DRN-3173135

The complaint

Mr M says J D Williams & Company Limited ("J D Williams") irresponsibly lent to him. He has requested that the interest and late payment charges he paid on his account be refunded.

What happened

Your text here This complaint is about a catalogue shopping account provided by J D Williams to Mr M. The account was in November 2017 with Mr M being given an initial credit limit of £175. This limit was increased 7 times until it reached £1500 in December 2018.

Mr M says he's unhappy that J D Williams continued to increase his credit limit on each account and didn't make proper checks to find out if he was in financial difficulties.

J D Williams says it carried out enough checks when it agreed to give Mr M his account and also each time it increased his credit limit.

Our adjudicator partially upheld Mr M's complaint and thought that J D Williams ought to have realised that Mr M wasn't in a position to sustainably repay any further credit on his account by the time it offered Mr M the increased credit limit in December 2018. J D Williams has said it will accept our adjudicator's view but Mr M remains unhappy with their finding.

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 Mr M 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 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 thought that the first increase to Mr M credit limit on the account, in December 2017, didn't show or suggest irresponsible lending by J D Williams. She also thought that for the second to sixth increases, which took place between January and July 2018, there wasn't enough to show that J D Williams shouldn't have increased his credit limit on each of those occasions. However, our adjudicator noticed that in January 2018 Mr M had a default recorded against another account he had, after the first credit limit increase. And as J D Williams gave Mr M further credit limit increases, he began to use up more of his available credit limit. Overall, however, our adjudicator thought that there wasn't enough to show that Mr M was having financial difficulty to the extent that J D Williams shouldn't have increased is credit limits over this period. Having reviewed the complaint in detail, I've reached the same outcome as our adjudicator did and for the same reasons.

Our adjudicator also set out in some detail why she thought J D Williams shouldn't have provided Mr M with any additional credit from December 2018 onwards, when Mr M's credit limit was increased to £1500. She noted that in June, October and November 2018 Mr M had started to pay less than the minimum payment required and considered this ought to have put J D Williams on notice that he might be getting into difficulty with making payments, including those to other lenders. Even though from what I've seen the checks carried out by J D Williams didn't show any new defaults elsewhere, I think the missed payments alone were likely enough to raise a concern with J D Williams so that it shouldn't have given Mr M another credit limit increase.

J D Williams said the credit limits it set were affordable for Mr M and there were no periods of consecutive or sustained missed payments. It also said that the fact Mr M encountered financial difficulties was not due irresponsible lending by J D Williams and that his credit history with it and other creditors showed he was able to manage his account. It also says that Mr M's credit score remained positive.

In making my decision I've looked at these points as well as the overall pattern of J D Williams' lending history with Mr M, with a view to seeing if there was a point at which J D Williams should reasonably have seen that further lending was likely unsustainable, or otherwise harmful. If so, that would mean J D Williams should have realised that it shouldn't have further increased Mr M's credit limits.

Given the particular circumstances of Mr M's case, based on the information Mr M and J D Williams have given, I agree with our adjudicator that a point was reached by December 2018 when J D Williams increased Mr M's total credit limit to £1500, which ought to have prompted J D Williams to realise further credit as likely to be unaffordable or otherwise harmful to Mr M. As noted by our adjudicator, Mr M had already started to miss meeting the minimum payments required for his account. I've also seen that as Mr M's account balance went over £1000, in February 2019, he began making payments below the minimum. So I don't think it was reasonable for J D Williams to increase Mr M's credit limit in December 2018. By then it can be seen that Mr M was experiencing increasing difficulty in managing his money. I think this demonstrates that it's likely this further credit limit was unaffordable. And it's also likely he would be unable to reduce the increasing debt on his account whilst at the same time having to meet his daily living expenses and other credit commitments. I therefore think J D Williams ought to have realised that there was a significant risk that increasing Mr M's credit limit in these circumstances would lead to his indebtedness increasing unsustainably.

It follows that I think that Mr M lost out because J D Williams provided him with further credit from December 2018 onwards. In my view, J D Williams should have realised by then that Mr M was in getting into financial difficulty and was likely to experience problems in paying back even a modest amount of credit.

Mr M says that J D Williams should have got a better understanding of his expenditure as well as his income and if it had done this at an earlier stage, he says it would have shown that the earlier credit limit increases weren't affordable to him. The adjudicator agreed that J D Williams ought to have completed more thorough affordability checks from the second increase onwards, and I agree. However, from everything Mr M has provided, I'm not persuaded that further checks ought reasonably to have led J D Williams to any different lending decision until December 2018.

I've also seen that Mr M feels that J D Williams didn't do enough to help him with his debt difficulties with the account. I've seen that at Mr M's request in May 2019, J D Williams put in place an interest-free temporary payment arrangement that lasted until March 2020. And in June 2020 J D Williams agreed to put Mr M's account on hold for 28 days when he was having difficulty making his payments. Mr M told J D Williams he was unhappy about the way he was treated in relation to the payment plan. This led to J D Williams making a compensation offer which I see Mr M accepted. But having made the above finding in Mr M's favour, and noting the actions taken by J D Williams to accommodate the payment difficulties he was experiencing, I don't think it needs to do anything more.

It follows that I agree J D Williams should put things right.

Putting things right – what J D Williams needs to do

- Rework Mr M's account to ensure that from December 2018 onwards interest is only charged on balances up to the total credit limit of £1000, including any buy now pay later interest, (being the credit limit 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 Mr M to arrange an affordable repayment plan for this account. Once Mr M has repaid the outstanding balance, it should remove any adverse information recorded on Mr M's credit file from December 2018 onwards.

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 Mr M, 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 Mr M's credit file from December 2018 onwards.†

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

My final decision

For the reasons set out, I'm partially upholding Mr M'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 Mr M to accept or reject my decision before 30 March 2022.
Michael Goldberg
Ombudsman