

The complaint

Mrs B complains Next Retail Limited (Next) irresponsibly provided her with an unaffordable catalogue shopping account.

Mrs B is represented by a claims management company, but for ease I'll refer to all submissions as though they are her own.

What happened

Mrs B was provided with two accounts with Next, in 2013 and 2020. Both Mrs B and Next have accepted our Investigator's jurisdiction findings that we can only consider the 2020 account and limit increases. So, the lending decisions I'm considering are:

Lending decision	Date	Credit Limit
Original limit	December 2020	£300
1 st limit increase	April 2021	£600
Limit decrease	December 2022*	

**Next decreased Mrs B's limit from December 2022 and by May 2023 it stood at £300*

Mrs B complained to Next in April 2023. She said Next had irresponsibly lent to her because had it completed reasonable and proportionate checks it would have identified the account was unaffordable for her.

Next didn't uphold the complaint. It said it completed proportionate checks at each lending event; and went on to make fair lending decisions. Mrs B didn't accept Next's response and referred her complaint to our Service for review.

Our Investigator upheld the lending decisions in 2020 and 2021. He said the information Next obtained within the checks it completed ought reasonably to have led to it not lending; and as such it didn't make a fair lending decision when providing Mrs B with this account.

Mrs B accepted the outcome; Next disagreed. In summary it maintained its argument that it made fair lending decisions based on the information it obtained. Next asked for an Ombudsman's review, so the complaint's been passed to me to decide.

As I've set out above my decision solely deals with the account opened in 2020.

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 Mrs B and Next are aware of this approach.

Next needed to take reasonable steps to ensure the lending it provided was responsibly lent to Mrs B. The relevant rules, regulations, and guidance at the time of each of Next's lending decisions required it to carry out reasonable and proportionate checks. These checks needed to assess Mrs B'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 fair lending decisions. 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 as part of its review when approving Mrs B with the limits, it completed a credit check to understand her existing credit commitments and how she'd managed her recent lines of credit. It has said at the limit increase it also took into account how Mrs B had been managing the account.

I've carefully considered the information Next obtained when completing its affordability assessment for the original lending decision; and I'm not persuaded its checks were proportionate in this instance. However, I've not gone on to consider what proportionate checks would likely have shown, because I'm satisfied the information it did obtain ought reasonably to have caused it concern, and to have identified Mrs B wasn't a suitable candidate to lend to.

I say this because as our Investigator set out, the credit check Next completed didn't suggest Mrs B was in control of her finances – both historically and recently – and was showing signs of financial difficulties.

The credit check identified Mrs B had defaulted on five accounts within the last six years; the most recent being just 12 months before this lending decision. While I accept a customer's financial circumstances can improve over a 12-month period to the point where providing lending may be reasonable in some instances (although likely with more detailed checks), this clearly wasn't the situation in Mrs B's individual case. I say this because the information Next obtained also detailed six accounts had been in a delinquent position, the most recent being the month before Next's lending decision. So, it's clear Mrs B was continuing to experience financial difficulties as recently as at least a month before this lending decision.

So, I consider this strongly suggests Mrs B's financial situation hadn't improved since she'd defaulted on one of her accounts 12 months before this lending decision; as she was still unable to maintain payments to her existing credit commitments. It therefore follows Next ought reasonably to have identified from the information it obtained that Mrs B was in financial hardship and by providing her with finance it would likely cause her financial harm.

I'm satisfied, from the information Next obtained in 2020, that Mrs B wasn't a suitable candidate to lend to; and it therefore follows I don't consider it made a fair lending decision when providing Mrs B with the original limit or the limit increase in 2021.

Putting things right

I don't consider Next Retail Limited should have provided this account to Mrs B, so it therefore follows it's not fair for it to apply any interest, fees or charges. However, I consider Mrs B 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 Mrs B would have owed after the above adjustments. Any repayments Mrs B has made should be used to reduce the adjusted balance
 - If this clears the adjusted balance any funds remaining should be refunded to Mrs B 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 Mrs B for the outstanding balance
- Once any outstanding balance has been repaid Next Retail Limited should remove all adverse information relating to this account from Mrs B's credit file

*HM Revenue & Customs requires Next Retail Limited to deduct tax from any award of interest. It must give Mrs B 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 Mrs B'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 Mrs B to accept or reject my decision before 27 February 2024.

Richard Turner
Ombudsman