

The complaint

Ms P, who is represented by a third party, says J D Williams & Company Limited (“J D Williams”), trading as Simply Be, irresponsibly lent to her. She has requested that the interest and late payment charges she has paid on two accounts she had be refunded.

What happened

This complaint is about two catalogue shopping accounts provided by J D Williams to Ms P. Account A was opened in July 2017 with Ms P being given an initial credit limit of £200. This limit was increased 8 times until it reached £2500 in July 2020. Account B was opened in August 2019 with Ms P being given an initial credit limit of £175. This limit was increased 4 times until it reached £1000 in July 2020.

J D Williams told us that a third account Ms P had complained about was a full cash only account that wasn't used for lending, so I won't be considering that account in this decision.

Ms P says she's unhappy that J D Williams continued to increase her credit limit on each account when she was in financial difficulty.

Our adjudicator partially upheld Ms P's complaint and thought that J D Williams ought to have realised that she wasn't in a position to sustainably repay any further credit on either account by the time it offered Ms P the increased credit limit on Account B in November 2019. J D Williams has disagreed, saying that it had no reason to think that Ms P was experiencing financial difficulties and explaining why Ms P was able to go over credit limit at around that time.

The complaint has therefore been passed to me.

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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website.

J D Williams needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Ms P could afford to repay what she was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that J D Williams should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount 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 *greater* the frequency of borrowing, and the longer the period of time during which a customer has been indebted (reflecting the risk that prolonged indebtedness may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Our adjudicator set out in some detail why he thought J D Williams shouldn't have provided Ms P with any additional credit from November 2019 onwards. J D Williams didn't entirely agree with what our adjudicator said.

Nonetheless, I've also looked at the overall pattern of J D Williams' lending history with Ms P, with a view to seeing if there was a point at which J D Williams should reasonably have seen that further lending was likely to be unsustainable, or otherwise harmful. If so, that would mean J D Williams should have realised that it shouldn't have further increased Ms P's credit limit on these accounts.

Having reviewed the complaint, I've decided to partially uphold this complaint on the same basis as our adjudicator. I will explain why.

J D Williams says that when Ms P opened each account there were no signs of financial difficulties based on the checks it carried out. Having reviewed those checks, and taking into account the opening credit limits of £400 (Account A) and £300 (Account B) she was given, I don't think there is enough to suggest it would have been unreasonable for J D Williams to have approved each account. J D Williams didn't however ask about Ms P's income, which is something that may have helped it begin to build a picture of Ms P's overall financial circumstances.

I've seen that Ms P didn't provide our adjudicator with her bank statements covering the time she had these accounts. That's something that would have further assisted our adjudicator in understanding Ms P's level of committed expenditure alongside her history of borrowing.

I agree with our adjudicator that for the first seven initial credit limit increases for Account A and up to the point of the first credit limit increase for Account B in November 2019, there wasn't enough to suggest that J D Williams had been lending irresponsibly to Ms P. I've seen that there were missed payments for both accounts before November 2019. I also agree that it would have been proportionate to carry out further checks to verify Ms P's income and expenditure. However, as things stand without having seen more details about Ms P's financial situation so as to understand that J D Williams might have seen, I've no way of knowing if such further checks would have shown that increases up to that point were unaffordable for Ms P.

I've also noted that, following missed payments in November and December 2019, Ms P also went over her credit limit for Account A, which at that point was £2250. That situation continued into 2020. In addition, J D Williams made further credit limit increases for Account B in February and April 2020. This happened even though Ms P was still at that point over her credit limit for Account A and was failing to pay back enough to take her balance back down below the credit limit. That situation continued up to May 2020. And even though J D Williams increased the credit limit for Account A to £2500 in July 2020, the amount Ms P owed to still exceeded her credit limit. At the same J D Williams increased the credit limit for Account B to £1000.

I think that had J D Williams carried out proportionate affordability checks at the time Ms P started to and then continued to exceed her credit limit, I think they would have likely shown that Ms P was experiencing difficulty in managing her financial situation, including meeting her daily living expenses and any other credit commitments. I say that given that Ms P has told us that her monthly income when these accounts were both opened was £700 with outgoings of £600. So I can see that by November 2019, with the requirement to make a total monthly payment of around £90, she would likely already be overstretched.

J D Williams has told us that Ms P started going over her credit limit for Account A because she was seeking to challenge several automatic direct debits as not being authorised. But in any event, J D Williams agrees that the credit limits on Account B ought not to have been increased after that. However, I remain of the view that the action taken by Ms P to withhold payments on Account A from late 2019 until and continuing into 2020, combined with the impact it had by way of taking her over her credit limit, remains consistent with the likelihood that Ms P was by then experiencing financial difficulty. I've also seen that Ms P missed making payments in May and June 2020, further worsening her position. It follows that the further increase to her credit limit, in July 2020, was also likely to have been unsustainable for her.

It follows that I think that Ms P lost out because J D Williams provided her with further credit from November 2019 onwards. In my view, J D Williams' actions unfairly prolonged Ms P's indebtedness by allowing her to use credit she couldn't afford over an extended period of time and the interest being added would only have the effect of putting her into further debt.

It follows that J D Williams should put things right.

Putting things right

- Rework Ms P's account to ensure that from 23 November 2019 onwards interest is only charged on balances up to the total credit limit of £2425 (Account A £2250 and Account B £175), including any buy now pay later interest, (being the credit limits that were in place before that date) to reflect the fact that no further credit limit increases should have been provided. All late payment and over limit fees should also be removed; and
- If an outstanding balance remains on the account once these adjustments have been made J D Williams should contact Ms P to arrange an affordable repayment plan for these accounts. Once Ms P has repaid the outstanding balance, it should remove any adverse information recorded on Ms P's credit file from 23 November 2019 onwards for each account.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Ms P, along with 8% simple interest per year on the overpayments from the date they were made (if they were) until the date of settlement. J D Williams should also remove any adverse information from Ms P's credit file from 23 November 2019 onwards.†

†HM Revenue & Customs requires J D Williams to take off tax from this interest. J D Williams must give Ms P a certificate showing how much tax it's taken off if she asks for one.

I am aware that Ms P is currently in an Insolvency Voluntary Arrangement ("IVA") and that her insolvency practitioner has expressed an interest in the compensation I have directed. I therefore remind Ms P of her obligation to comply with the terms of the IVA.

My final decision

For the reasons set out, I'm partially upholding Ms P's complaint. J D Williams & Company Limited should put things right in the way 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 4 May 2022.

Michael Goldberg

Ombudsman