relied on didn't show any negative information such as bankruptcy or county court judgements, it showed that Mrs G was likely spending more than half her income meeting her debts each month. Given this, and the amount of credit NewDay was offering, I think it would have been reasonable and proportionate for it to have looked into Mrs G's circumstances in more depth before offering her credit to check she would be able to meet the repayments without difficulty. This would include verifying her income and expenditure.

Mrs G has provided statements for her current bank account and a recent copy of her credit report and I've reviewed these. To be clear, I'm not suggesting this is the information NewDay should have relied on. NewDay is correct when it said that it wasn't required to consider an applicant's bank statements – the regulations weren't prescriptive about how an assessment should be carried out. However, it is the information I have and I think it's reasonable for me to rely on it when considering what a proportionate check carried out in February 2023 might have revealed.

Mrs G's net monthly income varied. She received a monthly child-related benefit payment of £87 and her wages came to £1,050 and £953 in November and December 2022 respectively, and £1,101 in January 2023. Even if I considered that Mrs G's monthly benefit was available to her to meet her debt repayments, this means her monthly income could be as low as £1,040.

In February 2023, Mrs G owed at least £8,500 on revolving credit and had a loan with a balance of over £3,000 and repayments of £123. NewDay says where a customer has revolving credit with additional creditors, its affordability assessment takes into account a reasonable monthly repayment of 4-7% of the outstanding borrowing, depending on the customer's profile. This would amount to at least £340. Mrs G's bank statements show that her payments towards her existing debts varied from £330 to £440 a month in the previous three months.

Mrs G also held a mortgage and was making repayments of £300 a month. I don't know if this was a joint mortgage but Mrs G had a monthly standing order for £300 which she paid to her husband. Mrs G told us this was towards the mortgage/bills. Mrs G's bank statements show that she also paid £100 directly towards bills and about £100 on average on food and transport each month.

Altogether, my conservative estimate of Mrs G's monthly expenditure comes to around £950. This doesn't include any child-related costs, for example.

When making this decision, I have borne in mind CONC 5.2A.25G which states that potential indicators that the level of affordability risk arising out of an agreement may be high include circumstances where:

- the total value of the customer's outstanding debts relative to the customer's income is high; or
- there is a high likelihood that the customer will not make repayments under the agreement by their due dates…it may be the case that a high risk that one repayment will be missed or will be late is, in the individual circumstances, indicative that the level of affordability risk arising out of the agreement is high.

In this case, the total value of Mrs G's unsecured debts were significantly high in relation to her income – as NewDay noted she owed almost as much as she earned in a year. I also think that there was a high likelihood that Mrs G wouldn't manage to meet her repayments for this level of credit each month without difficulty, given how much of her income was taken up with repaying her existing debt leaving her little slack in her budget for any unexpected or unaccounted for expenses.

I think it's likely that NewDay would have learnt this through a proportionate check and would not have proceeded with its decision to open the account under these circumstances. I can't say that NewDay treated Mrs G fairly or with due regard to her interests on this occasion, and I've concluded it was irresponsible to have entered into the agreement.

For the same reasons I've set out above, I don't think NewDay's checks were proportionate for the credit limit increase to £3,000 in October 2023. Its assessment showed that Mrs G was spending 40% of her income repaying debt, that she'd spent up to her £1,500 limit at that point, and had taken out cash transfers in August and September.

Although NewDay relied on an increased figure of £1,442 for Mrs G's monthly income, her bank statements show that her income hadn't changed – she was paid £954 in September 2023, for example. As before, I think it's likely NewDay would have learnt through a proportionate check that Mrs G wouldn't be able to meet her repayments without difficulty, and I've found it was irresponsible to have offered her this credit limit increase.

NewDay said in response to our investigator's view that Mrs G made her repayments on time and that she hadn't opened any new accounts. The CRA information NewDay provided shows that by July 2024, Mrs G owed £14,000. £12,544 of this was revolving credit. Mrs G's statement balance for this account stood at £2,998.64. So while Mrs G may not have opened new accounts, her overall debt increased while she held this account. I don't think it's likely that Mrs G managed to meet her repayments for this account without borrowing further and without it adversely impacting her financial situation. It follows that I am upholding her complaint.

I did also consider whether NewDay treated Mrs G unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. And I'm satisfied the redress I have directed below results in fair compensation for Mrs G in the circumstances of this complaint and that no additional award would be appropriate in this case.

Putting things right

I've concluded that NewDay was irresponsible to have opened this account for Mrs G. I think it's fair that Mrs G repays the capital she borrowed as she's had the use of this, but she shouldn't have to pay any interest, fees or charges associated with the account.

In summary, NewDay should:

- Rework the account removing all interest, charges or insurance premiums (that haven't already been repaid) that have been applied from the beginning;
- If the rework results in a credit balance, this should be refunded to Mrs G along with 8% simple interest per year** calculated from the date of each overpayment to the date of settlement. NewDay should also remove any adverse information regarding the account from Mrs G's credit file.
- Or, if after the rework, there remains an outstanding balance, NewDay should arrange an affordable repayment plan with Mrs G for the remaining amount. Once Mrs G has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

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

My final decision

For the reasons I've set out above, I'm upholding Mrs G's complaint about NewDay Ltd trading as Fluid and it now needs to put things right for her as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 3 December 2024.

Michelle Boundy
Ombudsman