

Case number: 470792

11 September 2017

## 1 Overview

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### 1.1 Dispute

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The applicant has a credit card account (credit account) with the financial services provider (FSP), which had an initial credit limit of \$5,500. The FSP subsequently approved a number of credit limit increases bringing the limit to \$25,500.

The dispute is about whether the FSP lent responsibly, in light of the applicant's gambling.

On 20 July 2017, the case analyst provided the parties with a recommendation in favour of the FSP. The applicant rejected the recommendation. In doing so he says the FSP:

- had a duty to monitor what the credit account was being used for
- should not have offered further credit where money was being spent on gambling.

### 1.2 Issues and key findings

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#### **Were the findings of the recommendation correct?**

The FSP assessed that the applicant could afford the repayments on the credit card and subsequent limit increases. The finding in the recommendation that the FSP lent responsibly was correct and is adopted in this determination. That issue has not been dealt with further.

#### **Did the FSP have an obligation to monitor the account for gambling?**

The FSP is not obliged to review or monitor what the credit account was being used for when approving credit limit increases. The FSP also has no obligation to prevent the applicant from using the credit account for gambling purposes.

### 1.3 Determination

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This determination is in favour of the FSP. If the applicant accepts this determination:

- within 14 days of his acceptance, he should provide details of his current financial position together with a reasonable repayment arrangement
- within seven days of receiving the information, the FSP should give genuine consideration to the applicant's proposal
- if the parties are unable to agree upon a reasonable repayment arrangement, the FSP is entitled to commence recovery action once the FOS file is closed.

## **2 Reasons for determination**

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### **2.1 Were the findings in the recommendation correct?**

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#### **The applicant could afford the credit account and increases**

I have decided this case on its merits, having regard to the relevant law, good industry practice, codes of practice and previous FOS decisions. I have taken into account all the material submitted by the parties. I am satisfied that the documentation I have relied on has been provided to both parties.

The case analyst's recommendation contains an accurate summary of the dispute, the issues to be determined, any applicable paragraphs of the Terms of Reference and any relevant law.

I agree with the case analyst's finding that the applicant demonstrated a capacity to service the credit account.

The applicant has not disputed the case analyst's finding that the FSP lent responsibly when it provided the increases. Based on all the available financial information, those findings are correct and that issue has not been dealt with further.

### **2.2 Did the FSP have an obligation to stop the applicant from gambling?**

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#### **The FSP did not have an obligation to monitor the account for gambling**

In rejecting the recommendation, the applicant says the FSP had an obligation to assess whether the credit limit increases were suitable. He accepts there is no obligation on the FSP to prevent him from gambling. The applicant says the FSP had an obligation to notice he was using funds lent to him to gamble, in which case no further credit limit increases should have been approved.

There have been a number of court cases where people have gambled away either their own money or money borrowed from an FSP. The person has sought to recover the funds gambled from either a gambling venue or an FSP. These cases have been unsuccessful from the gambler's point of view.

In one case, the Applicant was a regular at a gaming venue and would often cash cheques at the venue. He asked the venue to stop cashing his cheques to prevent him gambling. However, the venue ignored that request and cashed his cheques. The funds were gambled away.

The Court held that even though the gaming venue was aware of the patron's vulnerability to gambling, it did not have a duty of care to stop him from doing so. Nor was it obliged to follow his instructions to not cash his cheques. The court held that the law should not recognise a duty of care to protect someone from losing their money, where the loss occurs following a deliberate and voluntary act on the part of the person to be protected.<sup>1</sup>

In finding that there was no duty of care or unconscionable conduct, the court said even though the patron found it difficult, if not impossible, to control his urge to

continue gambling beyond the point of prudence, the patron was responsible for his own actions and could have taken steps to stop his gambling.

### **The FSP did not cause the applicant's loss**

In the same way, there was nothing preventing the applicant in this case from not gambling the money away.

It was the applicant's individual decision to use the funds to gamble. The relevant legal principles are such that the account holder must accept responsibility for her own actions in using the funds in this way and the FSP is not liable to refund the amounts withdrawn and used by the account holder.

### **The fact that other credit providers reduced his debts does not change the outcome**

The applicant also says other credit providers have reduced the amount he owes. He suggests these credit providers have done this based on his use of the account.

While other credit providers may have agreed to debt waivers, these decisions have no bearing on the credit account he has with the FSP. The FSP does not owe an obligation at law (or under the credit contract) to review/monitor how he uses his accounts. Its obligation is to consider his financial situation and whether or not he can afford any credit limit increase without incurring financial hardship. Therefore, the FSP is not required to provide any compensation or debt reduction.

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<sup>i</sup> See *Reynolds v Katoomba RSL All Services Club Limited* [2001] NSWCA 234 at para 17