

## The complaint

Mr P complains that NewDay Ltd trading as Fluid lent irresponsibly when it approved his credit card application and later increased the credit limit.

## What happened

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

*Mr P applied for a Fluid credit card in April 2020. In his application, Mr P said he was employed with an annual income of £21,142. Fluid carried out a credit search and found Mr P was making monthly repayments to his existing debts totalling £729. Defaults that were 32 months old were also noted. The lending data provided by Fluid doesn't include any details of an affordability assessment or credit scoring process. Fluid approved a credit limit of £900 and issued a credit card to Mr P.*

*Mr P used his credit card and in the years that followed Fluid increased the limit as follows:*

<b>Event</b>	<b>Date</b>	<b>Limit</b>
App	Apr-20	£900
CLI1	Aug-20	£1,900
CLI2	Feb-21	£3,150
CLI3	Sep-23	£4,650
CLI4	Jan-24	£5,650
CLI5	May-24	£6,650

*Last year, Mr P complained that Fluid lent irresponsibly and it issued a final response. Fluid said it had carried out the relevant lending checks before approving Mr P's application and later increasing the credit limit and didn't agree it lent irresponsibly.*

*An investigator at this service looked at Mr P's complaint. They thought Fluid had completed reasonable and proportionate checks before approving Mr P's application and increasing the credit limit. The investigator wasn't persuaded that Fluid lent irresponsibly and didn't uphold Mr P's complaint. Mr P asked to appeal and queried why the investigator had said the original credit limit of £900 was 99% affordable. Mr P also said he was experiencing persistent debt and disagreed with the investigator's view that Fluid lent responsibly. As Mr P asked to appeal, his 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 or increasing the credit limit, the rules say Fluid had to complete reasonable and proportionate checks to ensure Mr P 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 reviewed the application information Fluid used but whilst I was able to see a credit search was completed, no evidence of any affordability checks or credit scoring were noted. As I've seen no evidence to show Fluid carried out reasonable and proportionate lending checks when considering Mr P's application, as it's required to do, I'm unable to conclude it lent responsibly based on the information provided. I recently asked our investigator to request copies of Mr P's bank statements for the months before his application was made.

Mr P's confirmed that he no longer holds the same bank account and that he's been unable to obtain the bank statements requested (including those issued before the credit limit increases). Mr P's requested that I continue based on the information on file.

Whilst no affordability data from Mr P's application has been supplied by Fluid, it has sent us evidence from his application and the credit file results it obtained. They show Mr P's had some older defaults but that his existing debts were up to date. I think it's fair to say the initial credit limit was reasonably modest at £900. Overall, I haven't been persuaded that the available information shows Fluid lent irresponsibly when it approved Mr P's application in April 2020.

Before approving credit limit 1 (CL1) Aqua reviewed Mr P's credit file which indicated he'd reduced his unsecured debt levels over the previous month. No new adverse credit or defaults were recorded and Mr P's existing commitments were up to date. Aqua's provided evidence that shows it applied a likelihood affordable score of 99% to CL1 before approving it. I'd have liked to see Mr P's bank statements for the preceding months as whilst his account was up to date, I note an overlimit fee was applied in June 2020. But in the absence of further evidence, on balance, I'm satisfied the decision to approve Mr P's credit limit increase to £1,900 in August 2020 was reasonable and haven't been persuaded Fluid lent irresponsibly.

The lending data supplied by Fluid shows that before CL2 it checked Mr P's existing debts which stood at around £6,750 and took his credit card and loan payments into account. I can also see Fluid used estimates for Mr P's rent and general living expenses in its affordability assessment. Fluid also used a service provided by the credit reference agencies to get a picture of Mr P's monthly income. Overall, Fluid found Mr P had an estimated disposable income of £248 a month after meeting his existing commitments. In the absence of further information, I'm satisfied that was sufficient to sustainably afford repayments to a credit limit increase of £1,250, taking it to £3,150.

By CL3 in September 2023, I think it should've been clear that Mr P was already at or over capacity in terms of his ability to afford new credit. Fluid carried out a similar affordability

*assessment and found Mr P only had an estimated disposable income of £52 a month after covering his existing outgoings. In my view, £52 a month wouldn't have been sufficient for Mr P to be able to cover any unexpected or emergency costs that may've arisen. I would add that the rent figure of £45 a month Aqua used in this lending assessment is so low it could be considered unrealistic. Had Fluid used a more reasonable rent figure it's likely Mr P would've had no disposable income at the end of its lending assessment. In my view, the lending data provided by Fluid shows Mr P lacked capacity to sustainably afford an increased credit limit of £4,650. Based on the available information I haven't been persuaded that Fluid lent responsibly at CLI3.*

*I've looked at CLI4 and CLI5 and note the affordability assessments show Mr P had an estimated disposable income of £254 and £243 a month respectively. But, again, the rent figures of £75 and £78 used in the affordability assessments remain unrealistically low which impacted the estimated disposable income figures Fluid reached. I also think it's fair to say Mr P's other debts had increased substantially by the final credit limit increase reaching over £20,000. Taking everything together, I'm satisfied Fluid should've seen Mr P was already overcommitted and borrowing at an unsustainable rate. In my view, the decisions to approve CLI4 and CLI5 were unreasonable and I'm satisfied Fluid lent irresponsibly.*

*For the reasons I've noted above, I intend to uphold Mr P's complaint from CLI3 and direct Fluid to refund all interest, fees and charges applied to balance over £3,150 from September 2023 onwards.*

*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 below 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.*

I invited both parties to respond with any additional comments or information they wanted me to consider before I made my final decision. Mr P responded to confirm he was willing to settle in line with the provisional decision. We didn't hear back from Fluid.

### **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 no new information has been provided, I see no reason to change the conclusions I reached in the provisional decision. I still think Mr P's complaint should be upheld, for the same reasons.

### **My final decision**

My decision is that I uphold Mr P's complaint and direct NewDay Ltd trading as Fluid to settle as follows:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £3,150 after September 2023
- 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 recorded after September 2023 regarding this account from Mr P's credit file.
- Or, if after the rework the outstanding balance still exceeds £3,150 Fluid should arrange an affordable repayment plan with Mr P for the remaining amount. Once Mr

P has cleared the outstanding balance, any adverse information recorded after September 2023 in relation to the account should be removed from their credit file.

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

\*HM Revenue & Customs requires Fluid to deduct tax from any award of interest. It must give Mr P a certificate showing how much tax has been taken off if **he/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 Mr P to accept or reject my decision before 15 September 2025.

Marco Manente  
**Ombudsman**