Financial Ombudsman Service

The complaint

Mrs W complains through her representative that NewDay Ltd lent to her irresponsibly when it approved a credit card for her in 2021 and then increased the credit limit three times.

What happened

Mrs W was approved for a Fluid account credit card in January 2021 and here is a table giving brief details of the lending decisions NewDay made.

Date	Event	Credit limit	Increased to
January 2021	Account opened	£2,000	-
September 2021	Credit limit increase 1	£2,000	To £3,200
January 2022	Credit limit increase 2	£3,200	To £4,450
September 2023	Credit limit increase 3	£4,450	To £5,950

Mrs W's representative submitted the complaint on 2 April 2024 and received NewDay's final response letter (FRL). It did not uphold her complaint and closed the account for future spending. There is an outstanding balance.

After the complaint had been referred to the Financial Ombudsman Service, one of our investigators considered it all and thought that NewDay did not have to do anything to put things right.

Mrs W's representative made submissions, and received a second view from our investigator which was the same outcome. Then Mrs W asked for a decision without giving any further evidence or making any further submissions as to why. The unresolved complaint was passed to me to decide.

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.

Our approach to unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - is set out on our website and I have followed it here.

NewDay is required to lend responsibly. It needed to conduct checks to make sure that the credit it was giving to Mrs W was affordable and sustainable. Such checks needed to be proportionate to things like the credit limit it offered Mrs W, how much she had to repay (including interest and charges) each month, her borrowing history with it and what it knew about her circumstances. But there is no set list of checks it had to do.

This means to reach my conclusion I need to consider if NewDay carried out proportionate checks at the time it applied the credit limit increases; if so, did it make fair lending decisions based on the results of its checks; and if not, what better checks would most likely have shown. The approach by NewDay is not just looking at the likelihood of the credit being repaid, but the impact of the repayments on Mrs W. There is no set list of checks that it had to do, but it could consider several different things such as the amount of credit being applied for, the likely monthly repayments and the overall circumstances of the borrower.

Also, I'll consider whether NewDay acted unfairly towards Mrs W in some other way.

New account approval

NewDay in its FRL to Mrs W has said that when it provided her with the Fluid credit card in January 2021, it considered Mrs W's income and other information provided in the credit application, as well as data from Credit Reference Agencies. It said that this would have included details of Mrs W's expenditure and credit commitments and these were used to determine the credit provided was affordable. In part of NewDay's 2024 lending guide (summarised here) it says –

- it uses credit data
- its affordability assessments seek to ensure that a customer can afford repayments of 2.5x the monthly interest due on the full credit limit offered
- for both new applicants and existing credit limit changes, where it receives insufficient CATO data from the bureau ('Current Account Turnover') or are unable to verify the income (for new applicants), it introduces '*an internal Affordability score assessment which is based on application and bureau data of similar customers*…'

NewDay's calculations at the time Mrs W applied for the card were that Mrs W's declared salary after tax (gross £65,000) was £4,021 per month, and after it had carried out some research her credit commitments were £1,846. Plus, it assessed Mrs W's housing and living costs each month as £534 (rounded) and £384 (rounded). This left Mrs W with a disposable amount of income of £1,232. So, NewDay considered she could afford the new card with a credit limit of £2,000.

On NewDay's own figures sent to us, it has said that Mrs W's debt to income ratio ("DTI") was just under 106%. And despite sending to us documents, Affordability guides and excel spreadsheets to 'explain' its approaches to new customers' applications, it does not show how this figure was reached and so it does not make sense. And 'DTI' is not explained anywhere in the notes and explanations NewDay has sent to us.

My understanding is that the debt-to-income ratio (DTI) calculation is the total of an applicant's monthly debt payments divided by their gross monthly income. DTI is one of many factors lenders consider to determine eligibility for a loan or a credit card. Here, NewDay had recorded Mrs W's DTI when she applied for the new card as almost 106%. As I consider that an evaluation of a person's DTI of around 40% to 50% would likely give a firm confidence in the applicant's affordability, here at almost 106% for Mrs W, I do not consider that was a positive outcome.

Having said that, on the figures provided, I calculate that the DTI for Mrs W was around 34%. So, it may just be a mistake in the information provided to us but as these were presented to us as part of the complaint investigation I think that is less likely. Assuming this 106% is correct, this ought to have prompted NewDay to have carried out further checks. I consider that a full evaluation of Mrs W's finances ought to have been undertaken, because the DTI figure suggested Mrs W may already have overextended her use of credit in general.

Asking Mrs W for further information about her financial situation may have involved her supplying copies to NewDay of utility bills, copy payslips and evidence of other expenditure and credit accounts for which she was liable. A convenient method, one of several available, was to have reviewed copies of Mrs W's bank account statements which usually show a wider picture of her finances and how she was managing her money.

I have decided to review the bank account statements we have from Mrs W to determine what it is that NewDay would have seen had it carried out further checks on her income and outgoings. I have reviewed the statements for one account held in Mrs W's name for October 2020, November 2020 and December 2020 which seems fair for a card application in January 2021.

I am satisfied that Mrs W received income from three sources at least during each of these three months. The main two payments which credited Mrs W's account (after tax) from two different payers were as follows:

> October 2020: £4,325 and £1,724 = £6,049
>
> November 2020: £3,617 and £1699 = £5,316
>
> December 2020: £3,619 and £1,600 = £5,219

In each of these three months an individual paid into Mrs W's account between £1,300 and £1,500 depending on the month. In each of these three months Mrs W received £195 child benefit as well.

Her outgoings in December 2020 (and much the same for the other months too) included several sets of insurances, three phones, a utility bill for water, council tax, two DVLA payments, TV licence and television subscriptions and/or streaming services. All these added up to around £600. There was one membership fee of £32 and one bank account fee of £3.

Mrs W had several other credit cards and in December 2020 she paid off £880 to them all. In November 2020 she made a large payment of £1,500 to one card and also paid off four others being a total for all five cards of £2,359.

Mrs W had two car agreements of £260 and £313 which she paid each month. Mrs W made a small payment of £16 to one bank lender, plus payments to two other lenders of £277 and £138 totalling £431 each month. Mrs W had one, maybe two, store cards but paid small amounts to them and not each month for example only £38 in December 2020.

So, just looking at the outgoings for non-discretionary spend for December 2020, then these added up to £2,557. As Mrs W paid off a significant sum towards one of her other cards in November 2020 then those monthly outgoings were higher but I place that in context of it not being likely Mrs W paid off that much each month. So the December 2020 figure is a more representative figure to use.

In addition, across each of these three months I have reviewed, Mrs W was paying a standing order to an estate agency which may be rent. This was for £1,500 each month. It may explain why an individual paid into her account about that much each month too. It may have gone towards the rent and one of the car costs. This sort of detail has not been provided to us by her representative but my experience is that this was a likely arrangement between them.

Either way, the total of the three incomes (including the other individual's contributions) plus the total of the outgoings (even adding in petrol costs and a sum for food costs) make it clear that Mrs W would have been able to afford the card with a £2,000 credit limit.

And having satisfied myself as to what NewDay would have seen had it looked at Mrs W's actual outgoings and income, then I consider it would have been satisfied that she was able to afford the card.

I comment here on Mrs W's representative's submission about her income and outgoings in relation to this part of the complaint – meaning the initial card approval.

First of all, her representative has not stipulated what her income actually was in the lead up to the January 2021 card application, as I have been able to do by reviewing the bank statements. So, using the declared income alongside what it states were her actual outgoings does not seem fair to me. And I say that because her declared income was less than her actual income.

And secondly, in the list of outgoings her representative has given, I doubt that Mrs W's car insurance was £657 each month. This was the figure her representative has added in when submitting to us that her monthly outgoings were £4,566.

Reviewing the figures it has sent (allowing for the car insurance figure being an annual cost and therefore being more like £55 a month not £657) and being fair and using Mrs W's actual net income (not the declared figure) then I disagree that the new card looked unaffordable. And if I am mistaken in this and her vehicle insurance was that monthly figure, with the three sets of income I have seen being paid into her bank accounts, still I consider that NewDay would have made the same decision and approved the card for her.

Considering the FCA CONC rules and guidance, I consider that Mrs W was going to be able to pay the £2,000 credit limit down in a reasonable time without having to borrow further. I do not uphold Mrs W's complaint about the initial card approval.

Credit limit increases

NewDay says Mrs W would have been provided with the credit limit increases based on how her credit card was being managed. It had access to credit information, which showed her external debt, and some information on her income and expenditure.

In its view, the information obtained indicated that Mrs W's existing debts, as well as her NewDay credit card, were being reasonably managed and as such it wasn't unreasonable to have increased the credit limit on the card on the occasions that it did. On the other hand, Mrs W says that the limit increases shouldn't have been provided to her. I've considered what the parties have said.

What's important to note is that Mrs W was provided with limit increases to a revolving credit facility rather than a loan. And this means that NewDay was required to understand whether credit limits of £3,200, £4,450, and £5,950 could be repaid within a reasonable period, rather than all in one go.

Credit limits of £3,200, £4,450, and £5,950 didn't require huge monthly payments to clear the full amount owed within a reasonable period. I say this particularly as a reasonable period, in these circumstances, is likely to equate to the monthly cost over a loan term for equivalent loan amounts. And I have used the Financial Conduct Authority (FCA) CONC guide to assist me in coming to these conclusions. Extracts from these are set out here:

CONC 5.2A.28 G

> A Firm must '*have regard to the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the credit limit. …'*

CONC 6.7.33 G suggests that such a term would usually between three and four years.

An example is that £4,450 over say an equivalent loan term of say 36 months, using the APR of 34.9% which NewDay has told us was the APR for this card, would equate to around £166 a month including interest. This is a rough calculation. And it may be that the APR figure increased over time. These are figures to give a general indication only. I have kept these FCA guidance paragraphs in mind when considering the complaint. NewDay has said about Mrs W's account:

> *'All CLI's given were deemed affordable based on our assessment…:*
>
> - ***Credit limit 1 –*** *available EDI of £1508.25 was present during our assessment.*
> - ***Credit limit 2 –*** *available EDI of £2872.86 was present during our assessment.*

- ***Credit limit 3 –*** *available EDI of £3603.08 was present during our assessment.'*

CLI means 'credit limit increase' and EDI means, I think, 'estimated disposable income' but I've not been able to find a formal definition of 'EDI' in all the documents NewDay sent to us.

Having made these general points, I turn now to the credit lime increase lending decisions.

Credit limit increase from £2,000 to £3,200

The increase was offered in July 2021 which took effect 30 August 2021 but is described as being an increase dated September 2021. So, I have looked at both sets of data from NewDay for July 2021 and September 2021. I've more information for the September 2021 date than I do for the July 2021 date which was when the increase was offered.

In July, August and September 2021, Mrs W's balance on the card account was not near the limit of £2,000. She had been charged late fees in June 2021 but those looked to have been refunded in July 2021 so I discount that being of much relevance. Mrs W had been repaying over the minimum payments due on the account.

In July 2021, NewDay used information from its credit reference agency search which showed that she had loan payments due each month of £882 and other credit card payments due of £1,675. The total balances on her outstanding debts were between £67,000 and £76,000. Her revolving account usage on total existing limits of £17,000 was 82% in July 2021 and 89% in August 2021.

The September 2021 data had Mrs W's income as £5,017 each month which fits with the sort of figures I have seen from her bank account statements from earlier in 2021. Her loan payments as £898, her credit card payments as £1,766, her cost of living as £845 and her EDI was £1,508 each month.

There was a marker of 1 late payment in the last three months but that may have been the late pay fee to NewDay in June 2021 which was refunded and if that was the case NewDay would have known that. If it did not relate to the NewDay account, I do not consider that one late payment on her credit record would have led to NewDay being concerned. There were no markers for any other issues surrounding her accounts and no insolvency issues or judgment debts. There were no records of Mrs W having searched for or obtained any payday loans.

In these circumstances, and in the absence of evidence to show me that the monthly payments required to the increased credit limit was unaffordable either, I cannot reasonably conclude that reasonable and proportionate checks would have shown that the credit limit increase was unaffordable and that NewDay shouldn't have offered it. I do not uphold Mrs W's complaint about the first credit limit increase.

Credit limit increase from £3,200 to £4,450

This credit limit increase was offered 14 December 2021 and took effect 29 December 2021 but has been described as the January 2022 credit limit increase. So, I have reviewed the NewDay data for December 2021 and January 2022.

In December 2021, Mrs W's outstanding balance on the card account was around £2,500 on a £3,200 limit and so there was no suggestion that Mrs W was fully utilising her limit. The records indicated that she'd been paying a little over the minimum payments required each month and had had no late fees charged.

The credit reference agency data NewDay had gathered showed that her overall non-revolving debt had halved in value and her revolving debt was around the same at £17,775 of which she was using 87%.

Mrs W’s assessed income was £6,048 of which her EDI was £2,873. With nothing in the data or Mrs W’s account management to alert NewDay to any concerns then I consider it carried out proportionate checks and need not have looked into her finances any further. I do not uphold the complaint about this increase.

Credit limit increase from £4,450 to £5,950.

This credit limit increase was offered to Mrs W on16 August 2023 and took effect on 17 August 2023. So, I’ve looked at the data recorded by NewDay for Mrs W for August 2023 and September 2023. Mrs W was paying over £300 towards the account each month and it had noted her net monthly income as being £6,923, and her EDI as £3,603. Mrs W’s non-revolving credit balance had increased but not to the levels of January 2021 and her usage of all her revolving credit total limit was 86%.

Mrs W had one late payment marker for her general credit – not the NewDay account. But overall, I’d not consider that enough for any further checks being warranted. I consider NewDay carried out proportionate checks and need not have looked into her finances any further. I do not uphold the complaint about this increase.

The investigator did point out that there were six instances of over limit fees applied to her account during the 20 month period prior to the limit increase. But firstly I do not consider that NewDay needed to look at 20 months and secondly Mrs W did not fall into arrears. Although she may have exceeded her limit a couple of times in, say, the 3 or 4 months leading up to this increase, that did not translate into Mrs W failing to pay towards the account. I do not consider this would have been a concern such that additional checks were required when placed into the context of all the information it had about Mrs W at this time.

Finally, I’ve also considered whether NewDay acted unfairly or unreasonably in any other way and I have considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I’ve already given, I don’t think it lent irresponsibly to Mrs W or otherwise treated her unfairly in relation to this matter.
I haven’t seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs W to accept or reject my decision before 8 April 2025.

Rachael Williams
Ombudsman