DRN-3252477

The complaint

Mr M complains through his representative that J D Williams & Company Limited trading as Simply Be irresponsibly provided him with, and increased the credit limit on, a mail order account so he couldn't afford the repayments.

What happened

Simply Be provided Mr M with a mail order credit account on 26 December 2017. The initial credit limit was £125. This was then increased as follows:

20/02/2018 £125 - £225

15/05/2018 £225 - £400

10/07/2018 £600 - £750

Mr M began getting into difficulties over the payments from around March 2019 and he began exceeding the credit limit. He made a complaint through his representative that the credit was unaffordable.

Simply Be said it assesses all credit applications and credit limit increases applied using several sources of information, which includes information provided by a Credit Reference Agency. It also is very careful to use up to date information regarding a potential customer's financial status, along with other internal eligibility criteria that they must meet before it is able to offer a credit account or an increase to their credit limit. In Mr M's case it assessed that the initial limit was affordable. It increased the limit when the account was well maintained and its internal credit score and Mr M's external credit score was satisfactory. It has produced some records of the account history but the main records of the application aren't available having been disposed of after three years. It has produced a credit report up to date as of December 2021.

On referral to the Financial Ombudsman Service our investigator said that looking at Mr M's credit file at the time of the account application, he had a number of high interest credit facilities open, including several short-term lending facilities. He was also behind on payments and in a payment plan for some of the other credit facilities. Two of Mr M's accounts had defaulted and sold to a debt collection agency prior to the Simply Be account application being approved. Based on this, our investigator said that Simply Be shouldn't have approved Mr M for the account.

Simply Be didn't agree. it pointed out the it wouldn't be proportionate for it to carry out a full income and expenditure check for a credit limit of £125. And that it wouldn't be reasonable to say a defaulted account in the credit report is a reason to decline to provide the account.

The matter has been passed to me for further consideration.

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.

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did Simply Be complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the credit advanced in a sustainable way?

- If not, would those checks have shown that Mr M would have been able to do so?

- Bearing in mind the circumstances at the time of each application, was there a point where Simply Be ought reasonably to have realised it was increasing Mr M's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?

In reviewing this matter I've taken into account that the records of the application are incomplete. In particular I've seen no contemporary record of the checks Simply Be said it carried out. I would expect those records to be kept for six years though it would appear that Simply Be only kept them for three years.

In deciding whether an applicant can afford to repay any credit a basic income and expenditure assessment needed to be carried out, and I'm unsure why Simply Be argues it wasn't necessary for a £125 credit limit. Here, once that limit had been set my understanding is that for future credit limit increases as long as the consumer was managing their account well and had a satisfactory external credit score, this increase would be applied unless the consumer opts out. So whilst a small limit may be a minimal credit risk, a more detailed review may be necessary when the limit increased to around £750.

I have looked at the credit report obtained in December 2021. Since this contains records going back six years it's possible to discern that at the time of the application Mr M had three accounts that had defaulted in the previous six months, two communications and one credit card. In addition to this he had a substantial debt with a water company, an HP loan, an ordinary loan, and another credit card. Mr M also took out an additional loan in April 2018 (before the first increase) and two more in June 2018 (before the second increase). It's not possible now to reconstruct Mr M's credit commitments (because of the lack of records), but I would say that three recent defaults were on the face of it a reason to deny Mr M the credit in the first place especially as this the initial limit was a leader into increasing that limit.

I'm further not persuaded that Simply Be carried out proper affordability assessments. So I don't think Simply Be should have provided the account or increased the limit.

Putting things right

As I don't think Simply Be ought to have opened the account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I think Mr M should pay back the amounts they have borrowed. Therefore, Simply Be should:

- Rework the account removing all interest and charges that have been applied.

- If the rework results in a credit balance, this should be refunded to Mr M along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. Simply Be should also remove all adverse information regarding this account from Mr M's credit file.

- Or, if after the rework there is still an outstanding balance, Simply Be should arrange an affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the balance, any adverse information in relation to the account should be removed from their credit file.

*HM Revenue & Customs requires Simply Be to deduct tax from any award of interest.
It must give Mr M a certificate showing how much tax has been taken off if he 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

I uphold the complaint and require J D Williams & Company Limited trading as Simply Be to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 January 2023.

Ray Lawley
Ombudsman