DRN-4468616

## The complaint

Ms P is complaining about Next Retail Limited because she says it shouldn't have given her a store card and increased her limit on a number of occasions. She says the credit was unaffordable.

## What happened

In 2017, Ms P opened a store card with Next with a limit of £150. This limit was regularly reviewed and the following changes made:

| Date | Increase/Decrease | New Limit |
|---|---|---|
| April 2018 | Increase | £250 |
| July 2018 | Increase | £750 |
| November 2018 | Increase | £3,000 |
| June 2019 | Decrease | £1,500 |
| October 2019 | Increase | £3,000 |
| March 2023 | Increase | £3,750 |
| May 2023 | Decrease | £3,000 |

In making her complaint, Ms P told us she was subject to a Trust Deed at the time of her original application and that this wasn't discharged until June 2021. Next told us it overlooked the Trust Deed when approving the card and subsequent limit increases and that, when it became aware of this in 2022, it refunded all interest from the date the account was opened to the discharge date.

Accordingly, our investigator only considered the affordability of the limit increases in 2019 and 2023 to decide whether it was fair for Ms P to have paid interest after the Trust Deed was discharged. He concluded the complaint should be upheld. He didn't feel Next had carried out adequate checks to ensure these increases were affordable. After obtaining further information from Ms P, including a copy of her credit report and bank statements from the time, he felt appropriate checks would have shown additional credit wasn't affordable.

Next didn't accept the investigator's assessment and made the following key points:

- It's accepted it shouldn't have lent while Ms P was subject to the Trust Deed and has taken appropriate steps to resolve that situation. It feels this error has overshadowed the investigator's consideration of the other aspects of the complaint.

- It assessed affordability using a scoring system based on information held by Experian about Ms P's situation. This took account of a number of factors, including her credit commitments, how they were being managed and her income and outgoings. The scores received prior to the 2019 and 2023 limit increases indicated further credit was affordable.

- The previous conduct of Ms P's account had always been good. She'd only ever missed one payment, which came very early on, and she'd made a number of larger payments at different times to reduce the outstanding balance on the account.

- While Ms P has said she often had to borrow from family to maintain payments on the account, Next wouldn't have known this. Based on the information it had access to, the additional credit appeared affordable.

The complaint has now been referred to me for review.

**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 overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Before lending to Ms P, Next was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, there are two key questions I need to consider:

- Did Next complete reasonable and proportionate checks to establish that Ms P would be able to repay the credit in a sustainable way?
    - If so, was the decision to lend fair and reasonable?
    - If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

- Did Next act unfairly or unreasonably in some other way?

The rules, regulations and good industry practice in place at the time the credit was approved required Next to carry out a proportionate and borrower-focused assessment of whether Ms P could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant Next had to satisfy itself that making payments to the credit wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of her making payments, it had to consider the impact of the repayments on Ms P.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

In general, I think a reasonable and proportionate assessment should be more thorough:
- the lower the customer's income, reflecting that it could be more difficult to make repayments 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 longer the term of the credit, reflecting the fact that the total cost is likely to be

greater and the customer is required to make payments for an extended period; and
- the greater the instances and frequency of credit, and the longer the period of time during which a customer has been given credit, reflecting the risk that repeated refinancing may signal borrowing has become unsustainable.

There may also be other factors that could influence how detailed a proportionate check should've been for a given application, including any indications of borrower vulnerability or foreseeable changes in future circumstances.

Next has described the affordability assessments it carried out and maintains this approach was proportionate to the credit being given and in line with the requirements of the regulator. While that may be true in some scenarios, what constitutes a proportionate assessment varies depending on the circumstances and I don't agree the affordability assessments were adequate in this case.

In 2019, the limit was increased to £3,000, a significant rise on the previous limit of £1,500. Also, only four months earlier, in June 2019, Next had decreased the limit significantly from £3,000 to £1,500. It says this decision was based on the scoring it received from Experian at the time and the fact it had concluded a £3,000 limit wasn't affordable so recently supports the view that further checks were in order before putting the limit back to that amount. In addition, and by its own admission, Next should have known Ms P was subject to a Trust Deed at this time. When these factors are taken into account, I don't think it was appropriate to have relied solely on information received from a credit referencing agency and I believe Next should have carried out further checks to assess affordability.

In particular, I think Next should have considered Ms P's income and expenditure to assess whether she could afford repayments in a sustainable way. One way this could have been achieved was by reviewing recent bank statements and we've obtained these from her to establish the sort of information Next would have discovered if it had carried out further checks at the time.

These show Ms P regularly spent all the money she received and her account balance was virtually nil ahead of each payday. The statements also reveal she had a returned direct debit from her energy provider in August 2019. The fact she didn't seem to have sufficient spare income to afford the repayments on increased credit and had recently missed a payment on a priority bill should in my view have been enough to prevent Next increasing the limit on her card.

In 2023, the limit was increased to £3,750, a significant amount of debt that's likely to require a more detailed affordability assessment than when the account was opened with a low limit of £150. A review of Ms P's credit report shows she'd taken on new credit commitments since 2019, including a new credit card and vehicle finance (with a sizeable monthly payment of £155) in the few months before this. This is information that should have been reflected in Next's affordability assessment.

Again, I think these considerations should have prompted Next to carry out further checks to consider Ms P's income and expenditure. As before, a review of her bank statements from the time indicates she didn't have sufficient disposable income to repay the increased credit in a sustainable way.

I've considered Next's additional comments made in response to the investigator's assessment and make the following points in response:

- The fact Next overlooked that Ms P was subject to a Trust Deed hasn't clouded my thinking. I believe the decisions to increase her limit in 2019 and 2023 were unaffordable for the reasons I've set out.

- I note Next's comments about the conduct of the account and this is a factor I'd have expected it to take into account when considering whether to increase the credit limit. But the fact Ms P kept up with payments on a lower amount of credit doesn't necessarily mean a higher limit will also be affordable, particularly when that limit is being doubled as it was in 2019.

- Ms P has told us there were times when she was only able to keep up with payments on the account because she borrowed money from her family. She also says this was how she afforded some of the larger payments made to reduce the account balance. I accept that Next didn't know this but, as I've explained, there were factors on both occasions that Next did know about (or should have done) that ought to have prompted a further assessment of affordability.

In summary, if Next had adequately assessed whether the additional repayments on the increased credit limits were affordable and sustainable, it's my view it shouldn't have lent further to Ms P in 2019 and 2023. It's for this reason that that I'm upholding this complaint.

I've also considered whether Next treated Ms P unfairly in some other way that may have disadvantaged her but I don't believe that to have been the case. In particular, I note Next pro-actively took steps to put things right when it identified it had previously overlooked the Trust Deed.

**Putting things right**

The principal aim of any award I make must be to return Ms P to the position she'd now be in but for the errors or inappropriate actions of Next. But that's not entirely possible here as the lending provided cannot be undone.

Because I don't think Next should have lent to Ms P, I don't think it's fair for her to pay interest or charges on the amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, Next now needs to take the following steps:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied since it was opened.

- If the reworking results in a credit balance, this should be paid to Ms P with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

  HM Revenue & Customs (HMRC) requires Next to deduct tax from any interest. It must provide Ms P with a certificate showing how much tax has been deducted if she asks for one. If Next intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance, Next should arrange an affordable payment plan with Ms P for the shortfall.

- Remove any adverse information recorded on Ms P's credit file relating to this credit, once any outstanding balance has been repaid.

I’m satisfied this represents a fair and reasonable settlement to this complaint.

## My final decision

For the reasons I’ve explained, I’m upholding Ms P’s complaint. Next Retail Limited should now put things right as I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms P to accept or reject my decision before 13 March 2024.

James Biles
**Ombudsman**