

## **The complaint**

Mr R complains NewDay Ltd trading as Fluid ("NewDay") lent a credit card and increased the credit limit irresponsibly.

Mr R is being represented on this complaint by a professional third party, but for ease of reference, I'll refer to Mr R throughout.

## **What happened**

In January 2021, Mr R applied for a credit card with NewDay. The application was accepted, and a credit limit of £2,000 was provided. The credit limit was increased in August 2021 to £3,500.

In October 2024, Mr R complained that he felt NewDay failed to complete proportionate checks at the time the credit card was provided, and the credit card wasn't affordable for him. He asked for a refund of interest as well as 8% simple interest.

In January 2025, NewDay responded to the complaint. They rejected it – saying at the time of application Mr R told them he had a salary of around £28,500 per annum, had no missed payments or payday loans and wasn't in any repayment arrangements and so the lending was deemed affordable. They explained the same checks were completed for the increase too.

Mr R didn't agree, so the complaint was referred to our service. An Investigator here looked into things. They said although they felt NewDay's checks weren't proportionate, they were unable to get current account statements from Mr R to verify what NewDay would've seen had they done proportionate checks at the time and so they couldn't conclude NewDay had acted irresponsibly when lending to Mr R.

Mr R didn't agree. He responded saying NewDay didn't complete proper checks and they should've done further verification to establish his income and expenditure. He also felt the fact he'd been making minimum repayments in the lead up to the increase meant NewDay should've done additional checks. He said that while he was unable to provide current account statements from the time, the burden of completing adequate checks should fall on NewDay and not himself.

Because an agreement couldn't be reached, the complaint has been 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.

Having done so, I've reached the same outcome as the Investigator for slightly different reasons.

The rules and regulations in place at the time NewDay provided Mr R with the credit card and subsequent increase required them to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an 'affordability assessment' or 'affordability check'.

The checks had to be 'borrower' focused. This means NewDay had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mr R. In other words, it wasn't enough for NewDay to consider the likelihood of them getting the funds back or whether Mr R's circumstances met their lending criteria – they had to consider if Mr R could sustainably repay the lending being provided to him.

Checks also had to be 'proportionate' to the specific circumstances of the lending. In general, what constitutes a proportionate affordability check will be dependent on a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they were seeking. I've kept all of this in mind when thinking about whether NewDay did what was needed before lending to Mr R. Our investigator didn't think NewDay carried out proportionate checks at the time of lending. Having reviewed everything, whilst I accept that's arguable, on balance I think the checks did go far enough. I believe the checks were proportionate to the amount of credit being lent and the fact Mr R was being offered an interest-free balance transfer.

NewDay recorded that Mr R was earning a salary of around £28,500 per year and had a 70% debt to income ratio. Mr R had a default at the time of application, but it was recorded 70 months prior. Everything else, including external account management and income and expenditure was positive. It was calculated Mr R had a disposable income of around £890. This was collated using the information Mr R declared at application, and an external credit check.

I believe the checks NewDay carried out were proportionate, and considering the amount being provided to Mr R, and the information they gathered in these checks, I don't think they acted unfairly when providing Mr R with the credit card. I say this because the card was used for a balance transfer that was interest-free so ultimately, Mr R would've been in a better position because of this card than he was previously. I can see he utilised this offer for around £1,700. And although there were some signs of financial difficulty in the past, everything in recent months had been much improved, so it's difficult to say NewDay didn't complete proper checks when Mr R was benefitting from an interest-free period. No interest was applied to Mr R's credit card account until after the first credit limit increase, meaning there's also no financial loss for Mr R between January and September 2021.

But ultimately whether checks were or weren't proportionate, this doesn't impact the outcome here. That's because Mr R has been unable to provide current account statements to support the review of this complaint.

I'll take this time to address Mr R's comments regarding the burden being on the business to complete proportionate checks. And this is the case – as explained above the rules and regulations set out that's what a firm is required to do prior to lending. However, sometimes we may find a firm didn't complete proportionate checks. And in those scenarios, we require statements as a way to most accurately piece together what those checks would've shown at the time had proportionate checks been completed. Just because a firm didn't complete proportionate checks, it doesn't automatically mean the lending wasn't suitable or affordable for a consumer. This doesn't mean any burden has been placed on Mr R – it just means without the statements being requested, we're unable to replicate what proportionate checks at the time would have shown, and so we can't make a fair and impartial finding.

Regarding the credit limit increase, I agree that checks weren't proportionate. While I don't agree with Mr R that making the minimum repayment is always an indicator of financial difficulty as suggested in his response to the view, in this case it's a relevant factor because he wasn't making inroads to the balance he transferred while it was in an interest-free period. His debt had also increased significantly in the past six months.

I note Mr R's comments regarding additional verification of his income and expenditure. When considering lending complaints, there are no specific checks that lenders must complete before approving an application for credit. The rules set out by the regulator merely state that checks should take place and that they should be proportionate to the type and amount of credit being provided. But there is no obligation on lenders to ask to see bank statements, or complete a full verification, so NewDay didn't make an error when they didn't automatically do this before approving the applications.

However a more up to date income and expenditure assessment conducted with Mr R would've been more proportionate given the amount the credit limit was being increased to and the way the account had been managed since opening. But as I've said above, because Mr R is unable to provide current account statements, I'm unable to see what this check likely would've shown, and therefore I can't make a finding that NewDay treated him unfairly when increasing the limit.

In reaching my conclusions, I've also considered whether the lending relationship between NewDay and Mr R might have been unfair to Mr R under s140A of the Consumer Credit Act 1974 ("CCA"). However, for the reasons I've already explained, I'm satisfied that NewDay did not lend irresponsibly when providing Mr R with the credit card, or by increasing his credit limit. And I haven't seen anything to suggest that s140A CCA would, given the facts of this complaint, lead to a different outcome here.

So while it'll likely come as a disappointment to Mr R, I won't be upholding his complaint against NewDay for the reasons explained above.

### **My final decision**

It's my final decision that NewDay Ltd trading as Fluid didn't act unfairly when lending a credit card, or increasing it's limit to Mr R.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 5 June 2025.

Meg Raymond  
**Ombudsman**