

## The complaint

Mr H complains that NewDay Ltd trading as Fluid irresponsibly lent to him.

Mr H is represented by a claims management company in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Mr H himself.

## What happened

Mr H was approved for a Fluid credit card in August 2021 with a credit limit of £2,000. I have detailed the credit limit changes below:

August 2022	£2,000 to £3,000
January 2023	£3,000 to £3,850
May 2023	£3,850 to £5,350
September 2023	£5,350 to £7,100
January 2024	£7,100 to £7,600

Mr H says that Fluid irresponsibly lent to him. Mr H made a complaint to Fluid, who did not uphold his complaint. They said the affordability assessment was affordable and proportionate. Mr H brought his complaint to our service.

Our investigator partially upheld Mr H's complaint. She said Fluid shouldn't have approved the £5,350 credit limit, as he did not have a sufficient disposable income to sustainably afford repayments to the account and have enough disposable income in order to meet any emergencies he may have.

Fluid asked for an ombudsman to review the complaint. They said there was no evidence that Mr H had any direct debits returned leading up to the credit limit increase to £5,350. They said Mr H was making overpayments towards his account, and there were no concerns that he was struggling financially.

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.*

*Before agreeing to approve or increase the credit available to Mr H, Fluid needed to make proportionate checks to determine whether the credit was affordable and sustainable for him. 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 Mr H's application. I'll address the credit limit increases later on. Fluid said they looked at information provided by Credit Reference Agencies (CRA's) and information that Mr H had provided them before approving his application.*

*The information shows that Mr H had declared a gross annual income of £70,000. The CRA reported that Mr H had defaulted on at least one account previously, with the last default being registered 68 months prior to the checks.*

*It may help to explain here that, while information like a default on someone's credit file may often mean they're not granted further credit – they don't automatically mean that a lender won't offer borrowing. So I've looked at what other checks Fluid made to see if they made a fair lending decision.*

*The CRA did not report any County Court Judgements (CCJ's) on Mr H's credit file. And none of his active accounts were in arrears at the time of the checks (or for the six months prior to the checks).*

*Mr H was showing as having a debt to annual income ratio of 39.82%, which would have meant he had active unsecured debt of around £27,874.*

*Fluid completed an affordability assessment which incorporated Mr H's net income, information from a CRA about how much Mr H's credit commitments were each month, and modelling to estimate Mr H's other outgoings. The affordability assessment showed that Mr H should be able to sustainably afford repayments for a £2,000 credit limit. So I'm persuaded that Fluid's checks were proportionate, and that they made a fair lending decision here.*

*August 2022 credit limit increase - £2,000 to £3,000*

*I've looked at the information available to Fluid when they increased Mr H's credit limit as part of this lending decision. The checks showed that Mr H's active unsecured debt had significantly increased to £51,348. Mr H had not been in arrears on an active external account since the account had been opened.*

*Fluid would also be able to see how Mr H managed his account prior to the credit limit increase. Mr H incurred no overlimit fees, and no late payment fees. He often paid more than his minimum requested repayment. But based on the significant increase to the active unsecured debt, I'm persuaded that Fluid should have completed further checks to ensure Mr H could afford repayments for an increased credit limit which was 50% higher than the credit limit he currently 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 Mr H to find out why his active unsecured debt had significantly increased since the account had been opened. Or they could have asked for his bank statements as part of a proportionate check to ensure the lending was sustainable and affordable for him.*

*Mr H has provided his bank statements leading up to the credit limit increase. Mr H's statements show that he did have unpaid direct debits on 10 June 2020, but it does appear he had a sufficient available balance to cover these direct debits. His sole account shows he did receive a £4,500 credit from a third party lender in May 2022.*

*But despite this, Mr H did appear to have a sufficient disposable income in order to make sustainable and affordable repayments for a £3,000 credit limit. So I'm persuaded that Fluid made a fair lending decision here.*

*January 2023 credit limit increase - £3,000 to £3,850*

*The checks showed that Mr H's active unsecured debt had significantly increased to £101,224. Mr H had also been in arrears on at least one active external account since the last credit limit increase.*

*Mr H incurred no overlimit fees, and no late payment fees. He often paid slightly more than his minimum requested repayment each month. But based on the significant increase to the active unsecured debt, and the recent arrears, I'm persuaded that Fluid should have completed further checks to ensure Mr H could afford repayments for an increased credit limit which was 50% higher than the credit limit he currently had.*

*As I've previously mentioned, there's no set way of how Fluid should have made further proportionate checks. Mr H has provided his bank statements leading up to the credit limit increase. Mr H's statements don't show any returned direct debits, and he does not appear to enter an overdraft. It also appears that Mr H has access to funds in other accounts in his name based on transaction references.*

*So it appeared that Mr H had a sufficient disposable income in order to make sustainable and affordable repayments for a £3,850 credit limit. So I'm persuaded that Fluid made a fair lending decision here.*

*May 2023 credit limit increase - £3,850 to £5,350*

*The checks showed that Mr H's active unsecured debt had reduced to £97,401. So not only had Mr H managed to service his debt since the last lending decision, it appears that he had enough disposable income in order to reduce his active unsecured debt since the last credit limit increase. Mr H had no active accounts in arrears since the last lending decision.*

*Mr H incurred no overlimit fees, and no late payment fees on his Fluid account since the last lending decision. He often paid more than his minimum requested repayment each month. So I'm persuaded that Fluid's checks were proportionate here, and they made a fair lending decision to increase the credit limit to £5,350.*

*September 2023 credit limit increase - £5,350 to £7,100*

*The checks showed that Mr H's active unsecured debt was £98,768, which was not too dissimilar to the active unsecured debt at the last lending decision. Mr H had no active accounts in arrears since the last lending decision.*

*Mr H incurred no overlimit fees, and no late payment fees on his Fluid account since the last lending decision. He again often paid more than his minimum requested repayment each month, which I wouldn't expect him to be able to do if he was struggling financially. So I'm persuaded that Fluid's checks were proportionate here, and they made a fair lending decision to increase the credit limit to £7,100.*

*January 2024 credit limit increase - £7,100 to £7,600*

*The checks showed that Mr H's active unsecured debt was £100,025, which was not too dissimilar to the active unsecured debt at the last lending decision. Mr H had no active accounts in arrears since the last lending decision.*

*Mr H again incurred no overlimit fees, and no late payment fees on his Fluid account since the last lending decision. He again often paid more than his minimum requested repayment each month. In the three months prior to the credit limit increase, he paid £390.23, £504 and*

*£800, which I wouldn't expect him to be able to do if he was struggling financially. So I'm persuaded that Fluid's checks were proportionate here, and they made a fair lending decision to increase the credit limit to £7,600.*

*I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I can't conclude that Fluid lent irresponsibly to Mr H or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here."*

I invited both parties to let me have any further submissions before I reached a final decision. Fluid did not respond to the provisional decision, Mr H rejected the provisional decision. He made a number of points. In summary, he said he required a full start to bottom review which included income and expenditure during all increases (he had to take out loans, further credit cards, borrow money and rely on a bonus to keep up payments), another company upheld his irresponsible lending complaint, NewDay (Fluid's owner) offered further credit to him after his complaint was made showing further irregularities, and they failed to provide him with a second DSAR. Mr H said he was waiting for a full credit report.

### **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.

Firstly, I'm aware that I've only summarised Mr H's complaint points. And I'm not going to respond to every single point made by him. 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'm aware of the issues Mr H has told us about the new DSAR he's requested from Fluid, but as Mr H is aware, he will need to make a separate complaint to Fluid regarding this as this is a separate complaint point to his original complaint he brought to our service.

As Mr H has also told us that NewDay offered further credit to him after he complained about the irresponsible lending, he would also need to make a separate complaint regarding this, to give them the opportunity to respond to his complaint. If Mr H is unhappy with their response, then he may be able to bring this separate complaint point to our service. But this would not affect his complaint about whether Fluid made fair lending decisions between August 2021 – January 2024.

I've considered what Mr H has told us about an irresponsible lending complaint already being upheld by NewDay. But I note that this was upheld from a point years earlier than when the Fluid credit card was opened. So it wouldn't automatically follow that this complaint should automatically be upheld. This is because Mr H's financial situation could have improved over time, and we treat each complaint on its own merits. Instead, we would consider each lending decision Fluid made, whether the checks were proportionate or not, and whether Fluid made a fair lending decision or not.

Although Mr H has said he wants a full start to the review of his complaint, a full review was already completed, however, I will summarise a response to Mr H's points. Mr H has mentioned that he is waiting for a full credit file, however, as Fluid received summarised data from two different CRA's (which for transparency, I used the higher figures in the provisional decision), then I do not need to view Mr H's full credit file, as this would not be a

proportionate step. And it wouldn't be proportionate for Fluid to request this since it would be reasonable for them to act upon the information they received from two CRA's.

I must make Mr H aware that Fluid isn't required by the regulator to complete a thorough income and expenditure assessment at each lending decision. This would not always be proportionate. Mr H originally declared a gross annual income of £70,000. Fluid used information from the CRA's regarding monthly credit commitments, and modelling, which is an industry standard way of estimating outgoings.

For credit limit increases, Fluid sometimes used Current Account Turnover (CATO) to assess income, which again is an industry standard way of doing so. But there were lending decisions where I was persuaded that Fluid should have made further checks, regardless of all of Fluid's affordability assessments showing that the credit limit increases were likely to be affordable and sustainable for Mr H.

As Mr H has pointed out, he took out further credit at times. For example, in the August 2022 and January 2023 lending decisions (see the sections earlier in this decision), I had acknowledged the significant increase to his active unsecured debt, so I set out why it would have been proportionate for Fluid to have completed further checks. But further checks would have shown Mr H had enough disposable income after his priority spending had been paid to make affordable and sustainable repayments for the increased credit limits.

But there are often other indicators other than a modelled income and expenditure assessment which would suggest Mr H had enough disposable income to make affordable and sustainable repayments for a higher credit limit. One of these things is Mr H's overall debt decreasing in a short period of time, which could suggest that not only could Mr H service his debts, but also make overpayments to reduce this (see May 2023 lending decision above).

But another indicator of affordability is the repayments being made to the Fluid account. If Mr H was financially struggling prior to a credit limit increase, then it wouldn't be reasonable to expect him to be able to pay more than the minimum repayment. But prior to the May 2023 credit limit increase, not only had he reduced his overall active unsecured debt by almost £4,000 in just four months, but there was also only one time he paid his minimum repayment since the last lending decision, every other repayment he made was more than his minimum repayment.

Between the May 2023 and September 2023 lending decisions, there was again only one month where Mr H paid only his minimum repayment, every month apart from this he paid a higher amount than his minimum repayment. And in the month Fluid completed their checks for the September 2023 credit limit increase he made total repayments totalling £356.55 (which was nearly double his minimum requested repayment).

Prior to the last lending decision (January 2024), in every month since the credit limit had last been increased in September 2023, Mr H made total monthly repayments which exceeded his minimum requested repayment, sometimes significantly, as he made total monthly repayments of £383.33, £390.23, £504 and £800 in the month Fluid completed the checks for the January 2024 lending decision.

In summary, Mr H's response hasn't changed my view, and my final decision and reasoning remains the same as in my provisional decision. If Mr H is disappointed, I hope he understands my reasons.

**My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 March 2026.

Gregory Sloanes  
**Ombudsman**