

## **The complaint**

Mr P complains NewDay Ltd trading as Fluid Mastercard irresponsibly lent to him.

Mr P is represented by a claims management company in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Mr P himself.

## **What happened**

Mr P was approved for a Fluid credit card, in October 2021 with a £2,000 credit limit. The credit limit was increased to £3,200 in February 2022. Mr P says that Fluid irresponsibly lent to him. Mr P made a complaint to Fluid, who did not uphold his complaint. Mr P brought his complaint to our service.

Our investigator upheld Mr P's complaint. She said the checks Fluid made showed that Mr P was in arrears on an account when the checks were completed, therefore Fluid should have made further checks to ensure he could afford the repayments. She said further checks would have shown that the lending was unaffordable to Mr P. As Fluid did not respond to our investigator's view of the complaint, then Mr P's complaint was passed to me to make a decision on it.

## **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.

Before agreeing to approve or increase the credit available to Mr P, Fluid needed to make proportionate checks to determine whether the credit was affordable and sustainable for him. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances. I've listed below what checks Fluid have done and whether I'm persuaded these checks were proportionate.

### *Acceptance for the Fluid card - initial credit limit (£2,000)*

I've looked at what checks Fluid said they did when initially approving Mr P's application. I'll address the credit limit increase later on. Fluid said they looked at information provided by Credit Reference Agencies (CRA's) and information that Mr P had provided before approving his application.

The CRA reported no defaults or County Court Judgements (CCJ's) on his credit file. The information shows that Mr P had declared a gross annual income of £60,000. And he had a debt to annual income ratio of 28.64% which would equate to him having around £17,184 of unsecured debt.

The checks showed that Mr P could be in financial difficulty, despite Fluid estimating Mr P's disposable income. I say this because not only did it show that Mr P had been in arrears in the last six months on a mortgage and his unsecured lending, but he was currently in arrears at the time of the checks. So I'm persuaded that it would have been proportionate for Fluid to carry out further checks here, to ensure Mr P could sustainably afford repayments for the £2,000 credit limit.

There's no set way of how Fluid should have made further proportionate checks. One of the things they could have done was to contact Mr P to find out why he didn't meet his contractual payments on his agreements. Or they could have asked for his bank statements as part of a proportionate check to ensure the lending was sustainable and affordable for him.

Mr P has provided his bank statements for the three months leading up to his account being opened. I can see that it is a joint account, so I've discounted the income which is from the joint account holder. While it's not clear who pays for each individual outgoing, nearly all of the income crediting the account is from Mr P.

But Mr P appears to be in financial difficulty. I say this because he has a £500 overdraft limit which he constantly exceeds. There are multiples of direct debit payments which are returned which some are for low amounts such as £5, and some returned direct debits are to lenders.

This activity isn't restricted to one statement. Each of the three statements show multiple occasions where Mr P has entered an unarranged overdraft (collectively there are dozens of occasions where this has happened). And each statement shows multiple reversed direct debits due to Mr P not having sufficient funds in the account. His bank sometimes honours direct debits when he doesn't have the funds available, but this then forces him into an unarranged overdraft.

So if Fluid had requested Mr P's bank statements as part of a proportionate check, I'm not persuaded that they would have approved any credit for him, especially given how the statements showed he was struggling financially. So I'm not persuaded that Fluid made a fair lending decision here.

*February 2022 credit limit increase - £2,000 to £3,200*

If Mr P's application was not approved then I think there is an argument for saying that Mr P's complaint about the subsequent lending decision should be upheld without making a finding on reasonable and proportionate checks. After all, if matters had played out as the evidence suggests they should have done in October 2021, I'm not persuaded Mr P would've been able to add to the credit.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed at the end of this decision results in fair compensation for Mr P in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

### **Putting things right**

Our investigator has suggested that Fluid takes the actions detailed below, which I think is reasonable in the circumstances. But if they do not own the debt anymore, then they should also transfer any debt back to themselves if it has been passed to a debt recovery agent or liaise with them to ensure the redress set out below is carried out promptly.

## **My final decision**

I uphold this complaint. NewDay Ltd trading as Fluid Mastercard should take the following actions:

Fluid should arrange to transfer any debt back to themselves if it has been passed to a debt recovery agent or liaise with them to ensure the redress set out below is carried out promptly;

End the agreement and rework the account removing all interest, fees, charges, and insurances (not already refunded) that have been applied;

If the rework results in a credit balance, this should be refunded to Mr P along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement. Fluid should also remove all adverse information regarding this account from his credit file;

Or, if after the rework there is still an outstanding balance, Fluid should arrange an affordable repayment plan with Mr P for the remaining amount. Once Mr P has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

*\*If Fluid consider that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr P how much they've taken off. They should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 March 2025.

Gregory Sloanes  
**Ombudsman**