

The complaint

Miss R complains that NewDay Ltd trading as Fluid lent irresponsibly when it approved her credit card application and later increased the limit.

What happened

Miss R applied for a Fluid credit card in January 2020. In her application, Miss R said she was employed with an income of £25,993 a year that Fluid calculated left her with £1,618 a month after deductions. Fluid carried out a credit search and found default information, the newest of which was 12 months old. No other adverse credit like County Court Judgments (CCJs) were found and no payday loans were noted. The credit file results showed Miss R's unsecured debt repayments had been maintained over the previous six months with no missed payments. Fluid found Miss R owed around £7,500 in other unsecured debts and was making monthly repayments of around £145. Fluid carried out an affordability assessment and used estimates of £208 for Ms R's rent and £434 a month for her general living expenses. After carrying out its affordability assessment Fluid reached the view Miss R had a disposable income of around £830 a month after covering her existing outgoings. Fluid approved Miss R's application and issued a credit card with a limit of £1,500.

Miss R used the credit card and Fluid went on to increase the limit to £2,250 in September 2020, £3,250 in February 2021 and £4,500 in May 2021. Fluid says that before each limit increase it looked at Miss R's account history, checked her credit file and completed new affordability assessments.

The account was ultimately closed at default and then sold to another business I'll refer to as C in July 2022. Miss R's told us C later obtained a CCJ in respect of the outstanding balance.

More recently, Miss R complained that Fluid lent irresponsibly and it issued a final response. Fluid said it had carried out the relevant lending checks before approving Miss R's application and didn't agree it lent irresponsibly.

An investigator at this service looked at Miss R's complaint. They thought Fluid had completed reasonable and proportionate checks before approving Miss R's application and later increasing the credit limit and weren't persuaded Fluid lent irresponsibly.

Miss R asked to appeal and said Fluid failed to follow the relevant rules and regulations when deciding whether to lend. Miss R also said Fluid failed to act in line with industry guidance on identifying vulnerability and that it should've seen she was over committed triggering closer engagement. Miss R added that she believes the relationship between her and Fluid was unfair and at odds with Section 140A of the Consumer Credit Act 1974 and that the investigator's assessment failed to fairly take the long term harm of the lending into account. As Miss R asked to appeal, her complaint 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 Fluid had to complete reasonable and proportionate checks to ensure Miss R 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 Fluid used when considering Miss R's application in January 2020 above. I can see Miss R confirmed her annual income and a net monthly figure of £1,618 was calculated. The credit file results showed default information, the newest of which was 12 months old, but no other adverse credit or recent arrears were noted. Miss R's monthly repayments to her other debts, totalling around £7,500, were found and factored into the affordability assessment. In my view, Miss R's credit file results show that while she had previously had some issues her position appeared to have stabilised at this point. I can see Fluid took the cost of paying Miss R's existing debts into account when deciding whether to lend.

Fluid used estimates it obtained from nationally recognised statistics for Miss R's regular non discretionary spending including her rent and general living expenses. I can see Miss R says Fluid failed to follow the relevant lending rules set out in the Financial Conduct Authority (FCA) handbook in the Consumer Credit Sourcebook (CONC). But I've reviewed what CONC says about creditworthiness assessments. And CONC says businesses are able to use reasonable estimates for non discretionary spending. I've looked at the figures Fluid used and I'm satisfied they were reasonable in the circumstances of Miss R's application.

Fluid used Miss R's monthly income, debt repayments, housing costs and general living expenses when carrying out its affordability assessment. Fluid reached the view Miss R had a disposable income of £830 a month after covering her existing outgoings. I'm satisfied that was a reasonable conclusion to reach based on the information Fluid obtained about Miss R. In my opinion, Fluid carried out reasonable and proportionate checks before approving Miss R's application and its decision to lend was reasonable based on the information it obtained. I'm sorry to disappoint Miss R but I haven't been persuaded Fluid lent irresponsibly when it approved her application.

Before increasing the credit limit to £2,250 in September 2020 Fluid says it carried out a new affordability assessment in addition to checking Miss R's credit file and account management. The available credit file information shows Miss R's outstanding unsecured debts had increased to around £14,300 with monthly repayments totalling around £306. I can see Miss R's outstanding credit had increased significantly from her application and it

appears new borrowing was approved around February or March 2020. That had the effect of increasing Miss R's outstanding balance and monthly repayments. Given the increase in Miss R's unsecured debts, I think Fluid needed to be sure she could sustainably afford additional repayments. I note that while Miss R's other debts had increased her credit file showed no new defaults, adverse credit, payday loans or new missed payments.

Miss R's Fluid credit card was well maintained. I can see a late fee was recorded in August 2020, but Fluid's contact notes show Miss R quickly made up the payment and spoke with an agent, explaining the payment was late because she'd been in hospital. Fluid agreed to refund the fee on 6 August 2020 and the contact notes say her payment due date was reconfirmed. So whilst I can see there was a late fee, based on what Miss R told Fluid, it wasn't related to financial difficulties and was an oversight caused by a hospital visit. I note Miss R's balance was consistently below the £1,500 credit limit, the highest statement balance being £1,148 in March 2020. I haven't been persuaded the credit file Fluid obtained showed Miss R's was experiencing financial difficulties, even accepting the increase in her unsecured debts.

Fluid carried out a new affordability assessment, again using estimates for Miss R's rent and general living expenses as well as her unsecured debt repayments. I haven't seen anything in the lending information available that indicates the use of estimates for Miss R's outgoings was unreasonable or failed to follow CONC. The affordability assessment also included an income figure Fluid obtained from a service provided by the credit reference agencies that monitors current account turnover (CATO). That returned a monthly income figure of £1,905 that was used in the affordability assessment. After applying its lending criteria, Fluid says Miss R had a disposable income of around £928 a month after covering her existing repayments and living expenses.

In my view, Fluid completed reasonable and proportionate checks before approving the credit limit increase to £2,250 in September 2020. And I'm satisfied the decision to increase Miss R's credit limit to £2,250 was reasonable based on the information Fluid obtained. I'm sorry to disappoint Miss R but I haven't been persuaded Fluid lent irresponsibly when it increased her credit limit in September 2020.

The credit limit was increased again in February 2021, taking it to £3,250. Fluid's credit file results show Miss R's other debts had increased to around £18,500 by this point. There was no new adverse credit, defaults, payday loans or missed payments recorded on Miss R's credit file. I accept there was a further increase to Miss R's debts, but I can see that the cost of repaying them was factored into Fluid's lending assessment. And I think the fact Miss R's repayments were up to date indicates she was in a stable financial position.

Miss R incurred late fees in October and November 2020 and I agree that can be a sign of financial difficulties. But the payments were made up without either month's being missed. And I think it's reasonable to note Miss R's account balance was well below the existing credit limit. The highest outstanding balance in the preceding six months was £1,672 against a limit of £2,250. I note there's no recent evidence Miss R was using her Fluid account to take cash advances and no overlimit fees were applied. On balance, I'm satisfied that whilst there were two late payment fees applied, Miss R's account was reasonably managed overall.

Fluid also carried out a new affordability assessment, including the increased cost of Miss R's other debts. I can see outgoings for Miss R's non discretionary spending on rent and general living expenses were used in addition to the cost of maintaining her existing debts. Miss R's income was again verified via the credit reference agencies using the CATO service which returned a figure of £3,062 a month. I accept that figure is likely to be higher than the reality and may include other payments made into Miss R's account. But the

disposable income figure reached of £1,810 after Miss R's existing outgoings were taken into account means there was room for flexibility in terms of the income figure Fluid used. Even if Fluid had used the original income figure of £1,618 a month, that would've still left Miss R with around £365 a month as a disposable income. And I'm satisfied that would've been sufficient to sustainably afford the increased repayments for a credit limit of £3,250.

In my view, the checks completed by Fluid were reasonable and proportionate to the £1,000 increase in the credit limit it went on to approve. And I'm satisfied the information Fluid obtained indicated the repayments to a new credit limit of £3,250 were sustainable for Miss R. I'm sorry to disappoint Miss R but I haven't been persuaded Fluid lent irresponsibly when it approved the credit limit increase to £3,250 in February 2021.

The final credit limit increase was put in place in May 2021 when it was set at £4,500. Miss R's credit file shows her other debts hadn't increased further. No new missed payments, defaults, adverse credit or payday loans were recorded. I haven't seen anything on the credit file information that would've told Fluid Miss R's circumstances had worsened since the previous credit limit increase.

I note Miss R's account balance remained under the previous credit limit of £2,250 and that she hadn't utilised any of the funds made available via previous credit limit increase at this point. That indicates Miss R wasn't reliant on the credit card to make ends meet. In my view, Miss R's account was well handled and I haven't seen information that would've indicated to Fluid she was struggling.

Fluid's new affordability assessment took the cost of Miss R's existing debts, housing and general living expenses into account. I can see that the CATO results gave a monthly income of £2,706. Fluid says Miss R had a disposable income of £1,399 a month after covering her existing outgoings and commitments. Even if I were to accept the income figure used may've been higher than the reality, using the original income figure of £1,613 Miss R would've still had around £312 available as a disposable income each month which would've been sufficient to sustainably afford the £1,250 credit limit increase taking it to £4,500.

Taking all the available information into account, including Miss R's credit file, account history and the affordability assessment, I'm satisfied the level and nature of checks completed were reasonable and proportionate to the credit limit approved. Overall, I'm satisfied the decision to approve the final credit limit increase was reasonable based on the information Fluid obtained. I'm very sorry to disappoint Miss R but I haven't been persuaded Fluid lent irresponsibly when it increased the credit limit to £4,500.

In response to the investigator, Miss R said the checks completed weren't fit for purpose and that Fluid failed to follow the CONC lending rules. But I've set out why I'm satisfied the checks completed were reasonable and proportionate above, including why I think the credit card repayments were sustainable based on the information obtained. Those findings have taken the relevant lending rules into account.

Miss R also said Fluid had failed to assess her debt levels or intervene to address persistent debt. But I can see Fluid was monitoring Miss R's debt levels each month using credit file updates. And whilst I note Miss R's comments about the potential for persistent debt, the period Fluid was increasing the credit limit fell within the first 18 months that the account was open. The regulator's guidance on persistent debt says businesses should contact customers where they've paid more interest, fees and charges over the previous 18 months. So during the period when Fluid was increasing the credit limit, the persistent debt guidance wasn't applicable.

In response to the investigator, Miss R said Fluid's actions made the relationship between them unfair. In the context of this complaint, the law relating to unfair relationships is described in Section 140A of the Consumer Credit Act 1974 (Section 140). It says a court may make an order under Section 140A if it determines a relationship between the creditor and the debtor is unfair. The consumer is the debtor and Section 140C defines the creditor as "the person to whom his rights and duties under the agreement have passed by assignment or operation of law." As Miss R's debt was sold to C in July 2022, it follows that the debt purchaser (C) is now the creditor for the purpose of the credit agreement. So a claim about an unfair relationship can't be brought by the consumer (Miss R) against the original lender (Fluid) as it is no longer the creditor.

Miss R's told us she feels Fluid failed to pick up on signs of vulnerability and that it's insufficient to say she didn't contact the business to tell it she needed support. I've reviewed the FCA guidance on vulnerable consumers and its overarching principles. I understand the FCA says businesses should take reasonable steps to identify vulnerable customers and that they shouldn't have to self identify for support to be provided. But, as I've set out above, I didn't see signs of financial stress or over commitment by Miss R in the lending information Fluid used.

I can see the contact notes provided by Fluid show it tried to discuss Miss R's account with her after it fell into sustained arrears. Fluid also sent Miss R collections correspondence asking her to make contact and offering to work with her to find a solution. The details of various organisations that provide support for customers in financial difficulties were also provided. Miss R's told us why she didn't feel able to speak with Fluid's agents when they contacted her and I understand the account was ultimately closed at default and sold. But given the arrears that accrued and lack of engagement I haven't been persuaded Fluid treated Miss R unfairly.

I'm very sorry to disappoint Miss R but for the reasons I've given above, I haven't been persuaded to uphold her complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 14 November 2025.

Marco Manente
Ombudsman