DRN-3133084

The complaint

Mr P has complained that JD Williams & Company Limited trading as Jacamo irresponsibly lent to him.

What happened

Mr P opened a shopping account with JD Williams in August 2016. His account limit was initially very low - £150. Over the course of the next three years Mr P's account limit was increased eight times until, in July 2019, it was £2750.

Mr P says that he couldn't keep up with the payments and that he got further into debt trying to meet them. Mr P says that JD Williams shouldn't have lent to him. He says that he tried to contact JD Williams to discuss his financial difficulty, but he was told he couldn't be provided with a payment schedule and that not paying would affect his credit file.

JD Williams says it did all the necessary checks before it lent to Mr P – and when it increased his credit limit. JD William says that it had no record of Mr P contacting it to discuss his financial difficulties.

Our adjudicator thought that Mr P's complaint should be partially upheld. They thought that the initial credit given to Mr P was acceptable, but that by the time his credit was increased for the fourth time, JD Williams didn't act fairly or reasonably in doing so. They also said that there wasn't evidence available to suggest JD Williams had refused to help him when he was in financial difficulty.

Our adjudicator said that JD Williams should pay back interest and charges it made as a result of the credit that was unfairly extended to Mr P.

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 considered Mr P's complaint.

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 Mr P 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 and Mr P'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 JD Williams should fairly and reasonably have done more to establish that any lending was sustainable for Mr P. These factors include:

- Mr P'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 amount due to be repaid, reflecting that it could be more difficult to meet a higher repayment from a particular level of income;
- The frequency of borrowing and the length of time Mr P had 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 that the lending was unsustainable.

Our adjudicator set out in some detail why they thought JD Williams shouldn't have provided Mr P with any further increases in credit from January 2017 onwards. JD Williams said that the checks it completed when Mr P's credit was extended were sufficient and that it is inappropriate to say that income and expenditure checks should have been completed, because it is not explicitly required in CONC (the Consumer Credit sourcebook which sets out the obligations of businesses engaging in credit-related activities). JD Williams stated that the full credit limit offered was never fully utilised and Mr P often paid more than the minimum payment due. It says that was how it monitored the account to ensure that the lending was suitable.

When Mr P opened his account in August 2016, JD Williams has told us there were no signs of financial difficulties based on the checks it did. Having reviewed the checks, I don't think there is anything to suggest that it would have been unreasonable for JD Williams to have approved the account. JD Williams didn't ask about Mr P's income, and this may have helped it begin to build a picture of Mr P's financial circumstances. But even if it had, at this stage, I don't think it would have made a difference to its decision to extend the credit. Mr P's income was around £1,400 a month and the initial credit limit was £150.

In November 2016, JD Williams increased Mr P's credit limit to £250. In December 2016 it increased the limit to £400. And in early January 2017 it increased Mr P's credit limit to £600. JD Williams did a credit check before each increase. The credit check showed that there was a historic default on Mr P's credit file. But the account history shows that Mr P was making regular payments above the minimum amount required which showed he was maintaining the account well. While I think it would have been appropriate for JD Williams to have checked Mr P's income for these limit increases (to help build a picture of his circumstances) I haven't seen anything to suggest that JD Williams ought to have thought the credit was unaffordable for Mr P at this time. So I don't think JD Williams did anything wrong providing these increases.

However, in late January 2017 the credit limit was raised to £900. And then in February 2017 it was increased to £1,300. I think it would have been proportionate for JD Williams to have found out more about Mr P's committed expenditure, such as his living costs, at this point as well as his income. I say this because at this stage JD Williams appears to have still had no understanding of what Mr P's financial circumstances were outside of the credit check it completed. I've seen that in January 2017, Mr P had been significantly overdrawn on his current account for a prolonged period of time, I think it's likely this would have been visible on any credit check JD Williams completed. This would indicate Mr P would likely be repaying JD Williams with other credit (his overdraft) rather than from any disposable income he may have had. For this reason, I think it was proportionate for JD Williams to have carried out more thorough checks before lending.

I can't be sure what JD Williams would have found out if it had asked. I think it would be reasonable to place significant weight on the information contained in Mr P's bank statements to indicate what most likely would have been disclosed.

Having reviewed three months of bank statements leading up to the lending decision in late January 2017 I can see that Mr P's committed expenditure was around £1,830 for things like rent, council tax, utilities and food. A joint party was also responsible for some of that expenditure and I can see they made regular payments of around £500 into the account. However, this still didn't leave Mr P with a reasonable amount of disposable income to sustainably afford the additional borrowing.

So I don't think it was fair or reasonable for JD Williams to have increased the limit from 31 January 2017.

Mr P has also said that he tried to contact JD Williams to discuss his financial difficulties and to enquire about getting a payment extension but was informed it would affect his credit score negatively.

JD Williams has provided us with copies of the contact notes for Mr P's account and have said they have no record of Mr P contacting it to advise of his difficulties.

I have reviewed the contact notes and cannot see any evidence that Mr P made contact with JD Williams about his financial difficulties before he raised this complaint with them in December 2019. I note that the account was repaid in full on 6 November 2019 and no further purchases have been made since then. So I don't think JD Williams acted unfairly in respect of this element of Mr P's complaint.

Putting things right

I think it's fair and reasonable for J D Williams to refund any interest and charges incurred by Mr P as a result of the credit unfairly extended to him. I don't think the limit should have been increased from 31 January 2017 onward therefore J D Williams should:

- remove any interest and charges incurred after 31 January 2017 as a result of any increases (including any buy now pay later interest). That is, J D Williams can only add interest accrued on the balance up to the credit limit of £600 - being the credit limit before 31 January 2017.
- J D Williams should work out how much Mr P would have owed after the above adjustments. Any repayment Mr P made since 31 January 2017 should be used to reduce the adjusted balance.
- If this clears the adjusted balance any funds remaining should be refunded to Mr P along with 8% simple interest per year* - calculated from the date of overpayment to the date of settlement.
- All adverse information regarding this account should be removed from the credit file from 31 January 2017.

*HM Revenue & Customs requires J D Williams to deduct tax from any award of interest. It must give Mr P 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 think JD Williams acted unfairly when it extended further credit to Mr P on 31 January 2017 and on each occasion after that. To put this right I direct JD Williams & Company Limited, trading as Jacamo, to pay compensation as explained in ‘How to put things right’.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 14 March 2022.

Sally Allbeury
Ombudsman