

The complaint

Miss M complains that NewDay Ltd trading as Fluid and Aqua lent irresponsibly when it approved credit card applications she made.

What happened

The background to this complaint and my initial conclusions were set out in a provisional decision. I said:

Miss M's explained she had previously held accounts with NewDay when she applied for a new Fluid credit card in January 2021. In her application, Miss M said she was employed with an income of £47,500 that NewDay calculated left her with £2,601 a month. NewDay carried out a credit search and found Miss M had unsecured debts of around £8,300 with monthly repayments of £390. No recent missed payments, defaults or other adverse credit was found on Miss M's credit file. NewDay applied estimates for Miss M's regular living expenses of £475 and housing cost of £518 a month to the application. After applying its lending criteria, NewDay says Miss M had an estimated disposable income of £1,184 a month.

NewDay approved Miss M's Fluid application and issued a credit card with a £450 limit. Miss M used the credit card until May 2022 when the balance was repaid. The account was closed a short time later.

In September 2023 Miss M applied for an Aqua credit card with NewDay. In this application, Miss M gave an annual income figure of £74,000 that NewDay calculated left her with £4,456 a month after deductions. Cost of living expenses of £551 a month and housing of £621 were used by NewDay. A credit search was completed that showed Miss M owed around £39,000 and was making monthly repayments of £817. NewDay applied its lending criteria and says Miss M had an estimated disposable income of £2,426 after covering her existing outgoings.

NewDay approved Miss M's Aqua application and issued a credit card with a limit of £1,200. Miss M used the credit card between October 2023 and January 2024 when the balance was repaid. The account was closed a short time later.

Miss M went on to complain that NewDay lent irresponsibly and it issued a final response. NewDay said it had carried out the relevant lending checks before approving both applications and didn't agree it lent irresponsibly.

An investigator at this service looked at Miss M's complaint. They thought NewDay had carried out reasonable and proportionate checks before approving both applications and that its decision to proceed was reasonable based on the information it found. The investigator wasn't persuaded NewDay lent irresponsibly.

Miss M asked to appeal and explained she also wanted to complain about the previous accounts she'd held with NewDay. The investigator went on to arrange for a new complaint to be raised about those accounts with NewDay. Miss M also said NewDay should've seen she was borrowing at an increasing rate and found the new credit cards it offered weren't affordable. Miss M added that her existing debts were especially high in 2023 when she made the Aqua application. As Miss M asked to appeal, her complaint has been passed to me to make a decision.

What I've provisionally 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 lend, the rules say NewDay had to complete reasonable and proportionate checks to ensure Miss M could afford to repay the debt in a sustainable way. These affordability checks needed to be focused on the borrower's circumstances. The nature of what's considered reasonable and proportionate will vary depending on various factors like:³⁶

- The amount of credit;
- The total sum repayable and the size of regular repayments;
- The duration of the agreement;
- The costs of the credit; and
- The consumer's individual circumstances.

That means there's no set list of checks a lender must complete. But lenders are required to consider the above points when deciding what's reasonable and proportionate. Lenders may choose to verify a borrower's income or obtain a more detailed picture of their circumstances by reviewing bank statements for example. More information about how we consider irresponsible lending complaints can be found on our website.

I'll start by looking at the Fluid account Miss M applied for in January 2021. Miss M's told us that her debt level had increased since the previous application she made to NewDay. Whilst I'm not covering that application in this decision, when Miss M had previously applied for a credit card her unsecured debts stood at around £10,350. But when Miss M's application for the Fluid card was made in January 2021, she owed around £8,300 which doesn't show an increasing trend in her unsecured debt.

I've set out the information NewDay used in the application above, including Miss M's income and the outgoings used for affordability. I understand Miss M's actual outgoings may've differed, but the lending rules NewDay operates under do allow it to use estimates. And I haven't seen anything that indicates the figures used in the Fluid application were unreasonable.

As noted, Miss M owed around £8,300 and was making monthly payments of £390 according to the credit file results NewDay obtained. I note no missed payments or other adverse information was recorded on Miss M's credit file. I haven't seen anything in the credit file information that would've indicated to NewDay that Miss M was already overcommitted or unlikely to be able to afford a new credit card with a reasonably modest limit of £450.

After applying its lending criteria, NewDay says Miss M had an estimated disposable income of £1,184 a month. In my view, that was sufficient to sustainably afford repayments to a new credit card with a £450 limit. I'm sorry to disappoint Miss M but I haven't seen anything that would've indicated to NewDay its lending checks ought to have gone further. In my view,

NewDay completed proportionate lending checks and its decision to proceed was reasonable based on the information it found. I'm sorry to disappoint Miss M but I haven't been persuaded NewDay lent irresponsibly when it approved her Fluid application in January 2021.

I think Miss M makes a reasonable point when she says her unsecured debts had increased substantially by the time she applied for the Aqua credit card in September 2023. When Miss M repaid the Fluid account in 2022 the credit file information NewDay has supplied shows she had no other debts. But when Miss M applied for the Aqua credit card in September 2023 she owed around £39,000 and was making monthly payments of £817 towards them. I agree that's a significant increase and somewhat at odds with the income figure of £74,000 Miss M gave in the application. In my view, the level of Miss M's existing debts ought to have caused NewDay to consider better lending checks before approving Miss M's application.

One option NewDay had would've been to review Miss M's bank statements for the preceding months. Miss M's forwarded her bank statements so I've taken that approach.

Miss M's bank statements show she was earning around £3,645 a month after deductions. I looked at Miss M's regular outgoings and can see a large number of payments to businesses that provide by now pay later credit and online payment suppliers. For the purposes of this assessment, I took those payments into account, but I think it's reasonable to note they were used to cover individual purchases rather than regular credit commitments. I also took Miss M's regular payments from her second bank account into account. I reached the position that Miss M had average outgoings of £3,031 for items like her rent, utilities, insurances, communications and existing credit. That left Miss M with around £615 a month after covering her existing outgoings. I haven't seen anything in the bank statements Miss M has supplied that would've caused NewDay to take the view she was experiencing financial difficulties or unable to afford a new credit card with a limit of £1,200.

Whilst I agree that NewDay ought to have carried out more detailed lending checks before approving Miss M's Aqua application, I think it's more likely than not it would've still approved her application if it had done so. I'm very sorry to disappoint Miss M but I haven't been persuaded Aqua lent irresponsibly or treated her unfairly when it approved her Aqua application. As a result, I'm unable to uphold Miss M's complaint.

I've considered whether the business acted unfairly or unreasonably in any other way including whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think NewDay lent irresponsibly to Miss M or otherwise treated her unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

I invited both parties to respond with any additional information or comments they wanted me to consider before I made my final decision. Miss M responded to confirm she didn't agree. Miss M said her debt to income ratio was very high at the point of which should've shown NewDay she could've been experiencing financial difficulties. Miss M also said she wasn't earning £74,000 a year and that a disposable income figure of £600 a month wasn't sufficient to cover her remaining outgoings. We didn't hear back from NewDay.

which should've shown she could've been experiencing financial difficulties – in line with industry guidance. which should've shown she could've been experiencing financial difficulties – in line with industry guidance.

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.

I'd like to thank Miss M for responding to the provisional decision with her comments. As I noted in the provisional decision, I felt the increasing in Miss M's unsecured debt levels between the closure of her Fluid account and opening of the Aqua account should've led NewDay to carry out a more comprehensive set of checks before deciding whether to lend. As a result, I looked at the bank statements Miss M provided that covered the months immediately before her application for the Aqua credit card. So I agree that lending checks NewDay completed didn't go far enough.

With that said, I wasn't persuaded Miss M's bank statements showed she was in financial difficulties at the time of the application and whilst I noted the reasonably high level of debt, I thought it was well managed. I carried out an income and expenditure assessment, taking Miss M's regular outgoings for items like rent, utilities and existing debts. And I found that whilst Miss M had a reasonably high level of unsecured debt, her payments were affordable.

I also think it's fair to note that I included the buy now pay later payments Miss M was making in the assessment. Those weren't traditional unsecured loans represented payments made to cover specific purchases Miss M made, normally for reasonably modest sums. The repayments Miss M was making for buy now pay later debts were short term in nature so had a limited impact on her ability to repay the credit card on a longer term basis. In my view, Miss M's bank statements show she was able to afford her existing commitments and outgoings, including the buy now pay later payments she was making and other debts.

I understand Miss M feels the figure of £600 wasn't sufficient to cover her remaining outgoings. But I factored Miss M's key expenses when considering the affordability of the credit card. I remain of the view that the remaining income of £615 a month was sufficient to sustainably afford repayments to a new Aqua credit card with a limit of £1,200 in addition to her other outgoings.

I'm very sorry to disappoint Miss M but I haven't been persuaded to change the conclusions I reached in my provisional decision. As a result, I'm unable to uphold Miss M's complaint.

My final decision

My decision is that I don't uphold Miss M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 30 June 2025.

Marco Manente
Ombudsman