DRN-3465841

The complaint

Mrs H says Next Retail Limited trading as Next Online ("Next") irresponsibly lent to her. She has requested that the interest and late payment charges she paid on the account she had be refunded.

What happened

This complaint is about a catalogue shopping account provided by Next to Mrs H. It seems the account was opened in 2011 with Mrs H being given an initial credit limit of £300. This limit was increased several times reaching, at its height, a credit limit of £3600 in November 2015. The account fell into arrears in 2017.

Our adjudicator partially upheld Mrs H's complaint and thought that Next ought to have realised that Mrs H wasn't in a position to sustainably repay any further credit on the account by July 2016. Next has disagreed with what they said, saying that it had no reason to think that Mrs H was experiencing financial difficulties. The complaint has therefore been passed to me.

I issued my provisional decision in respect of this complaint on 11 April 2022, a section of which is included below, and forms part of, this decision. In my provisional decision I set out the reasons why I didn't agree with the adjudicator's view and that it was my intention to partially uphold Mrs H's complaint but from earlier in the life of the account. I set out an extract below:

"Next needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mrs H could afford to repay what she was being lent 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. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Next should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- *the lower a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);*
- *the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);*
- *the greater the frequency of borrowing, and the longer the period of time during which a customer has been indebted (reflecting the risk that prolonged indebtedness may signal that the borrowing had become, or was becoming, unsustainable).*

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Our adjudicator set out in some detail why she thought Next shouldn't have provided Mrs H with any additional credit from July 2016. Next didn't agree with what our adjudicator said. It said the credit limits it set were affordable for Mrs H. Next told us it obtained credit reference data about Mrs H at the time of the account opening and prior to each credit limit increase and that it took into consideration how the account was being managed.

Our adjudicator thought that the early increases to the credit limit on the account were not examples of irresponsible lending. Both parties have seen that assessment and Mrs H has not raised any objection to those findings. So, in the absence of any argument about that, I'll address the later increase that, currently, I think was an example of irresponsible lending. And I think that moment came earlier than our adjudicator did.

Before November 2015 there were times when Next increased the credit limits on the account. I don't think that the checks were always proportionate at those times. But I haven't seen sufficient evidence to think that better enquiries would have caused Next to think the initial credit limit or the credit increases before November 2015 were unaffordable.

Nonetheless I've also looked at the overall pattern of Next's lending history with Mrs H, with a view to seeing if there was a point at which Next should reasonably have seen that further lending was likely unsustainable, or otherwise harmful. If so, that would mean Next should have realised that it shouldn't have further increased Mrs H's credit limits. Having done so, I think there was such a point in November 2015 when Next raised the credit limit to £3600. I will explain why I say this.

Throughout the life of the account but particularly before the account went into arrears, there were times when Next increased the credit limits on the account. But there were also times when the credit limit was reduced. I think there was a pattern of lending that ought to have put Next on notice that putting up the credit limit in November 2015 was unsustainable as Mrs H would not have been able afford to repay what she was being lent in a sustainable manner, most likely. I explain why I say that.

On 21 October 2012 the credit limit was raised to £2000. In the month before that, the balance had been £129.99. By 21 January 2013 the balance had risen to £934.42 and Mrs H failed to make her minimum payment. Next reacted by reducing the credit limit to £1000 in April 2013. And Next continued to manage the balance down by reducing the credit limit in steps to £350. By July 2013 the balance had reduced to £186.96. It seems that the pattern of lending shows from this that with a lower credit limit Mrs H was able to manage her account well. But the higher credit limit led Mrs H to raise her balance to a level where she couldn't afford to make the repayments on time.

Having imposed some control on the account, the following month, August 2013, Next increased the credit limit to £2500 and to £3000 in November 2013. Before the rise to £3000 the balance was £226.81. Within five months the balance had risen to £841.18 and Mrs H had failed to make the full minimum payment in four of the preceding five months. Next reacted to this by reducing the credit limit to £1000. But Mrs H's management of that credit limit meant it took her three months to get the balance to an amount under the £1000.

But this time Next chose not to manage Mrs H's balance down by reducing the credit limit to a more modest amount, as it had chosen to do previously. This time Next chose to leave Mrs H on the credit limit of £1000. Mrs H spent 19 months with a credit limit of £1000. Her balance at the start of that period, April 2014, was £1077.86 and in October 2015 the balance was £922.69. So, in a year and a half, Mrs H had not reduced her balance by a significant amount and the balance had stayed close to the credit limit for the 19 months.

Again, Next had seen some evidence that with a higher credit limit Mrs H was likely to allow the balance to grow and that she seemed unable to make much progress in reducing the balance when it had grown.

But it was at this time, 21 November 2015, that Next chose to increase Mrs H's credit limit to £3600. It is my view currently that Next should reasonably have seen that further lending was likely unsustainable, or otherwise harmful, and it shouldn't have further increased Mrs H's credit limits. In the 15 months that Mrs H spent with the credit limit at £3600 her balance rose from £832.20 to £2985.10.

So, the evidence of Mrs H's account was that she managed her account well when she was limited to a modest credit limit. When Next tried to increase that credit limit significantly, it found it had reasons to take remedial action on a couple of occasions before it chose to increase Mrs H's credit limit to £3600 on 21 November 2015.

It's not easy to accurately determine Mrs H's circumstances at the time. Mrs H has not been able to provide us with copies of her bank statements. Mrs H has provided testimony that her income was modest and based on state benefits. Next have not been able to provide copies of bank statements or provide details of Mrs H's income and expenditure from the time, as it chose not to source either of these things during the life of the account. So, I've seen no evidence to call into question Mrs H's testimony about the source of her income or the amount (£1100 per month) that she said she received. Mrs H thought she had a modest disposable income each month. But in the 19 months before the increase to £3600, her balance had reduced but not by a significant amount.

So, given the particular circumstances of Mrs H's case, based on the information Mrs H and Next have given, I nevertheless think that a point was reached by 21 November 2015, when Next increased Mrs H's total credit limit to £3600, which ought to have prompted Next to realise further credit would most likely be unaffordable or otherwise harmful to Mrs H. I say this because the way Mrs H had managed her account until that point would have shown Next that Mrs H would not find it easy to repay a balance that rose anywhere near the new credit limit, whilst at the same time having to meet her daily living expenses.

I also think there was a significant risk that further increases to her credit limits could have led to her indebtedness increasing unsustainably, such that she had no funds available to meet her regular outgoings.

It follows that I think that Mrs H lost out because Next provided her with further credit from 21 November 2015 onwards. In my view, Next's actions unfairly prolonged Mrs H's indebtedness by allowing her to use credit she couldn't afford over an extended period of time and the interest being added would only have the effect of putting her into further debt.

It follows that Next should put things right.

Putting things right – what Next needs to do

- *Rework Mrs H's account to ensure that from 21 November 2015 onwards interest is only charged on balances up to the total credit limit of £1000, including any buy now pay later interest, (being the credit limit in place before that date) to reflect the fact that no further credit limit increases should have been provided. All late payment and over limit fees should also be removed; and*

- *If an outstanding balance remains on the account once these adjustments have been made Next should contact Mrs H to arrange an affordable repayment plan for these accounts. Once Mrs H has repaid the outstanding balance, it should remove any adverse information recorded on Mrs H's credit file from 21 November 2015 onwards for each account.*

OR

- *If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mrs H, along with 8% simple interest per year on the overpayments from the date they were made (if they were) until the date of settlement. Next should also remove any adverse information from Mrs H's credit file from 21 November 2015 onwards.†*

†HM Revenue & Customs requires Next to take off tax from this interest. Next must give Mrs H a certificate showing how much tax it's taken off if he asks for one."

I asked the parties to the complaint to let me have any further representations that they wished me to consider by 9 May 2022. Next have acknowledged receiving the decision and has inferred it agrees with the outcome as it told us it has already calculated redress. Mrs H has acknowledged receiving the provisional decision. She has accepted the arguments in the provisional decision. Neither party has suggested they wish to make any further submissions. So, I am proceeding to my final 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.

Next will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

Given that there's no new information for me to consider following my provisional decision, I have no reason to depart from those findings. And as I've already set out my full reasons for partially upholding Mrs H's complaint, I have nothing further to add.

Putting things right

Next Retail Limited trading as Next Online should put things right in the way set out in the provisional decision and copied above.

My final decision

For the reasons set out, I'm partially upholding Mrs H's complaint. Next Retail Limited trading as Next Online should put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 3 June 2022.

Douglas Sayers
Ombudsman