DRN-3398077

The complaint

Ms S complains that Next Retail Limited ("Next Retail") lent to her irresponsibly.

What happened

Ms S opened a credit account with Next Retail in 2005. She then entered into a debt management plan ("DMP") so, from August 2015, her credit limit was suspended while Ms S was on a reduced payment plan. The suspension was lifted in 2017 and Next Retail reinstated the credit limit of £400. Then in 2018, Next Retail increased the credit limit to £5,000. In March 2019, the limit was reduced to £3,750 and was reduced again down to £3,000 in June 2019. Ms S complained that Next Retail shouldn't have reinstated her credit limit following the DMP and it was further irresponsible of them to increase her credit limit.

Next Retail responded and explained, following the end of the reduced payment plan, Ms S kept up her monthly payment for the next two months, so they decided to reinstate her credit limit of £400. Next Retail said they make credit decisions based on scores they receive from a Credit Reference Agency ("CRA"). They said this takes into account a range of factors which they review together with their internal data. They said, based on this, the checks suggested a credit limit increase to £5,000 was affordable. Next Retail said, they offer customers the option to accept or decline the offer, and Ms S accepted it. They said, since the increase, Ms S had managed her account well. So, they didn't uphold the complaint.

Our investigator looked into things for Ms S. She thought Next Retail hadn't lent irresponsibly in relation to reinstating the £400 credit limit. In relation to the increase to £5,000, she thought the decision to lend was irresponsible and recommended Next Retail refund all interest and charges on balances over £400 together with 8% simple interest. And, they should remove any adverse information on Ms S's credit file since increasing the credit limit. Next Retail haven't responded so the matter has come 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 decided to uphold the complaint. And, I think the investigator's recommendation here is a fair way to resolve matters.

We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Next Retail needed to take reasonable steps to ensure that they didn't lend irresponsibly. In practice this means that they should've carried out proportionate checks to make sure that Ms S could repay the credit in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure.

The first point I've addressed is whether I think Next Retail carried out reasonable and proportionate checks. Section 5 of the Consumer Credit (CONC) sourcebook, in place at the time, outline that the assessment that Next Retail needed to complete should've been dependent on, and proportionate to, a number of factors – including the amount and cost of the credit and the consumer's borrowing history. CONC also provides guidance on the sources of information Next Retail may have wanted to consider as part of making a proportionate assessment. It then gives examples of factors a firm must consider and refers to whether the information the firm has is sufficient and whether to obtain additional information from the customer and any other sources of information to use.

Next Retail is free to decide how to set their lending criteria but they should complete proportionate checks to ensure borrowing is sustainable. In this case, and in relation to reinstating the credit limit of £400, Next Retail say the reduced payment plan had ended at this point and Ms S kept up with her payments. I think it's important to add here this involved reinstating a credit limit which was originally in place rather than Ms S applying for this or Next Retail increasing the credit limit. The information I've seen shows Next Retail suspended the credit limit while Ms S was making reduced payments. The suspension was then lifted and the £400 credit limit was reinstated. I can see, at this point, payments were consistently made in line with the reduced payment plan and Ms S reduced the arrears on her account significantly – down to under £20. Ms S then brought her account up to date by clearing the arrears. So, given that the account was brought up to date, I don't think it was unreasonable for Next Retail to reinstate the limit of £400.

In relation to the credit limit increase, Next Retail say they receive an Index of Affordability from the CRAs which gives them an idea of a customer's incomings/outgoings and the utilisation of other credit commitments – the higher the score the greater the risk. Next Retail have also provided a process document which sets out their approach to creditworthiness and affordability. This says, "*The highest credit limit obtainable is £5,000, but this can **only** be achieved after a minimum of 24 statements (not time related) and a high creditworthiness assessment.*" It also says "*Fully drawn, the highest credit limit gives a monthly minimum payment of £250. However, this is achievable only after an extended period of trade without recent signs of financial difficulty*."

Given what this information shows, I don't think the checks carried out by Next Retail are reasonable and proportionate in the circumstances. The credit limit is increased in March 2018 but this isn't long after Ms S had been in arrears on this account and had completed a reduced payment plan. And, the reduced payment plan and DMP had been in place for a significant period of time. I think it's also important to note that Ms S was still in a DMP at the point the credit limit was increased. So, taking these factors into account, and given that this involved a more than ten-fold credit limit increase, I don't think relying on scores from CRAs was sufficient here and I don't believe this demonstrates the 'high creditworthiness assessment' Next Retail's process document suggests takes place when applying their maximum credit limit.

While I accept the scores might well take into account a range of factors including Ms S's other credit commitments and income and outgoings, I think further checks should've been done by Next Retail given that Ms S was in significant financial difficulty not long before the credit limit increase. And, Next Retail were fully aware of those financial difficulties.
In these circumstances, given that they'd increased the credit limit to the maximum available, I think Next Retail should've carried out further checks. And, I think, in the circumstances of this case, it would've been reasonable and proportionate for Next Retail to ask to see Ms S's bank statements to get a clearer picture of Ms S's income and expenditure. And, given Ms S was still in a DMP, they should've obtained her credit report to get a clearer picture of her other credit commitments.

Given that I don't think reasonable and proportionate checks were completed in this case, the next point I've considered is, if reasonable and proportionate checks had been completed, would they more likely than not have shown that Ms S was more likely than not unable to sustainably repay what she was being lent.

To help decide this, I've looked at Ms S's bank statements for the three months leading up to the credit limit increase. This shows Ms S's average net monthly income as around £1,400. It also shows her monthly outgoings, in the form of bills, payment of her DMP and a loan, was around £650. In their process document, Next Retail refer to a minimum payment of 5% of the balance and I can see they've also applied this percentage when referring to the monthly minimum payment on a £5,000 balance being £250. So, it's fair and reasonable for Next Retail to consider a monthly payment of £250 in the event that Ms S might take the maximum credit limit available to her. Their process document says a 5% minimum payment ensures a sufficient amount of the principal is paid each month and avoids a customer entering into persistent debt. Ms S's credit report and bank statements show payments to other lenders towards other credit – this includes credit card accounts and catalogue accounts. So, I think it's also fair to consider 5% of the balance on these accounts as being the minimum monthly payment for the same reasons set out in Next Retail's process document. So, Ms S was paying a combined figure of around £200 per month towards these balances.

Deducting these outgoings would leave Ms S with a monthly disposable income of around £300. This would need to cover shopping, travel (work and general) and other discretionary/non-discretionary spending. And, I don't think this is sufficient given that Ms S was still in a DMP and there being a recent history of financial difficulties.

I've gone further and looked at other information which Next Retail would've taken into consideration. Next Retail say Ms S's Customer Indebtedness Index score ("CII") when they offered the credit limit increase was 24 which indicated there was little risk the account would become unaffordable. I agree this was the case, but given Ms S's recent financial difficulties, I think it would've been reasonable to consider this score over a longer period. The month before it was 47 – almost double the score it became a month later. And, the month before that it was 38. I think this is particularly important because over a 10-month period, while Ms S was on a DMP and making reduced payments of £21.58, her average CII score over this period was 36. This shows, at the point Ms S was in significant financial difficulty, her average CII score was 11 less than it was the month before Next Retail offered the credit limit increase to an amount which was more than 10 times greater than the previous credit limit. And, it was two less than it was two months before they offered the credit limit increase. So, looking at this in comparison to a point in time when Ms S was clearly in financial difficulty – I don't think the CII scores leading up to the credit limit increase pointed towards it being affordable.

The process document refers to how Next Retail assess affordability and gives examples of indicators for high indebtedness. One example refers to a CII score above 25 in cases where a customer is paying the minimum instalment. In this case, the score when Next Retail offered the credit limit increase was only one less than this. But, as mentioned above, the CII score was higher than this in the two months preceding this.
While, strictly, Ms S wasn't making the minimum contractual instalments, she was on a reduced payment plan – and I think this should be treated in the same way as though Ms S was making minimum payments.

Taking this all into account, I don't think the information shows Ms S would be able to repay any borrowing in a sustainable manner. The information I've seen shows Ms S was in significant financial difficulties shortly before the credit limit increase and she was still on a DMP when it was applied. Next Retail were aware of Ms S's financial circumstances so, given the CII scores they received for the months leading up to the credit limit increase, I think they should've gathered further information to ensure they were carrying out a 'high creditworthiness assessment'. I feel if Next Retail had carried out reasonable and proportionate checks it would've showed the credit limit increase wasn't affordable for Ms S. And, it would've highlighted that Ms S wouldn't be able to repay the extra credit in a sustainable manner and without any undue difficulty.

Given that I think Next Retail lent irresponsibly to Ms S by increasing her credit limit above the reinstated £400 limit, it follows that I think the later credit limits of £3,750 and £3,000 were also irresponsible.

Putting things right

I've taken the view that Next Retail lent irresponsibly to Ms S when they increased her credit limit above the £400 limit they'd reinstated. I therefore consider this is irresponsible lending and Next Retail should put this right. So, they should refund all interest, fees and charges accrued or incurred on Ms S's account on balances over £400 from the date the credit limit was increased to £5,000. The refund should be deducted against any outstanding balance. If this leaves a credit balance in Ms S's favour, Next Retail must pay this amount to Ms S together with 8% simple interest, calculated from the dates of any overpayments to the date that the payment is made to Ms S. This would put Ms S back in the position she would have been in were it not for the lending decisions taken by Next Retail. Next Retail should provide Ms S with a certificate showing any taxation deducted.

Next Retail must also remove all adverse reporting from Ms S's credit file for this account from the date the credit limit was increased to £5,000.

My final decision

My final decision is that I uphold the complaint. Next Retail Limited must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 19 July 2022.

Paviter Dhaddy
Ombudsman