

## The complaint

Mrs H complains that Liverpool Victoria Financial Services Limited (“LVFS”) irresponsibly gave her a credit card and subsequent credit limit increases that she couldn’t afford to repay.

## What happened

In March 2001, Mrs H applied for a credit card with LVFS. She was given an initial credit limit of £2,000. The credit limit was increased at least twice. This was to £4,000 in around 2003 and to £5,500 in around 2004.

Mrs H entered into a debt management plan in 2006 as she had a significant amount of debt and this credit card account was included in the plan. LVFS says it suspended any further interest and charges at this point. In around 2008 LVFS says it sold the outstanding debt to a third party and in around 2010 it ceased all its banking services.

In 2023, Mrs H complained to LVFS to say she should not have been provided with the credit card and limit increases as they weren’t affordable to her.

I sent Mrs H and LVFS my provisional decision on 5 June 2024. I explained why I was planning to uphold the complaint in part. I explained that I didn’t think I had jurisdiction to consider any complaint about the account opening, but I could look at a complaint about the two limit increases. In relation to those, I said:

*I’m required to take into account relevant rules, regulations, law, guidance and codes of practice as well as what I consider to have been good industry practice at the time. It is worth highlighting that the two limit increases happened a long time ago, in 2003 and 2004 respectively (over twenty years ago). With this in mind, the requirements on lenders was less prescriptive when it came to responsible lending and it wouldn’t be fair and reasonable for me to retrospectively apply rules, regulations and guidance from now to what happened twenty years ago.*

*The Banking Code was a voluntary code that firms could subscribe to at that time. It set out best practice for financial firms to follow when lending to its customers. It appears LVFS were not subscribers to the Banking Code (and it wasn’t required to be). But despite this, I think that it represents a reasonable starting point when considering what would have been good industry practice at the relevant time.*

*The Banking Code set out that before granting credit (including increasing a credit card limit), lenders should assess whether they feel the consumer can repay that borrowing. To do this it said lenders should take into account one or more of the following (but not necessarily limited to): the consumer’s income and financial commitments, how they handled finances in the past, information from credit reference agencies, information the consumer provides and credit scoring.*

*It set out that there was no expectation to do all of these things as not every measure will always be necessary. But I take from this that before increasing Mrs H’s credit limit good industry practice at the time would have been to make some reasonable*

*assessment of her ability to repay the borrowing. In order to be able to do that, I would have expected LVFS to have gained some understanding of Mrs H's income and outgoings.*

*Given the amount of time that has passed LVFS says it no longer holds any records of the checks it completed. I don't find this surprising or unreasonable especially as it ceased to operate these types of accounts more than a decade ago. And I've kept this in mind when thinking about what is fair and reasonable in all the circumstances of this case.*

*For completeness, neither LVFS nor Mrs H has been able provide sufficient evidence to demonstrate exactly how many credit limit increases occurred or when. However, LVFS has been able to provide a monthly end balance from account opening and some copies of statements that had been sent to her. From the available evidence it appears the initial limit of £2,000 was increased at least twice. Having reviewed the account balance history, I'm persuaded that an increase to £4,000 likely took place in around June 2003 and another increase to £5,500 took place in around July 2004.*

*I say this because Mrs H has told us she never went over her credit limit and up until June 2003 her balance remained close to £2,000. In June 2003, it jumped to just under £4,000 indicating this is likely when the limit was increased. Her balance then remained at broadly that level until July 2004 when it increased to around £5,300, once again suggesting this is when a further limit increase was granted. I've therefore used these two dates as the points at which LVFS likely made their lending decisions.*

*It appears that LVFS likely had some understanding of what Mrs H's income might have been. She had originally declared an annual income of around £17,000 on the original credit card application. I think it's reasonable to assume this is the figure it likely used when assessing the affordability of the limit increases. In relation to her outgoings, I think it would have been reasonable for LVFS to have at least got a basic understanding of Mrs H's other financial commitments. LVFS has told us that it would likely have completed a credit check when assessing affordability.*

*Mrs H has provided us with a copy of her credit file dated from July 2004 which shows the position of her unsecured borrowing at that point in time. This credit file happens to be from around exactly the time of when the final limit increase to £5,500 likely took place. I therefore think I can place significant weight on this evidence as an indicator of what LVFS would most likely have discovered about Mrs H's financial circumstances at the time.*

*The credit file shows that including the LVFS credit card, Mrs H held 14 separate credit card accounts, a personal loan and several mail order accounts. Most of the revolving credit facilities were close to their respective limits. In total, Mrs H owed in excess of £60,000 in unsecured credit. This was a significant level of borrowing, especially when taken in context of what her income at the time appeared to be and the number of different credit accounts she was required to pay.*

*Taking all of this into consideration, I'm persuaded that LVFS didn't make a fair lending decision when it increased the limit to £5,500 in around July 2004. Even basic enquiries into her existing credit commitments and income would have shown that Mrs H was already overindebted and would be unable to sustainably repay further credit. Regarding the previous limit increase in around June 2003, there is even more limited evidence available. I say this because the credit report from 2004 that Mrs H supplied doesn't provide details of the balances of her credit commitments*

*at an earlier point in time. However, I can see from the report that all but one of those accounts had been active at the time of the limit increase in June 2003.*

*I accept that it's possible the total amount of unsecured debt Mrs H might have owed a year earlier may have been less than the approximately £60,000 she owed in 2004. However, given that she held broadly the same number of accounts, I'm not persuaded that her outstanding debt was likely to be significantly less so as to suggest that LVFS likely acted fairly and reasonably in increasing the credit limit in 2003.*

*I'm persuaded that any reasonable enquiries (as would have been good industry practice at the time) concerning Mrs H's ability to repay the borrowing would have revealed the substantial number of unsecured credit commitments she held. When considering her level of income, it ought to have been clear she could not afford to take on further borrowing without falling into financial difficulty. In fact, I think it ought to have been reasonably clear that she was already in significant financial difficulty at that stage even with the limited information I have available now.*

*For these reasons I think LVFS acted unfairly when it increased Mrs H's credit limit on her credit card beyond the original £2,000 limit that had been granted. I therefore think it now needs to put things right.*

*As Mrs H has had the benefit of the borrowing under the credit card, I think it's fair she repays the capital amounts she borrowed. As LVFS shouldn't have allowed Mrs H to borrow more than £2,000, I think it's fair that it also refunds any interest that it applied on borrowing exceeding £2,000 (for clarity, it can still retain any interest charged on the first £2,000 of each monthly balance). Further, it should refund any charges (such as late payment or over limit fees) it applied which have occurred while Mrs H's balance exceeded £2,000.*

*It appears that Mrs H still owes around £4,000 on this particular debt. This suggests that it's unlikely Mrs H has repaid all of the capital amounts she borrowed and has therefore likely not been deprived of funds she should have been entitled to (as a result of having paid interest and charges she shouldn't have). I'm therefore not currently minded to direct a payment of interest on the refund of interest and charges.*

*I note the debt has been sold by LVFS and it no longer provides this type of credit card facilities. Further, it appears the debt has been sold on several times since and therefore LVFS has no relationship with the current owner of the outstanding debt. LVFS should therefore pay any refund directly to Mrs H so she can use it to reduce any liability she has with the new owner of the debt.*

Mrs H didn't respond to my provisional decision. LVFS didn't agree with it. In summary, it said:

- There was no expectation set in the Banking Code that all of the various checks it listed had to be completed by lenders.
- While Mrs H has shared a copy of a credit file, there were, and still are, more than one credit reference agency who often hold different data. There was no requirement on LVFS to check with all credit reference agencies before lending and at the time of lending to Mrs H its checks didn't indicate her debt was outside of her control.
- When Mrs H contacted LVFS in June 2006 to explain her financial difficulties, it immediately gave her assistance by stopping interest and agreeing a repayment plan.
- Shortly after the limit increases Mrs H completed a balance transfer from another

credit card to LVFS, which it believes would likely have been at a 0% interest offer and she had therefore benefitted from cheaper borrowing.

- Should the complaint still be upheld, LVFS would need additional guidance on the proposed redress as it no longer holds enough account information for Mrs H to calculate the suggested remedy.

### **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 outcome I did in my provisional decision and for the same reasons. For completeness, I'll address the additional points LVFS has made and explain why they don't change my view on what a fair and reasonable outcome ought to be.

LVFS has set out their understanding of the expectations within the Banking Code. However, these don't appear to differ from what I said in my provisional decision. I agree that it set no expectation that everything it listed needed to be completed in every lending decision. But given LVFS already had some understanding of what Mrs H's income was (from her application) and LVFS says it would have completed a credit check, it seems it had the information available to it that I said it ought to have reasonably gathered before lending.

LVFS says the different credit reference agencies can hold different data. I agree that is a possibility and I also agree it wasn't required to carry out checks with each credit reference agency. But we don't know what information LVFS did see at the time of the limit increases. It accepts it would have obtained data from a credit reference agency so I think the report Mrs H has provided is a reasonable proxy for what LVFS likely would have seen and it is possible that the report has come from the same agency LVFS would have used. I accept it's equally possible that LVFS used a different agency who reported slightly different information to LVFS. However, even if that were the case, I find it very unlikely that the other credit reference agencies would have held such significantly differing information so as to demonstrate that Mrs H's unsecured borrowing was not unsustainable.

LVFS appears to be saying that because it agreed to increase the limits the checks it did must not have revealed any indebtedness concerns and that this is supported by the fact that it did stop interest as soon as Mrs H told it she was struggling. But I don't agree that it is as straightforward as that, nor that LVFS actions in 2006 demonstrate it didn't act unfairly in 2003 and 2004.

LVFS says it took action when Mrs H told it about her difficulties. But it didn't do this proactively, which shows the opposite of what LVFS are trying to argue. It needed someone else (Mrs H herself) to point out to LVFS that the amount of unsecured debt she had was too much. Further, just because LVFS took the decision to increase her borrowing in 2003 and 2004 does not automatically mean it acted fairly and reasonably.

From everything I've seen, Mrs H's unsecured borrowing was at a significant and detrimental level compared to her income during both credit limit increases. I've not seen anything to persuade me that LVFS wouldn't have been reasonably aware of this following the credit checks it says it completed at those times. While I accept LVFS took positive steps to help Mrs H when she reached out for help in 2006, I don't agree it acted fairly and reasonably when it increased the credit limits in 2003 and 2004. It therefore needs to put things right.

LVFS says that Mrs H benefitted from lower interest rates by transferring balances to it from other providers. While that might be the case (and I've seen some statements which suggest that was a possibility) those promotional rates appear to have been temporary and it was still

increasing Mrs H's overall indebtedness as Mrs H wasn't closing the other credit card facilities. So, I'm not persuaded this makes any difference to the overall outcome I've reached. However, I do think it is relevant to how LVFS ought to calculate any refund.

### **Putting things right**

LVFS says it doesn't have sufficient account data to calculate the redress I've suggested and would like some clarification on how it should work this out.

I think to put things right LVFS should refund all interest and charges it has applied to the credit card account on balances above £2,000 (the opening credit limit). LVFS says it doesn't have the account statements for that time and I accept that, given the amount of time that's passed. But, it has been able to provide some sporadic copy statements from 2003, 2004 and 2005 as well as the monthly end balances for every month from account opening.

LVFS has provided a statement from October 2003. This appears to show that Mrs H made two balance transfers in June 2003 (following the first limit increase) and that these balance transfers had a promotional 0% interest free period, although the length of that interest free period is unclear. The total of these two balance transfers was around £3,500. This promotional rate appears to have still been in place in December 2003 but had finished by June 2004. The remainder of Mrs H's balance attracted barely any interest (presumably because her minimum payment cleared most of the interest bearing purchase balances) and in October 2003 she was charged only 81 pence in interest.

There are no available statements between December 2003 and June 2004 to show exactly when her interest free period ended on her balance transfers. But given interest had been charged on almost the whole balance for the month of May 2004, it was at the latest in that month. I'm mindful that this all took place twenty years ago and that LVFS understandably have limited records. Taking that into account, I think it's fair and reasonable to assume that the balance transfers were interest free until May 2004 – unless Mrs H can demonstrate otherwise.

It seems that Mrs H's interest bearing balance for purchases between June 2003 and May 2004 was very low, as the majority of the balance was made up of interest free borrowing. I therefore don't consider that she suffered any loss as a result of the first limit increase until May 2004 when the interest free period ended on those balance transfers. This means that any refund of interest should be calculated from that date (unless Mrs H can show to LVFS by way of historic statements that the promotional zero percent rate ended earlier).

The statements show that the standard interest rate on her balance was calculated at 1.167% per month in May 2004, and by June 2005 this had gone up to 1.240% per month. So, I consider it reasonable for LVFS to use these interest calculations when working out how much interest Mrs H was charged. It can use the end balances it has provided from May 2004 through to June 2006 (when it stopped charging interest altogether) to work out how much interest should be refunded each month. For example, in the month of October 2004, Mrs H's balance was £5,033.93 so the level of interest to be refunded for the month of November 2004 ought to be the interest that was charged on £3,033.93 (the total balance minus the first £2,000 for which LVFS can retain the interest charges) at the rate of 1.167% per month as indicated on the credit card statements.

I accept that this method won't necessarily produce the exact refund that might be due if all the credit card statements were available, particularly as it won't be possible to calculate when in each month payments were made or new purchases added. But in the absence of any better records of exactly what happened, I think this is the fairest way to calculate how

much interest Mrs H is likely to have overpaid as a result of the unfair lending decision.

I've not seen anything to suggest LVFS applied any charges other than interest onto her borrowing, so I consider it is just the additional interest that LVFS needs to refund from May 2004 to June 2006.

### **My final decision**

For the reasons given above, I uphold this complaint and direct LVFS to:

- Refund interest charged on balances exceeding £2,000 from May 2004 to June 2006 in the manner set out above.
- If Mrs H can provide copy statements to LVFS showing that her interest free promotional rate ended at a different time between December 2003 and May 2004, LVFS should instead calculate the interest refund from that earlier date where the promotional rate ended.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 31 July 2024.

Tero Hiltunen  
**Ombudsman**