

The complaint

Miss T complains that NewDay Ltd trading as Fluid irresponsibly lent to her.

What happened

Miss T was approved for a Fluid credit card in May 2022 with a credit limit of £1,500. The credit limit was increased to £2,350 in March 2023. The credit limit was increased for the last time in June 2023 to £3,600. Miss T says that Fluid irresponsibly lent to her. Miss T made a complaint to Fluid.

Fluid did not uphold Miss T's complaint. They said that the affordability assessments showed the lending was appropriate and proportionate. Miss T brought her complaint to our service. Our investigator did not uphold Miss T's complaint. He said Fluid made fair lending decisions.

Miss T asked for an ombudsman to review her complaint. She made a number of points. In summary, she said that she was consistently using her overdraft, which combined with her rent burden and credit repayments, showed clear signs of financial strain. Miss T documented how much interest she paid when her promotional interest rate ended. She said Fluid gave her further credit when she was already financially struggling.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Firstly, I'm aware that I've only summarised Miss T's complaint points. And I'm not going to respond to every single point made by her. No discourtesy is intended by this. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair outcome.

I've considered what Miss T has said about the interest she paid on her Fluid account. I've reviewed Miss T's credit agreement that she's sent us, and the Fluid credit card statements, at it appears that Fluid have charged Miss T the interest shown on the statements, so I can't say that Fluid have acted outside of the credit agreement here.

Before agreeing to approve or increase the credit available to Miss T, Fluid needed to make proportionate checks to determine whether the credit was affordable and sustainable for her. 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

I've looked at what checks Fluid said they did when initially approving Miss T'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 Miss T had provided them before approving her application.

The information shows that Miss T had declared a gross annual income of £23,000. The CRA did not report any County Court Judgements (CCJ's) or defaults on Miss T's credit file.

While the data from a CRA showed Miss T had been in arrears on an account in the last six months, she had brought this account back up to date at the time of the checks and none of her accounts were in arrears at the time of the checks.

Miss T was showing as having a debt to annual income ratio of 13.41%, which would have meant she had unsecured debt of around £3,084.30.

Fluid completed an affordability assessment which incorporated Miss T's net income, information from a CRA about how much Miss T's credit commitments were each month, and modelling to estimate Miss T's other outgoings. The affordability assessment showed that Miss T should be able to sustainably afford repayments for a £1,500 credit limit. So I'm persuaded that Fluid's checks were proportionate, and that they made a fair lending decision here.

March 2023 credit limit increase - £1,500 to £2,350

I've looked at the information available to Fluid when they increased Miss T's credit limit as part of this lending decision. The checks showed that Miss T's unsecured debt had more than doubled to £7,192. Miss T had at least four occasions (including the three months prior to this credit limit increase) where she was in arrears on an external account.

Fluid would also be able to see how Miss T managed her account prior to the credit limit increase. Miss T incurred no late or overlimit fees. She often paid more than the minimum repayment, but I note she often re-used the credit she had repaid in a short period of time. Miss T incurred several cash advance fees after opening the account, which could also indicate financial difficulty, although I do acknowledge that this is a legitimate use of the account.

So based on the doubling of total unsecured debt, the multiple arrears on at least one external account, and the cash advance fees incurred, I'm persuaded that Fluid should have completed further checks to ensure Miss T could afford repayments for an increased credit limit which was over 50% higher than what she had.

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 Miss T to find out why she was in arrears for three consecutive months, and why her debt had more than doubled in a relatively short period of time. Or they could have asked for her bank statements as part of a proportionate check to ensure the lending was sustainable and affordable for her.

Miss T has provided her bank statements leading up to Fluid offering her the credit limit increase. Miss T's statements show she is constantly overdrawn. But an overdrawn account in its own right doesn't automatically equate to other lending being unaffordable. This is because someone may choose to spend their income on non-essential items or have poor account management as opposed to reducing their overdraft usage.

But there are examples of financial difficulty from Miss T here. She has a returned direct debit to an external lender, and the payment was only for £41.58. While the first statement I

looked at had no payments being made to a Buy Now Pay Later (BNPL) company, her second and third statements show a number of increasing transactions to a BNPL company, which indicates Miss T was financially struggling.

So based on the bank statements, and the external arrears for three consecutive months leading up to the credit limit increase, I'm not persuaded that Fluid made a fair lending decision here, as it wouldn't appear that Miss T could afford to make sustainable repayments for an over 50% increase to her credit limit.

June 2023 credit limit increase - £2,350 to £3,600

If Miss T's credit limit was not increased to £2,350, then it's probable that the further lending decision wouldn't have happened after this either. So I think there is an argument for saying that Miss T'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 March 2023, then I'm not persuaded that Fluid would've added 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 Miss T 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."

I invited both parties to let me have any further submissions before I reached a final decision. Miss T accepted the provisional decision. Fluid did not respond to the provisional 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.

As neither party have provided me with any further information to consider, then my decision and reasoning remains the same as in my provisional decision.

Putting things right

In the provisional decision I said I intend to uphold this complaint in part. I said I intend to ask NewDay Ltd trading as Fluid to 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 to balances above £1,500 after 3 March 2023;

If the rework results in a credit balance, this should be refunded to Miss T 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 Miss T's credit file recorded after 3 March 2023;

Or, if after the rework the outstanding balance still exceeds £1,500, Fluid should arrange an

affordable repayment plan with Miss T for the remaining amount. Once Miss T has cleared the balance, any adverse information recorded after 3 March 2023 in relation to the account should be removed from Miss T's credit file.

I'm still satisfied this is a fair outcome for the reasons given previously.

**If Fluid considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss T how much they've taken off. They should also give Miss T a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

My final decision

I uphold this complaint in part. NewDay Ltd trading as Fluid should settle the complaint in line with the instructions in the *"Putting things right"* section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 15 September 2025.

Gregory Sloanes
Ombudsman