

The complaint

Mr F is being represented by a claims manager. He's complaining about Shop Direct Finance Company Limited trading as very because he says it lent to him irresponsibly.

What happened

In June 2016, Mr F opened a catalogue shopping account with Shop Direct with an initial limit of £750. The limit was first increased to £1,250 in July 2017 and there were several subsequent increases with the limit reaching £4,700 by 2021.

Our investigator concluded the complaint should be partially upheld. She was satisfied the initial decision to open an account for Mr F was reasonable but felt Shop Direct should have carried out more detailed checks before increasing the limit in 2017. If it had carried out additional checks, she concluded it shouldn't have offered further credit.

Shop Direct didn't accept the investigator's assessment and made the following key points:

- In 2017, Mr F's income was validated as £35,000. Further checks returned a verified income of £36,000 in September 2017, £38,500 in December 2018 and £42,000 in March 2021.
- He had no other arrears either internally or externally.
- He paid £260 off the balance of the card in June 2017, the month before the limit was increased.
- Throughout the time he held the account, Mr F didn't have arrears, often paid over the minimum amount and his management of the account was very good.

Mr F's representatives confirmed he accepted the investigator's assessment.

The complaint has now been referred to me for review.

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 overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Before lending to Mr F, Shop Direct was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, there are two key questions I need to consider:

- Did Shop Direct complete reasonable and proportionate checks to establish that Mr F would be able to repay the credit in a sustainable way?

- If so, was the decision to lend fair and reasonable?
 - If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?
- Did Shop Direct act unfairly or unreasonably in some other way?

The rules, regulations and good industry practice in place at the time the credit was approved required Shop Direct to carry out a proportionate and borrower-focused assessment of whether Mr F could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant Shop Direct had to satisfy itself that making payments to the credit wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of him making payments, it had to consider the impact of the repayments on Mr F.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

In general, I think a reasonable and proportionate assessment should be more thorough:

- the lower the customer's income, reflecting that it could be more difficult to make repayments 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 longer the term of the credit, reflecting the fact that the total cost is likely to be greater and the customer is required to make payments for an extended period; and
- the greater the instances and frequency of credit, and the longer the period of time during which a customer has been given credit, reflecting the risk that repeated refinancing may signal borrowing has become unsustainable.

There may also be other factors that could influence how detailed a proportionate check should've been for a given application, including any indications of borrower vulnerability or foreseeable changes in future circumstances.

Shop Direct has described the information it gathered to assess whether Mr F's credit was affordable before it was offered. It says the decision to approve initial application was based on the information contained in the application and obtained from credit reference agencies (CRAs). And that the decisions to increase the limit were based on the information it had available, including CRA and account management data. Shop Direct says these checks were proportionate to the credit being offered.

In view of the information available and the comparatively low initial limit, I share the investigator's view that the decision to approve credit for Mr F at the outset was fair and reasonable. Neither party has disputed this point so I won't comment on it further here.

Turning to the decision to increase the limit in July 2017, I think there were factors that should have prompted Shop Direct to carry out further checks before approving further credit for Mr F and I don't agree the affordability assessment was proportionate in this case. In my view, a combination of the following factors should have prompted further investigation:

- While the initial limit was relatively modest, the new limit was significantly higher.
- The monthly CRA data Shop Direct has provided to us is limited in terms of its scope and the timescale covered as it doesn't start until May 2017. But what it does show is that Mr F's non-mortgage debt was slowly increasing in the months before the increase and that his mortgage debt increased significantly around that time.
- The CRA data also shows Mr F had opened as many as seven new accounts in the previous 12 months, potentially indicating he was becoming more dependant on credit.

I can't know exactly what further checks Shop Direct might have carried out at the time, but I think a consideration of Mr F's actual income and expenditure would have been reasonable. So we've obtained copies of his bank statements prior to the lending to establish what information could reasonably have been discovered.

A review of the statements shows Mr F was consistently living in his overdraft during this period, often overdrawn by more than £2,000 and even his monthly wages weren't sufficient to return him to a positive balance. The statements show evidence of considerable outgoings to finance existing debt and evidence of payments to and from family members that could indicate he was borrowing and repaying funds. If Shop Direct had seen this information, it's my view that it shouldn't have lent further to Mr F.

Moving forward from 2017, The CRA data supplied shows Mr F's external debt increased significantly during the period Shop Direct was continuing to increase the account limit. Non-mortgage debt was £14,581 in July 2017 and had increased to more than £46,000 by the time of the last limit increase in October 2021. Mr F's mortgage debt also increased during this period. As its checks showed his verified income wasn't increasing significantly, it follows that I don't think it was appropriate for Shop Direct to offer the later increases without more detailed checks either. A review of Mr F's bank statements throughout the period show his situation never significantly improved and he was consistently operating with an often substantial overdraft on his current account.

In summary, if Shop Direct had adequately assessed whether the credit repayments were affordable and sustainable, it's my view it shouldn't have increased the limit in 2017 or subsequently. It's for this reason that that I'm partially upholding this complaint.

I've also considered whether Shop Direct treated Mr F unfairly in some other way that may have disadvantaged him but I don't believe that to have been the case.

Putting things right

The principal aim of any award I make must be to return Mr F to the position he'd now be in but for the errors or inappropriate actions of Shop Direct. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think Shop Direct should have lent to Mr F, I don't think it's fair for him to pay interest or charges on the amount borrowed. But he has had use of the money that was lent, so I think it's fair he repays the amount borrowed (without the addition of interest or charges).

To put things right, Shop Direct now needs to take the following steps:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied after the limit increase in July 2017 on balances over £750.

- If the reworking results in a credit balance, this should be paid to Mr F with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires Shop Direct to deduct tax from any interest. It must provide Mr F with a certificate showing how much tax has been deducted if he asks for one. If Shop Direct intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance in excess of £750, Shop Direct should arrange an affordable payment plan with Mr F for the shortfall.
- Remove any adverse information recorded on Mr F's credit file after July 2017 relating to this credit, once any outstanding balance over £750 has been repaid.

I'm satisfied this represents a fair and reasonable settlement to this complaint.

My final decision

For the reasons I've explained, I'm upholding Mr F's complaint in part. Subject to his acceptance, Shop Direct Finance Company Limited trading as very should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 26 March 2024.

James Biles
Ombudsman