

Complaint

Miss D has complained that Next Retail Limited (“Next”) irresponsibly provided her with a catalogue shopping account and credit limit increases.

She has said that this credit was unaffordable for her and it resulted in her experiencing ongoing difficulties.

Background

This complaint is about a catalogue shopping account Next initially provided to Miss D. Next has said that Miss D’s account was initially opened in September 1988. However, Next is unable to confirm what the credit limit was at this stage as its detailed records do not go back this far. Nonetheless, it has been able to confirm that Miss D’s credit limit was increased to £3,600.00 in December 2010 and then £5,000.00 in April 2013.

Miss D entered into a reduced payment plan through a debt management company in November 2019, before her account was defaulted in April 2021.

In December 2023, Miss D complained saying that the catalogue shopping account and the credit limit increases Next provided were unaffordable for her and led to her experiencing ongoing difficulties.

Next did not uphold Miss D’s complaint as it was satisfied that Miss D had complained too late. When responding to our request for its file on Miss D’s complaint, Next reiterated that it believed Miss D had complained too late and therefore this precluded us from considering matters.

One of our investigators looked at everything provided and reached the conclusion that proportionate checks would not have shown Next that it shouldn’t have provided this account or the credit limit increases to Miss D. So she didn’t think that Miss D’s complaint should be upheld.

Miss D disagreed with our investigator’s conclusions and asked for an ombudsman’s review of 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. Next has argued that Miss D’s complaint was made too late because she complained more than six years after the decisions to provide the catalogue shopping account and the 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 Miss D's complaint as being one alleging that the relationship between her and Next was unfair to her as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Miss D's complaint. Given the reasons for this, I'm satisfied that whether Miss D'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 Miss D's complaint should be considered more broadly than just the lending decisions. I consider this to be the case as Miss D has not only complained not about the respective decisions to lend but has also alleged that having to make these payments resulted in her experiencing ongoing difficulties.

I'm therefore satisfied that Miss D's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between her and Next. I acknowledge Next still doesn't agree we can look Miss D's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Miss D's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss D's complaint can be reasonably interpreted as being about the fairness of the lending relationship between her and Next, 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 (Next) and the debtor (Miss D), 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 Miss D's complaint, I therefore need to think about whether Next's decision to initially lend to Miss D and increase her credit limit, or its later actions resulted in the lending relationship between Miss D and Next being unfair to Miss D, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Miss D's relationship with Next is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Miss D's ability to repay in circumstances where doing so would have revealed the catalogue shopping account or limit increase to be unaffordable, or that it was irresponsible to lend. And if this was the case, Next didn't then remove the unfairness this created somehow.

Were the decisions to provide the catalogue shopping account and subsequent credit limit increase unfair?

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.

Miss D was initially provided with a catalogue shopping account more than 35 years ago. And it's fair to say that the obligations place on lenders have changed a great deal over this period of time. Broadly speaking, one thing that has remained in place over the time Next lent to Miss D was that a lender has always been expected to take reasonable steps to understand whether a borrower could pay back any money they were lent.

In practice this means that Next needed to find out enough about Miss D in order to have a fair understanding of whether she could afford to repay what she was being lent. Any checks carried out to find this out, 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. 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.

I've kept all of this in mind when deciding Miss D's complaint.

As I've explained, Miss D's account was opened in September 1988. The credit limit was then increased on at least two occasions, in December 2010 and April 2013 until it reached £3,600.00 and then £5,000.00. This meant that, at the very least, Next was required to understand whether Miss D could repay £3,600.00 and then £5,000.00 within a reasonable period of time.

Next hasn't been able to provide any information on the checks that it carried out when providing any of this credit. Given even the most recent of the limit increases took place more than a decade prior to Miss D's complaint, I don't think that Next no longer having this information is unreasonable. Therefore, I've not drawn any adverse conclusions as a result of Next not being able to provide the information on its checks.

In any event, as Miss D ended up being provided with limits of £3,600.00 and £5,000.00, by this stage I would have expected Next to have found out more about Miss D's income and

expenditure (including her regular living expenses and existing credit commitments) before providing these credit limit increases. As there's no suggestion that Next did this on any occasion, at the very least, I don't think that the checks it carried out before it increased Miss D's credit limit in December 2010 or April 2013, were reasonable.

Ordinarily, where a firm failed to carry out reasonable checks before providing credit or increasing the amount available to a customer, I'd usually go on to recreate such checks in order to get an indication of what they would more likely than not have shown.

However, Miss D has been unable to provide us with the information we've asked her for in order to be able to assess what Next finding out more about her regular monthly living costs and existing credit commitments is likely to have shown at the respective times. So I've not been provided with sufficient evidence to reasonably conclude that the limit increases were as a matter of fact unaffordable for Miss D.

I appreciate that Miss D may feel that it is unreasonable and unfair to expect her to provide information which she doesn't have and cannot reasonably be expected to have. But I also have to take into account that Next isn't required to have retained all of this information either and it was Miss D that chose to make her complaint in December 2023. As this is the case, I have to decide the complaint on what I have before me.

Equally, it is only fair and reasonable for me to uphold a complaint in circumstances where I can see that any additional credit provided was unaffordable. And I'm afraid that I've not been provided with sufficient evidence which corroborates what Miss D has said about not being able to make the increased monthly payments required should she owe the full amount.

In reaching my conclusions, I've also thought about what Miss D has said about agreeing with Next to pay a lesser amount than the minimum due on at least two occasions prior to the limit increase and that this in itself meant she shouldn't have been lent to. I've thought about what Miss D has said. However, as the investigator has explained, there isn't any information to show reduced payment plans having been agreed prior to the limit increases. Furthermore, it's also fair to say that Miss D did have the option of deciding against using the additional credit if she felt that it wasn't affordable for her.

For the sake of completeness, I'm also mindful that these credit limit increases were offered over a period of almost 25 years. Most importantly, Miss D had a balance of just over £500 when she was offered the December 2010 increase and a balance of just under £200 (against a limit of £3,600.00) when she was offered the April 2013 increase.

Therefore, this isn't a case where I can reasonably say that the limit increases and Miss D's account usage ought reasonably to have shown Next that Miss D's indebtedness, on this account, was rapidly increasing in an uncontrollable way, or that the pattern of lending here ought reasonably to have led Next to conclude that the facility had become demonstrably unsustainable for Miss D either.

So overall and having carefully considered everything and while I appreciate that this will disappoint Miss D, I've not been persuaded that reasonable checks would have shown Next that it shouldn't have provided Miss D with this credit. Furthermore, I don't think that Miss D's pattern of borrowing meant that Next offered the credit limit increases in circumstances where it ought reasonably to have realised that they may have been unsustainable or otherwise harmful for her either.

Overall, and based on the available evidence I don't find that the lending relationship between Miss D and Next was unfair to Miss D. I've not been persuaded that Next created

unfairness in its relationship with Miss D by unfairly lending to her whether when initially agreeing to provide her with a catalogue shopping account, or in respect of increasing her credit limit. And I don't find Next treated Miss D unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Miss D's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Miss D. 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 this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 7 April 2025.

Jeshen Narayanan
Ombudsman