DRN-5741865

The complaint

Miss H complains that NewDay Ltd lent irresponsibly when it approved her Fluid and Aqua credit card applications and increased the credit limit on both accounts.

What happened

Miss H applied for a Fluid credit card with NewDay in October 2021. In her application, Miss H said she was employed with an annual income of £25,000 that NewDay calculated left her with £1,793 a month after deductions. A credit search was completed that found Miss H had two County Court Judgements that were 39 months old and default information that was 38 months old. No recent missed payments were noted. Existing debts totalling around £450 with monthly repayments of £83 were also found on Miss H's credit file. NewDay completed an affordability assessment using estimates for Miss H's rent and living expenses totalling £728 a month as well as the cost of servicing her existing debts. NewDay applied its lending criteria and says Miss H had a disposable income of £962 a month after meeting her existing outgoings. NewDay approved Miss H's Fluid application and issued a credit card with a £2,000 limit.

NewDay went on to increase the credit limit as follows:

Event	Date	Credit Limit
App	Oct-21	£2,000
CLI1	Mar-22	£3,200
CLI2	Jul-22	£4,450
CLI3	Jan-24	£5,950
reduction	Apr-24	£3,000
CLI4	Nov-24	£4,500

Miss H applied for an Aqua credit card with NewDay in August 2024. In this application, Miss H gave her annual income as £28,600 and NewDay calculated that left her with £2,009 a month after deductions. A new credit search found Miss H had existing unsecured debts of around £20,000 and was making monthly repayments of £776. NewDay completed an affordability assessment and used estimates for Miss H's rent and living expenses totalling £957 a month in addition to the cost of servicing her existing debts. NewDay applied its lending criteria and says Miss H had a disposable income of £245 a month after covering her existing outgoings. NewDay approved Miss H's Aqua application and issued a credit card with a limit of £1,200. Miss H used the Aqua credit card and NewDay increased the limit to £2,700 in January 2025.

Earlier this year, Miss H complained that NewDay lent irresponsibly and it issued a final response. NewDay said it had carried out the relevant lending checks before approving Miss H's applications and increasing the credit limit on both accounts and didn't agree it lent irresponsibly.

An investigator at this service upheld Miss H's complaint. They thought NewDay's decision to approve Miss H's Fluid application and issue a credit card with a £2,000 limit was reasonable based on the information it obtained. The investigator wasn't persuaded NewDay failed to complete proportionate checks before approving Miss H's Fluid application and didn't agree it lent irresponsibly.

The investigator wasn't persuaded NewDay completed reasonable and proportionate checks before approving CLI1 in March 2022 and CLI2 in July 2022 and asked Miss H to provide bank statements to show her circumstances at the time. But Miss H wasn't able to obtain the necessary bank statements and the investigator looked at CLI1 and CLI2 based on the information on file. The investigator wasn't able to safely reach the conclusion NewDay lent irresponsibly when it approved CLI1 and CLI2 and didn't uphold this part of Miss H's complaint.

Miss H was able to provide some bank statements for the months before CLI3 in January 2024. The investigator reviewed those bank statements and found Miss H's outgoings were higher than her income each month and showed she wasn't in a position to sustainably afford higher repayments to her Fluid credit card. The investigator upheld Miss H's complaint about the Fluid credit card from CLI3 and asked NewDay to refund all interest, fees and charges applied to balances over £4,450 from July 2022 onwards.

The investigator also reached the view that NewDay lent irresponsibly when it approved Miss H's Aqua application and asked it to refund all interest, fees and charges applied.

NewDay didn't respond to the investigator's view of Miss H's complaint, so her case has been passed to me to make a decision.

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 lend or increasing the credit limit, the rules say NewDay had to complete reasonable and proportionate checks to ensure Miss H 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:

- 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've set out the information that NewDay used when considering Miss H's Fluid application above so won't repeat it again here. Aqua found Miss H had two CCJ's on her credit file but they were over three years old at the point of application. The same can be said for the default information NewDay found. I note Miss H had a low level of other debts at the time, owing around £450, and her monthly repayments were up to date. NewDay applied estimates for Miss H's outgoings to its affordability assessment – an approach it's allowed to take under the relevant lending rules. Overall I'm satisfied the conclusion Miss H had a disposable income of £962 a month was reasonable based on the information NewDay obtained. In my view, NewDay carried out reasonable and proportionate checks before approving Miss H's Fluid application and the decision to issue a credit card with a £2,000 limit was reasonable based on the information it obtained. I'm sorry to disappoint Miss H but I haven't been persuaded NewDay lent irresponsibly.

Miss H's credit file shows her outstanding debts grew between the application and CLI1 and CLI2. I also think the increases to £3,200 and £4,450 were reasonable large. Taken together, I haven't been persuaded NewDay carried out reasonable and proportionate checks. Like the investigator, I would've liked to see Miss H's bank statements for the months before CLI1 and CLI2 to get a clearer picture of her circumstances. Unfortunately, Miss H has confirmed those bank statements are not available so she hasn't been able to supply them.

As no additional evidence is available, I've relied on the information we already hold on file, including NewDay's case file and lending data. Whilst the lending data shows Miss H's debts had increased, I note no new adverse credit, defaults or recent missed payments were recorded on her credit file. And I can see no late or overlimit fees were applied. NewDay carried out new affordability assessments before each credit limit increase. And I'm satisfied both showed Miss H had sufficient disposable income to sustainably afford the increased repayments to the Fluid account. On balance, whilst I'm unable to conclude proportionate checks were completed by NewDay, I haven't seen sufficient evidence to persuade me it lent irresponsibly. As a result, I'm unable to uphold this part of Miss H's complaint.

Before CLI3 was approved Miss H's other debts increased to around £18,300 and her monthly repayments came to £700. In my view, that alone ought to have caused NewDay to consider additional checks before approving CLI3. Miss H has been able to supply bank statement information for the period before CLI3 that shows her outgoings were slightly higher than her income each month. I'm satisfied Miss H's bank statements show she had no capacity to sustainably afford repayments to a £1,500 increase to the existing credit limit taking it to £5,950. In my view, if NewDay had completed more detailed lending checks it's more likely than not it would've taken the decision not to approve CLI3. As a result, I'm upholding Miss H's Fluid complaint from CLI3 and directing NewDay to refund all interest, fees and charges applied to balances over £4,450 from January 2024.

I note NewDay reduced the credit limit to £3,000 in April 2024 but then increased it again to £4,500 in November 2024. NewDay's lending data said Miss H had a monthly income of £4,010 at the time. But Miss H had submitted her Aqua application to NewDay only three months before that confirmed an annual income of £28,600 or £2,009 a month. So NewDay was already aware Miss H wasn't earning £4,010 a month. I note Miss H's existing debts stood at around £19,650 and that her monthly repayments were £1,044. Using NewDay's cost of living and rent estimates along with the cost of servicing her existing debt, I'm satisfied Miss H wouldn't have had enough disposable income available to cover an increase to £4,500 in November 2024.

I've also looked at the application Miss H made for the Aqua credit card in August 2024. I think it's reasonable to note that NewDay had recently reduced Miss H's existing credit limit on her Fluid account to £3,000. And the credit search found Miss H's existing debts stood at around £20,000 with monthly repayments of £776. Given the amount of unsecured debt Miss H had accrued since opening her Fluid account just under three years earlier, I think it should've been clear to NewDay she was likely borrowing at an unsustainable rate. In the circumstances, I'm unable to conclude the decision to approve Miss H's application was reasonable. In my view, NewDay lent irresponsibly when it approved Miss H's Aqua application. As a result, I'm going to tell NewDay to refund all interest, fees and charges applied to Miss H's Aqua account from the date of approval.

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, I'm satisfied the redress I have directed above results in fair compensation for Miss H in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

My final decision

My decision is that I uphold Miss H's complaint and direct NewDay Ltd to settle as follows:

<u>Fluid account</u>

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £4,450 after 29 January 2024.
- If the rework results in a credit balance, this should be refunded to Miss H along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information recorded after 29 January 2024 regarding this account from Miss H's credit file.
- Or, if after the rework the outstanding balance still exceeds £4,450, NewDay should arrange an affordable repayment plan with Miss H for the remaining amount. Once Miss H has cleared the outstanding balance, any adverse information recorded after 29 January 2024 in relation to the account should be removed from her credit file.

<u>Aqua account</u>

- 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 Miss H along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding this account from Miss H's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Miss H for the remaining amount. Once Miss H has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

If NewDay has sold the debts to a third party, it should arrange to either buy back the debts from the third party or liaise with them to ensure the redress set out above is carried out promptly.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Miss H a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 1 October 2025.

Marco Manente
Ombudsman