

The complaint

Mrs N on behalf of Miss N complains that NewDay Ltd trading as Fluid Credit Card (NewDay) lent to her irresponsibly.

What happened

Miss N opened a credit card account with NewDay in January 2022 with a credit limit of £1,500.

Miss N complained to NewDay about the lending saying it had been unaffordable. New Day didn't agree and felt it had made a fair decision to lend.

One of our investigators looked into Miss N's complaint and said that NewDay didn't complete proportionate checks and had it done so it would have realised that lending to Miss N was unfair. So, the investigator asked NewDay to put things right by refunding the interest and charges that had been applied to the account.

Mrs N didn't accept what our investigator said. She said she felt compensation was due for the stress caused by the irresponsible lending decision and the debt being sold. So, Miss N asked for compensation and for the debt be written off. The investigator explained that he didn't think this was a fair way to resolve the complaint. As no agreement could be reached, the complaint has been passed to me for 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.

Having done so, I've reached the same outcome as the investigator, for broadly the same reasons.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance, and good industry practice - on our website.

In summary a business needs to take reasonable steps to ensure that it doesn't lend irresponsibly to its customers. This means it should carry out proportionate checks to make sure the customer can afford to repay what they're being lent in a sustainable way. Once it's completed those checks it needs to assess the information to ensure it's making a fair decision to lend to that customer based on what it knows.

Looking at what happened, I think the checks NewDay did before providing the credit aren't out of keeping with what might be considered proportionate given the amount and type of lending that took place here. However, based on the information NewDay gathered and what it knew about Miss N's circumstances, I think it needed to find out more about her circumstances before lending.

I say this because from the initial checks NewDay completed it could see that Miss N's debt to income ratio was at 103%. This suggests she was over indebted already and unlikely to be able to manage any further lending. Given this, I think it would have been reasonable for NewDay to get a better understanding of Miss N's financial situation and disposable income before lending to her.

There are a number of ways it could have done this, but for the avoidance of doubt, I'm not making a finding here that NewDay needed to see Miss N's statements in order to complete its own income and expenditure assessment. Rather I think it needed to verify Miss N's income and ask her for more information about her regular expenditure. That said Miss N has been able to provide this service with copy bank statements from the time of the lending. In the absence of any other evidence, I think it's reasonable to rely on these to establish what NewDay would likely have found had it asked Miss N more questions about her finances.

Having reviewed the statements, I can see that whilst Miss N did have an income this wasn't consistent, and in the three months leading up to the lending she had very little or no disposable income, and in some months her essential expenditure exceeded her income by a relatively significant amount.

Given this, I think if NewDay had asked Miss N more about her income and expenditure, it would have more likely than not concluded that she didn't have enough disposable income to be able to sustainably afford the repayments due under the agreement.

This means I don't think NewDay made a fair lending decision when it provided the credit card to Miss N.

Where it's concluded that a business has made a mistake, we'd normally direct that business to put the customer in the position they would be in now if it hadn't made a mistake, as far as is reasonably practical.

But in cases where a customer has had the benefit of the lending, i.e. they were given the credit card and used the money available, we generally consider it to be fair for the customer to repay what they borrowed. But we don't agree that a business should benefit from an unfair decision to lend the money.

In this case NewDay didn't respond to the investigators view and Miss N asked for the debt to be written off and for compensation to be paid. I have carefully considered the arguments Miss N has made. She says the debt caused her a lot of stress, particularly as it was sold to a third party and she would like the debt written off.

I've considered whether it would be reasonable to ask NewDay to write off Miss N's debt but based on what I've seen I don't think it would be. I say this because, although NewDay made an unfair decision to lend, Miss N has still had the benefit and use of the £1,500 extended to her. So, it's fair and reasonable for Miss N to repay this capital sum.

I don't doubt Miss N's strength of feeling. But, taking account of the information available to me, whilst NewDay shouldn't benefit from its error, I've not seen anything that persuades me it would be fair to ask NewDay to write of the debt or award any additional compensation.

Miss N has raised some concerns about NewDay sharing her information with a debt purchaser. I haven't seen anything to suggest that NewDay has acted unfairly in selling the debt. However, if Miss N still has concerns on how NewDay has handled her data she may want to consider contacting the Information Commissioners Office (ICO).

Putting things right

As I don't think NewDay ought to have opened the account, I don't think it's fair for it to be able to benefit from credit agreement. But I think it's reasonable for Miss N to pay back the capital amount she has borrowed and had the benefit of. This removes the unfairness that was created by NewDay's failure to ensure the agreement was affordable for Miss N. Therefore, NewDay should:

- If necessary, arrange to transfer any debt back to itself where it has been passed to a debt recovery agent or liaise with that agent to ensure the redress set out below is carried out promptly.
- 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 N 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 N's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Miss N for the remaining amount. Once Miss N has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

*If NewDay considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss N how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint. NewDay Ltd trading as Fluid Credit Card should put things right for Miss N, as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 28 October 2025.

Charlotte Roberts
Ombudsman