complaint

Miss S complains that Next Retail Limited acted irresponsibly in increasing her credit limit on her NextPay account in July 2017.

background

The background to this complaint was set out in the provisional decision I issued in January 2021. An extract from this is attached and forms part of this final decision, so I will not repeat that information here.

In my provisional decision I set out why I was minded to uphold the complaint. I invited both parties to let me have any further comments and evidence. Both parties have responded to my provisional decision. Although I am only summarising here what Miss S and Next have said, I have considered their entire responses carefully before writing this decision.

Miss S reiterates that Next didn't ask her for any information on her finances before it increased the credit limit. She says her primary wish in resolution of this complaint is the removal of adverse information from her credit file. But she also asks whether I think the compensation due from Next should include a refund of the interest she has paid on her account.

Next doesn't agree with my provisional findings. Next says that the checks it did with the credit reference agency showed a very low probability that Miss S would face problems repaying her debt. It says that its checking processes were recently reviewed by the regulator and that it corrected any credit limit increases that were identified by that review as being problematic. The increase to Miss S's credit limit was included in that review and not considered to be a cause for concern.

Next asks me to note that our adjudicator did in fact find that its checks before increasing the credit limit were proportionate. And it goes on to question why, since its checks were proportionate, the adjudicator went on to request further information from Miss S, including her bank statements. It thinks that it would have been grossly disproportionate to ask Miss S for copies of her bank statements at the time of the credit limit increase.

Next has said that, until it received my provisional decision, it was unaware that Miss S had faced problems with a gambling addiction. It says that she didn't share that information with the firm. And it has asked for more details about the information on her bank statements that shows the problems with gambling.

Next doesn't agree that, if I still decide the complaint should be upheld, I should diverge from the redress I would normally direct when I find lending to be irresponsible. It thinks it acted promptly in reducing Miss S's credit limit when it identified her financial problems. Next is concerned that my decision might damage its reputation, particularly when there is no evidence that it was acting outside the law or with anything other than the best intentions towards Miss S. It says that it takes its responsibilities as a lender very seriously and is fully conversant with the relevant regulations. It aims to deliver fair customer outcomes and be sensitive to customer vulnerabilities.

my findings

I've once more considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I am not minded that I should alter the conclusions that I reached in my provisional decision. But I think it is right that I should comment further on the matters that both parties have raised in response to that decision.

As Next should be aware, two adjudicators looked at Miss S's complaint. Next is correct that the first adjudicator thought that the checks Next had performed had been proportionate. But Next also received a later assessment from the second adjudicator. That assessment concluded, in line with my analysis, that the checks Next did were insufficient. And that is why the adjudicator asked Miss S for additional information about her financial situation at the time of the credit limit increase.

In its response Next provided me with a little more information, in the form of an Indebtedness score, that it received from the credit reference agency when it was considering the credit limit increase. Although that provides me with more of an understanding of the checks Next did, I still think the checks fell someway short of what I would consider to be proportionate in this instance.

I have considered the retrospective review that Next says it undertook of its credit limit increase process. And that the review was supervised by the regulator. Next has explained that its criteria for the review was based on a consumer's past use of its credit facilities. But that does not override the responsibility that Next had to ensure that it conducted proportionate checks to ensure that future repayments would be sustainably affordable for Miss S. The fact that Miss S had (mostly) managed minimum payments of at most £30 does not give me any confidence that she would be able to sustainably afford minimum repayments of £250.

Next has said that its checks might be less since its credit was restricted and could only be used to purchase goods from the company, it doesn't permit cash advances, and the loan is not secured against property. It is true that all those are relevant factors that could influence the checks that Next needed to do. But here, given the significant increase in the credit limit that Next was offering, and the potential for that to provide difficulties or adverse consequences for Miss S in repaying what she owed, I still think it would have been proportionate for Next to have gained a far deeper understanding of Miss S's day to day finances.

I used Miss S's bank statements as a proxy for those checks as they gave me an accurate and contemporaneous picture of her finances. I did not suggest that this was the exact check that Next should have carried out. But it might have been a very useful way to gain a detailed understanding of whether it was likely Miss S could repay what she would owe in a sustainable manner.

I explained in my provisional decision the extent of Miss S's gambling spending. I said that, as an example, in June 2017, over just two days, Miss S spent more than £8,000 – that was more than four times the income she received from her employment that month. Miss S's bank statements contain a great deal of personal information. I don't think it appropriate, or necessary, to share those statements with Next. My analysis is that those statements could not be viewed as showing anything other than a significant problem with gambling expenditure.

It is of course possible that, had Next asked Miss S for further details of her finances before it agreed the credit limit increase, she would have declined to provide that information. But I think that would then have led Next to the very reasonable conclusion that things were not well with Miss S's finances. And as a result it would have taken the appropriate decision to not allow her to take further credit.

I think that the significant increase in the credit limit that Next provided, against the backdrop of what I consider to be wholly insufficient checks, leaves Next with a greater responsibility for the debt that Miss S incurred that might normally be the case. When I described the actions as creating "a ticking timebomb" I did not do so to suggest that Next knowingly created problems for Miss S or failed to take actions, albeit after the event, to restrict the credit available to Miss S. But by the time Next reduced Miss S's credit limit the damage had already been done. In the space of two months she had incurred a debt of over £5,000.

I do not know why Miss S purchased so many duplicate high value items. It is Next that has suggested that Miss S might have been selling these items to fund her gambling addiction. But I don't think Next can argue that Miss S's purchasing behaviour is normal, or not indicative that she might be facing problems managing her money. I think that sort of behaviour could, and should, have been identified earlier. It seems to me that Next only restricted Miss S's credit limit when she failed to make the minimum payment that was due – not because it had any concerns over her pattern of spending.

I am aware that my decision will require Next to write off a considerable sum. And it is for that reason that I have not, as Miss S requests, made any direction in relation to the interest that has been added to her account. The amount that Next will need to write off is significantly greater than the interest that might be refunded. But in the circumstances I've described above I think it is a fair and reasonable resolution to Miss S's complaint.

putting things right

Miss S was left with a large debt as a result of Next significantly increasing her credit limit without undertaking what I would consider to be proportionate checks. To put things right, Next should;

- Write off the outstanding balance on Miss S's account as at 5 November 2018.
- Refund to Miss S any payments that she has made to the account since 5 November 2018.
- Remove any adverse information relating to the credit account from Miss S's credit file. The account should be shown as settled in full as at 5 November 2018.

my final decision

My final decision, for the reasons given above and in my provisional decision, is that I uphold Miss S's complaint and direct Next Retail Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 3 April 2021.

Paul Reilly
ombudsman

EXTRACT FROM PROVISIONAL DECISION

complaint

Miss S complains that Next Retail Limited acted irresponsibly in increasing her credit limit on her NextPay account in July 2017.

background

Miss S opened a NextPay account in April 2013. Her credit limit was set at £600. Miss S operated the account relatively well over the following years. In July 2017 Next wrote to Miss S to advise her that it intended to increase her credit limit to £5,000. It gave Miss S the opportunity to decline that credit limit increase, but if it heard nothing back from her it said that the increase would be implemented. Next says that Miss S accepted the credit limit increase via its website in early August 2017.

Miss S made little use of the additional credit limit until April 2018. At that time she started spending heavily on her account and within little more than a month her outstanding balance was approaching her new credit limit of £5,000. Miss S was unable to make the payments she was required to in order to service that debt and her account fell into arrears in June 2018. Next responded by reducing her credit limit to £1,500 at that time, with a further reduction to £300 two months later. Miss S still has an outstanding balance on her account that she is attempting to repay in monthly instalments.

Miss S's complaint has been assessed by one of our adjudicators. She didn't think the checks that Next had done before agreeing the credit limit increase had been sufficient. But, from the information that Miss S had disclosed, the adjudicator wasn't able to determine that better checks would have led to the limit increase not being offered. So she didn't think that the complaint should be upheld.

Miss S didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've set out our approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding Miss S's complaint.

The rules and regulations at the time Next increased Miss S's credit limit required it to carry out a reasonable and proportionate assessment of whether she could afford to repay what she owed in a sustainable manner. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Next had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Miss S. In practice this meant that Next had to ensure that making the repayments wouldn't cause Miss S undue difficulty or adverse consequences. In other words, it wasn't enough for Next to simply think about the likelihood of it getting its money back, it had to consider the impact of any repayments on Miss S.

Checks also had to be "proportionate" to the specific circumstances of the credit account. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given assessment – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether Next did what it needed to before offering to increase Miss S's credit limit.

In this decision I haven't considered in any detail what happened when Miss S was first given a NextPay account in 2013. Her credit limit was relatively modest and appeared to be affordable for her. And Miss S hasn't made any complaint about the original lending decision. So that isn't something I need to consider in this decision.

Next says that it used data from a credit reference agency when it originally set the credit limit, and then used updates to this data on a monthly basis to ensure that the credit limit remained appropriate and affordable. It says that it was this data, and the way in which Miss S had operated her account over the previous years, that led it to offer the increase to the credit limit in 2017.

I've looked at how Miss S was managing her NextPay account in the months leading up to the credit limit being increased. Her repayments were generally made on time, or shortly afterwards, so Next didn't consider any of them to have been made late. And she generally paid at least the minimum amount that was required. But those two factors alone don't give me any confidence that she would be able to sustainably afford a significant increase in her credit limit.

As I said earlier Next offered to increase Miss S's credit limit from £600 to £5,000. That would mean that her minimum monthly payment (if she took advantage of the entire credit limit) would increase from £30 to £250. That was a significant change, and I think would have warranted Next to undertake some detailed checks on Miss S's financial circumstances.

Next hasn't been able to provide us with any detailed information about the data it received from the credit reference agency, that it says supported its decision to increase the credit limit. Without that data I cannot conclude that the checks Next did were proportionate. But even if I had sight of that data I think it likely that I would have concluded that Next needed to do more. I think that it would have been proportionate for Next to get a full and detailed overview of Miss S's income and expenditure to determine whether the new credit limit was likely to be affordable for her.

I have noted that Next has said that it only offered the credit limit increase to Miss S. It says that she would have been free to decline some or all of the increase it offered, and that Miss S in fact accepted the whole increase via its website. But I think that misses the fundamental point that it was Next, not Miss S, that was required to ensure the offered credit was sustainably affordable. The regulations were in place to protect consumers – not to assist lenders in managing the risk of repayments not being made.

But although I don't think the checks Next did before increasing the credit limit were sufficient, that in itself doesn't mean that Miss S's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown Next that Miss S couldn't sustainably afford the repayments. So I've looked at Miss S's bank statements, and what she's told us about her financial situation, to see what better checks would have shown Next. To be clear that wasn't information that Miss S had made available to our adjudicator. The provision of that information is what has led me to a different conclusion from that our adjudicator reached.

At this stage I want to be clear that I am not suggesting that this is the exact check that Next should have carried out. I do think Next needed more detailed information about Miss S's finances. And looking at her bank statements is one way of achieving that although there are of course many other ways that level of detail could be established. But I think that by looking at Miss S's bank statements I can get a good idea of what better checks might have shown.

Miss S has told us that at that time she was suffering from a significant problem with an addiction to gambling. And that is supported by the transactions I can see on her bank statements. Around the time that Next increased her credit limit she was spending several thousand pounds each month on transactions of this nature. In June 2017, over just two days Miss S spent more than £8,000 – that is more than four times the income she received from her employment that month. I think that had this expenditure been identified, any responsible lender would have decided it was unlikely that Miss S could safely meet any credit repayments in a sustainable manner at a time where it could be argued she had little control over her spending.

I have considered that Miss S didn't abuse her credit account for several months after the credit limit was implemented. But I don't think that should provide any reassurance to Next that the increase in the credit limit was appropriate or affordable. By increasing the credit limit against the backdrop of Miss S's gambling addiction Next provided her with a ticking timebomb that was available when she needed additional funds to support her addiction. The fact that those funds weren't used for some months doesn't suggest the decision to increase the credit limit was ever appropriate.

In April 2018 Miss S spent heavily on her credit account. She purchased a number of duplicate high value items. I think that unusual pattern of spending might have been identified earlier by Next - the regulator requires lenders to have processes to assist with identifying and dealing with customers showing signs of actual or possible financial difficulties, even though they may have not missed a payment. And so Miss S's excessive spending might have been curbed earlier.

So in summary I don't think that the checks Next did before agreeing to increase Miss S's credit limit were proportionate. And I think that better checks would have shown it was unlikely that Miss S would have been able to repay her outstanding balance in a sustainable manner. And Next might have taken steps to limit Miss S's access to that credit when it became apparent that she was possibly facing financial difficulties.