

The complaint

Mr J complains that J D Williams & Company Limited lent to him irresponsibly. He says the lending was unaffordable for him

What happened

Mr J opened a catalogue shopping account with J D Williams in May 2016. Mr J says that J D Williams shouldn't have provided him with the credit. He complains that he was still able to use his account even when he had missed payments and his limit was increased during this time.

Our adjudicator partially upheld his complaint. They didn't think J D Williams had done anything wrong in its initial lending decisions, but by February 2018 they thought there were signs that he was in financial difficulty. The adjudicator thought that J D Williams shouldn't have allowed Mr J to make further purchases at that point and that it should have shown forbearance and taken steps to avoid a worsening of Mr J's financial position. The adjudicator's view was that J D Williams should compensate Mr J for the impact of not freezing his account in February 2018.

J D Williams disagreed. It said it did not have a record of Mr J contacting it at any point to discuss any financial difficulties. It accepted that Mr J's credit shouldn't have been increased in July 2018 and it considers it would be fair to only uphold Mr J's complaint from that point. As J D Williams disagreed with the view the complaint was passed to me to make a decision.

When I reviewed the case I provisionally decided that Mr J's complaint should have been upheld from earlier in the lending relationship. I wrote to all parties about this. J D Williams told me that it didn't have any further comments to make. Mr J didn't respond.

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 and I've taken that into account when I have considered Mr J's complaint.

Having done so, I have come to a different conclusion to our adjudicator. I think that J D Williams should have frozen Mr J's account much earlier – in October 2017. And I don't think it should have increased Mr J's credit limit at any point after that. I'll explain why I have reached this decision.

J D Williams needed to take reasonable steps to ensure it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr J could afford to repay what he 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, Mr J's lending history and Mr J's income and expenditure.

J D Williams has provided a copy of the checks it completed when opening Mr J's accounts and the results of checks it ran each month when it reviewed his lending limits. It says these show that Mr J didn't have any financial problems paying off his credit either with J D Williams or elsewhere.

Mr J opened his account in May 2016 with a low credit limit of £125. I've not seen anything to suggest that the credit check J D Williams completed at the time showed anything that would have stopped it from opening the account.

In August 2016 Mr J was using a large proportion of his credit limit and it was increased to £200. He had also missed a payment. I think it would have been proportionate for J D Williams to have verified Mr J's income in some way, either through a bank statement or payslip. We asked Mr J for copies of these documents, but he didn't supply them. So I can't say what J D Williams would likely have seen at that point. The same applies to the increases in September, October and November 2016 when Mr J's credit limit was increased to £300, £500 and £700 respectively.

In May 2017 Mr J's credit limit was increased to £1,100. He was using a high proportion of his credit limit and given the large increase from the previous month's credit limit I think it would have been proportionate for J D Williams to have found out more about Mr J's committed expenditure, such as his accommodation and utilities expenses. However, again, I can't tell what J D Williams would have seen if it had done this, as Mr J has not provided this information to this service.

Our adjudicator noted that in October 2017 J D Williams ought to have become concerned about the number of missed payments on Mr J's account. These led to his balance tipping over his credit limit of £1,100 because of the charges applied. Again, our adjudicator said more checks should have been done, but that they couldn't know for sure what would have been seen if J D Williams had done them.

Our adjudicator thought that by February 2018 it was evident Mr J was struggling to manage his existing credit with J D Williams. Our adjudicator noted further missed payments and that the balance had not significantly reduced over a period of time. At this point, our adjudicator thought that there was a significant risk that Mr J wouldn't have been able to repay what he owed within a reasonable period of time. They thought that at this point J D Williams shouldn't have allowed new purchases at all after February 2018 and that the account should have been frozen. The adjudicator thought that J D Williams should remove all interest and charges (including any Buy Now, Pay Later interest) incurred on the account since February 2018.

J D Williams disagreed. It said that this was effectively an arbitrary point to choose. However, it agreed that in July 2018 it shouldn't have increased Mr J's limit again and it accepted that it should have frozen interest and charges on Mr J's account from that point.

I disagree with both these views. I think that J D Williams should have frozen Mr J's account in October 2017. At that point Mr J had missed four out of five of his minimum repayments and he was utilising more than 100% of his credit limit, due to charges and interest added on. He went on to miss a further minimum payment in November 2017 before making it 28 days later. Throughout this time Mr J was exceeding his account limit. Following that single payment Mr J went on to miss a further five months of minimum payments.

Irrespective of what happened afterwards, I think it was clear by October 2017 that Mr M was struggling to meet his repayments and was likely struggling financially. And I think it was clear that he would have difficulty to pay off his balance within a reasonable period of time. He wasn't making any inroads into paying off the balance of his account.

J D Williams said that it wasn't fair to uphold this complaint because interest and charges were added. It said that a decision to uphold should only be made at a point where the credit limit was increased. I disagree. J D Williams had a duty to ensure that its lending remained sustainable throughout the agreement, and not just at the point of increasing the credit limit.

In these circumstances I think there was as significant risk in October 2017 that Mr J wouldn't have been able to repay what he already owed within a reasonable period of time. So I think it would have been reasonable for J D Williams to have shown forbearance and taken steps to avoid worsening Mr J's financial situation at this point. In the absence of J D Williams taking action at the time, I think this would have likely included preventing further purchases on credit and to have stopped charging interest and late payment fees.

Putting things right

As I uphold this complaint in part, I think to put things right, it's fair and reasonable for J D Williams to refund any interest and charges incurred by Mr J as a result of the credit unfairly granted to him.

I don't think J D Williams should have allowed new purchases at all after October 2017 and I think the account should have been frozen at that time. To reflect this, J D Williams should remove all interest and charges (including BNPL interest) incurred on the account since October 2017.

J D Williams should work out how much Mr J would have owed after the above adjustments. Any repayment Mr J made since October 2017 should be used to reduce the adjusted balance. If this clears the adjusted balance any funds remaining should be refunded to Mr J along with 8% simple interest* - calculated from the date of overpayment to the date of settlement.

If after all adjustments have been made Mr J no longer owes any money then all adverse information regarding this account should be removed from the credit file from October 2017. Or, if an outstanding balance remains, J D Williams should look to arrange an affordable payment plan with Mr J for the outstanding amount. As the debt was sold to a third party, J D Williams are to either repurchase the debt or liaise with the third party to ensure the above steps are undertaken. Once Mr J has cleared the balance, any adverse information should be removed from the credit file.

*HM Revenue & Customs requires J D Williams to deduct tax from any award of interest. It must give Mr J a certificate showing how much tax has been taken off if he asks for one.

My final decision

I partially uphold Mr J's complaint. J D Williams must put things right in the way I have described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 24 June 2022.

Sally Allbeury

Ombudsman