

## **The complaint**

Miss T complains Next Retail Limited (Next) irresponsibly provided her with an unaffordable credit facility.

## **What happened**

Next provided Miss T with a £300 credit facility in February 2023.

In June 2023 Miss T complained to Next. She said it had irresponsibly provided her with this account, because had it completed reasonable and proportionate checks it would have identified the line of credit was unaffordable for her.

Next didn't uphold the complaint. It said it completed proportionate checks and went on to make a fair lending decision when providing Miss T with this facility. Miss T didn't accept Next's response and referred her complaint to our Service for review.

Our Investigator upheld the complaint. She said Next didn't make a fair lending decision when providing Miss T with this account. She said this because she considered the information Next had obtained within its checks ought reasonably to have put it on notice that Miss T wasn't a suitable candidate to lend to.

Miss T accepted the outcome; Next disagreed. In summary it maintained its argument that it made a fair lending decision based on the checks completed and the information obtained.

Next asked for an Ombudsman's review, so the complaint's been passed to me to decide.

## **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 reached the same outcome as our Investigator, for broadly the same reasons.

We've set out our approach to complaints about irresponsible and unaffordable lending as well as the key rules, regulations and what we consider to be good industry practice on our website; both Miss T and Next are aware of this approach.

Next needed to take reasonable steps to ensure the lending it provided was responsibly lent to Miss T. The relevant rules, regulations, and guidance at the time of Next's lending decision required it to carry out reasonable and proportionate checks. These checks needed to assess Miss T's ability to afford the credit limit being approved and repay it sustainably, without causing her financial difficulties or harm.

There isn't a set list of checks a lender needs to carry out, but they should be proportionate, considering things like the type, amount, duration, and total cost of the credit, as well as the borrower's individual circumstances.

And it isn't sufficient for Next to just complete proportionate checks – it must also consider the information it obtained from these checks to make a fair lending decision. This includes not lending to someone in financial hardship; and ensuring repayments can be made sustainably without the need to borrow further.

Next has said it obtained details of Miss T's creditworthiness via data provided by a credit reference agency, and by completing a credit check before approving this lending. It has said it considers its checks to be reasonable and proportionate, based on what it considers to be a low-risk product with a modest limit; and that there were no signs of financial difficulties from the information it obtained via its checks. Next maintains it made a fair lending decision when providing Miss T with this facility.

I've carefully considered Next's arguments here; but in the individual circumstances I'm not persuaded by them.

I say this because while Next suggests its checks were proportionate based on the type of facility and limit provided, I can't agree that the information it obtained as part of its checks suggested Miss T was a suitable candidate to lend to.

Next has said its checks take into account an individual's credit history, specifically where an individual may have had adverse information reported. The checks Next completed showed Miss T had ten defaults on her credit file, the most recent being 14 months before this lending decision. While not in the very recent past and therefore not necessarily an up-to-date reflection of Miss T's management of her credit on its own, the data also showed only six of Miss T's 12 active accounts were up to date at the time of the check. 13 accounts were showing as being delinquent, with the most recent the month before this lending; and at least one account was four months in arrears, with the worst status showing as six months in arrears within the last six months.

I consider this information strongly suggests Miss T's financial problems weren't only historic but were also very recent; and had clearly continued since the latest default had been reported 14 months before Next's lending decision.

Given that a significant number of Miss T's account were still being reported as delinquent, as close as a month before this lending, I don't consider Miss T was a suitable candidate for any further lending, no matter how modest or low risk Next may have considered it to be; as the evidence it had strongly suggested further credit would be harmful or otherwise detrimental to Miss T. And while after the lending event, as our Investigator set out this clearly turned out to be the case as Next suspended the facility a month after it was provided.

I'm therefore satisfied Next ought reasonably to have concluded Miss T wasn't a suitable candidate to lend to; and it therefore follows I don't consider it made a fair lending decision when providing Miss T with this facility.

Miss T has said Next should write off the outstanding balance and close the account, meaning she should not need to repay the facility before it is closed. I've carefully considered Miss T's argument, but I can't agree this would be a reasonable action for Next to take in the individual circumstances.

I say this because while I've found Next shouldn't have provided Miss T with this line of credit, she has had the use of the facility and has received goods and/or services to the value of the capital balance outstanding. I've also not been presented with any evidence to suggest I should depart from our general approach to redress on irresponsible and

unaffordable lending complaints in Miss T's case.

### **Putting things right**

As I don't consider Next Retail Limited should have provided this account to Miss T, it therefore follows it's not fair for it to apply any interest, fees or charges. However, I consider Miss T should pay the cash price for any goods she's kept. Therefore, Next Retail Limited should:

- Remove all interest (including any Buy Now Pay Later ("BNPL") interest), fees and charges applied to the account
- Work out how much Miss T would have owed after the above adjustments. Any repayments Miss T has made should be used to reduce the adjusted balance
  - If this clears the adjusted balance any funds remaining should be refunded to Miss T along with 8% simple interest\* - calculated from the date of overpayment to the date of settlement
  - Or, if an outstanding balance remains Next Retail Limited should look to arrange an affordable/suitable payment arrangement with Miss T for the outstanding balance
- Once any outstanding balance has been repaid Next Retail Limited should remove all adverse information relating to this account from Miss T's credit file

\*HM Revenue & Customs requires Next Retail Limited to deduct tax from any award of interest. It must give Miss T a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

### **My final decision**

My final decision is that I'm upholding Miss T's complaint about Next Retail Limited and I direct it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 18 March 2024.

Richard Turner  
**Ombudsman**