

Complaint

Ms G has complained that NewDay Ltd (“NewDay”) irresponsibly provided credit cards as well as subsequent credit limit increases to her. She says that the credit cards and limit increases were unaffordable for her and caused her continued financial difficulty as she struggled to make her payments, which affected her going forward.

Background

This complaint is about two credit cards, which NewDay provided to Ms G. The history of these cards is as follows:

Marbles card

Date	Event
December 2015	Account opened with limit of £1,200.00
November 2016	Limit increase to £2,000.00
April 2017	Limit increase to £4,000.00
October 2018	Limit increase to £5,500.00
September 2020	Limit increase to £1,600.00 ¹
January 2021	Limit increase to £3,100.00
April 2021	Limit increase to £4,100.00
August 2021	Limit increase to £5,600.00

Fluid card

Date	Event
May 2024	Account opened with limit of £2,500.00

In August 2025, Ms G complained saying that both of the credit cards and limit increases that NewDay provided to her were unaffordable for her and caused her continued financial difficulty as she struggled to make her payments which affected her going forward.

NewDay didn’t uphold Ms G’s complaint. It believed that Ms G had complained about the decision to provide the Marbles card and the first three limit increases too late. It didn’t think it had done anything wrong in relation to its remaining lending decisions.

Ms G remained dissatisfied after NewDay’s response and referred her complaint to our service. When it provided its file of papers on Ms G’s complaint, NewDay reiterated its view that Ms G’s complaint about its decision to provide the Marbles card and the first three limit increases on it was made too late.

¹ Ms G’s credit limit had been decreased to £2,750.00 in October 2019 and then £1,350.00 in May 2020.

One of our investigators reviewed what Ms G and NewDay had told us. She thought that she hadn't seen enough to be persuaded that NewDay failed to act fairly and reasonably either when initially providing Ms G with her credit cards, or the credit limit increases it did. This meant that the investigator didn't recommend that Ms G's complaint be upheld.

Ms G disagreed with the investigator's conclusions and asked for an ombudsman to look at her complaint.

My findings

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

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. NewDay has argued that part of Ms G's complaint was made too late because she complained more than six years after the decision to provide the Marbles credit card and the first three credit limit increases; as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the relationships between her and NewDay were unfair to her as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why these complaints about allegedly unfair lending relationships had been made in time.

Having carefully considered everything, I've decided not to uphold Ms G's complaint. Given the reasons for this, I'm satisfied that whether Ms G's complaint about the specific lending decisions was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Ms G's complaint should be considered more broadly than just the lending decisions. I consider this to be the case as Ms G has not only complained about the respective decisions to lend but has also alleged that the repayments unfairly caused her continued financial difficulty as she struggled to make her payments which affected her going forward.

I'm therefore satisfied that Ms G's complaint can therefore reasonably be interpreted as a complaint about the fairness of her relationships with NewDay. I acknowledge NewDay still doesn't agree we can look at Ms G's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Ms G's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Ms G's complaint can be reasonably interpreted as being about the fairness of her relationship with NewDay, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (NewDay) and the debtor (Ms G), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;

- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Ms G's complaint, I therefore need to think about whether NewDay's decision to lend to Ms G and increase her credit limits, or its later actions resulted in the lending relationships between Ms G and NewDay being unfair to Ms G, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Our typical approach to unaffordable and irresponsible lending complaints

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Ms G's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether any repayments to credit were affordable (asking it to evidence what it did) and then determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion. Indeed, the requirements have not and still do not mandate a list of checks that a lender should use. Any rules, guidance and good industry practice in place over the years has simply set out the types of things that a lender could do when considering whether to lend to a prospective borrower.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was fair to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments that a prospective borrower might have to make were affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

Ms G's relationships with NewDay are therefore likely to be unfair if it didn't carry out reasonable enquiries into Ms G's ability to repay in circumstances where doing so would

have revealed the credit cards or the limit increases to be irresponsible or unaffordable. And if this was the case, NewDay didn't then remove the unfairness this created somehow.

I've considered Ms G's complaint in this context.

NewDay's decisions to provide Ms G with a Marbles credit card which had a credit limit of £1,200.00 in December 2015 and increase her credit limit to £2,000.00 in November 2016

NewDay says it initially agreed to Ms G's application after it obtained information on her income and carried out a credit search. And the information obtained indicated that Ms G would be able to make the monthly repayments due for this credit card. Due to Ms G's account being relatively well managed and the information present on the credit checks it carried out, Ms G was then subsequently offered her credit limit increases.

On the other hand, Ms G says that the credit card and the subsequent limit increases were unaffordable and caused ongoing hardship.

I've considered what the parties have said.

What's important to note is that Ms G was provided with a revolving credit facility rather than a loan. This means that to start with NewDay was required to understand whether Ms G could repay £1,200.00 and then £2,000.00 within a reasonable period of time. It's fair to say that the required monthly payments in order to clear the full amount that could be owed, as a result of credit limits of £1,200.00 and £2,000.00, within a reasonable period of time aren't especially high.

I've seen records of the information NewDay obtained from Ms G about her income. Furthermore, the credit search showed that Ms G didn't have any recent significant adverse information at either of these times. And the amount that Ms G owed elsewhere at this time wasn't especially high either.

I'm also mindful that NewDay reasonably mitigated the risk of harm to Ms G going forward by providing Ms G with reasonably sized credit limits to begin with. This is especially the case as Ms G declared she had an annual income of £16,000.00 a year. NewDay argues that the information that Ms G declared on her income combined with the credit file information meant that it was reasonable to conclude that Ms G could afford this credit card.

Having reviewed the information obtained and bearing in mind the not especially high monthly repayments required to clear balances of £1,200.00 and £2,000.00 within a reasonable period of time, I'm in agreement with this conclusion.

As this is the case, I'm satisfied that it wasn't unfair for NewDay to offer Ms G a Marbles credit card with a limit of £1,200.00 in December 2015, or increase her credit limit to £2,000.00 in November 2016. Therefore, there was no unfairness created at these stages.

Did NewDay carry out reasonable and proportionate checks before deciding to offer the remaining six limit increases on the Marbles credit card?

As I've explained in the background section of this decision, NewDay went on to increase Ms G's credit limit on six further occasions. It increased Ms G's credit limit to £4,000.00 in April 2017 and then £5,500.00 in October 2018. After Ms G's limit had been reduced, it then increased the limit to £1,600.00 in September 2020, £3,100.00 in January 2021, £4,100.00 in April 2021 and then £5,600.00 in August 2021.

NewDay's credit check indicates that it wasn't aware of Ms G having any defaulted accounts or CCJs recorded against her at the time of these limit increases either. Nonetheless, given that Ms G could have ended up having to repay up to £5,600.00 as a result of these increases and Ms G's external indebtedness had increased, I do think that NewDay needed to do more to find out about Ms G's regular living expenses before increasing her limit on the Marbles card on the final six occasions that it did.

I'll now proceed to consider whether NewDay acted fairly and reasonably in relation to what it did prior to granting the Fluid card, before I return to the question of whether Ms G lost out as a result of NewDay failing to do enough to find out about her circumstances prior to providing the final six limit increases on the Marbles card.

Did NewDay carry out reasonable and proportionate checks before deciding to offer Ms G a Fluid credit card which had a limit of £2,500.00?

As Ms G still had her Marbles card at this time, when NewDay provided the Fluid card it was required to understand whether £8,100.00 could be repaid within a reasonable period of time.

A reasonable period of time isn't defined in the rules. Although, the guidance indicates that the typical term associated with repaying a fixed-sum loan of this much provides a useful yardstick. I think the typical repayment term for fixed sum loans of around £8,000.00 would be somewhere in the region of four to five years.

Once again, the credit checks that NewDay carried out didn't highlight any significant adverse information having been recorded against Ms G. Nonetheless, given Ms G could end up owing NewDay around £8,000.00, I do think that it needed to know about her actual living costs rather than relying on statistical data on this.

I can't see that NewDay did have such information when assessing Ms G's application for the Fluid card, I'm satisfied that it didn't carry out sufficient checks before agreeing to provide this credit card to her.

As this is the case, I'm satisfied that NewDay failed to carry out reasonable and proportionate checks before providing a Fluid credit card to Ms G. I'll now proceed to consider whether it is more likely than not that NewDay finding out more about Ms G's circumstances, would have resulted in it taking a different decision to lend to her.

Would further checks have made a difference to NewDay's decisions to offer the final six limit increases on the Marbles card or the Fluid card to Ms G?

I've already explained why it is that NewDay has not persuaded me that it carried out on Ms G's circumstances, prior to providing the extra credit it did from April 2017 onwards², were sufficient. However, as I explained in the early part of this decision, even if we don't think that the lender did enough to establish whether the repayments to a credit agreement were affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what the checks in question are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

² The final six limit increases on the Marbles credit card and the decision to provide the Fluid card.

Given this is the case, I've gone on to decide what I think NewDay is more likely than not to have seen had it obtained further information from Ms G. In order to do so, I've looked at the information Ms G has provided with a view to recreating what a proportionate check is likely to have shown at the relevant times.

To be clear, I'm not going to carry out a forensic analysis of Ms G's bank statements and all of the information she's provided in order to determine whether the credit card payments that could be due, if Ms G used all of the extra credit provided, were affordable for her. I'm simply going to consider what NewDay is likely to have done if it had taken reasonable steps to obtain the information that I think was missing from its checks.

As I've explained, bearing in mind the circumstances here, I would have expected NewDay to have supplemented what it would have found out about Ms G's existing credit commitments, from the credit search it carried out, with information about Ms G's income and her regular living expenses.

Having considered everything, I'm satisfied that the information provided does appear to show that NewDay finding out more about Ms G's income and regular living expenses is unlikely to have seen it reach different lending decisions. I say this because it looks like when Ms G's discernible regular and committed living expenses are added to her credit commitments and then deducted from her income, she did have sufficient funds left over in order to make sustainable repayments to these credit limits.

In reaching my conclusions, I've noted what Ms G has said about the amount of debt that she had was increasing. However, it isn't unusual for an applicant to owe a higher amount later on in a lending relationship. This is especially given it was almost nine years between NewDay's first decision to provide the Marbles credit card and its final decision to provide the Fluid card.

Therefore, the fact that Ms G might have had more outstanding credit by the time of the later applications, doesn't in itself mean that she shouldn't have been lent to. This is especially the case in circumstances where, for the reasons I've explained, the information Ms G has provided indicates that proportionate checks would more likely than not have shown that she could afford sustainable repayments to this additional credit.

As this is the case, while I appreciate that this will disappoint Ms G, I've not been persuaded that proportionate checks would have shown NewDay that it shouldn't have provided Ms G with the final six limit increases on the Marbles card or the Fluid card, or that any unfairness was created at these respective stages either.

Overall, and based on the available evidence I don't find that Ms G's relationships with NewDay were unfair. I've not been persuaded that NewDay created unfairness in its relationships with Ms G by irresponsibly lending to her whether when initially agreeing to provide her with credit cards, or in respect of the limit increases. I don't find NewDay treated Ms G unfairly in any other way either based on what I've seen.

So while I can understand Ms G's sentiments and appreciate why she remains unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Ms G. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Ms G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 30 March 2026.

Jeshen Narayanan
Ombudsman