Financial Ombudsman Service

The complaint

Mr C complains that JD Williams & Company Limited irresponsibly increased the limit on his shopping credit account and increased the interest rate on the account overtime.

What happened

Mr C took a shopping account with JD Williams in April 2017. The account had an opening credit limit balance of £125.

Mr C said when the account was first taken out he was earning around twenty-two thousand pounds a year but two months after the account was opened, he was made redundant. This meant his income decreased significantly with his salary being replaced by carers allowance and universal credit giving a total monthly income of around £460 a month.

JD Williams increased the credit limit on the account seven times resulting in a total credit limit of £1800 in August 2018. The breakdown of these increases is as follows:

Date	**Limit**
April 2017 (opening limit)	£125
September 2017	£200
December 2017	£300
January 2018	£500
February 2018	£700
April 2018	£750
May 2018	£1200
August 2018	£1800

JD Williams has explained when the account was first opened, it carried out credit reference checks as well as information from the electoral register to determine whether it was willing to provide the credit. It often provides a lower balance than it checks determine are affordable but the limit is increased overtime. Similar checks were carried out when the credit increases were applied as well as consideration to the previous account usage and history.

Mr C feels that had JD Williams carried out reasonable and proportionate checks when his credit limit was increased, it would have identified that the borrowing was unaffordable based on his income versus his expenditure. In the absence of this, he feels the increases have been irresponsible. He said he needed to take out a personal loan to clear the balance on the account after the repayments became too much.

Our investigator looked at Mr C's complaint and said he felt JD Williams needed to do something to put things right. He didn't think JD Williams had completed reasonable and proportionate checks on Mr C as to whether he would be able to afford to meet the repayments of his account in a sustainable way. There was a point in time when he felt JD Williams should have asked for more information. If it had done this it would have been clear that Mr C was not in a good financial situation and it was unlikely that he'd be able to repay the credit in a sustainable way – so without risk of detriment to himself.

The checks needed to be borrower focused so what is appropriate for one customer might not be for another. And in some circumstances a less detailed assessment could be deemed reasonable and proportionate. He felt this was the case for the borrowing from April 2017 until January 2018, but in February 2018 it was reasonable to expect JD Williams to carry out further checks. He said had this happened it would have been clear that Mr C was struggling financially.

As a result he felt JD Williams should refund the interest and charges applied to the account from February 2018 for any borrowing which exceeded the previous credit limit increase from January. So interest and charges applied on the balance, less £500 (the previous and last increase applied when reasonable and proportionate checks were completed) should be refunded.

He didn't agree the APR rate of the account had been increased though. He explained the account had been opened with an APR rate of 64.9% and this was the interest rate applied to the account for its duration.

JD Williams disagreed; it didn't believe that Mr C's credit information demonstrated anything which would flag concern with his score overall generally being good. And with his history of meeting the minimum repayments and often more than these on the account, it didn't think it would have been proportionate to carry out further checks. It felt its checks demonstrated that Mr C could afford to repay this borrowing in a sustainable way and it hadn't been irresponsible with its lending.

Mr C disagreed with the redress recommendation. He felt the additional increases made the total amount repayable unaffordable and asked that all interest and charges on the account be refunded from February 2018.

Because JD Williams and Mr C disagreed with our recommendaion, the complaint has been passed to me for decision.

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.

I've decided to uphold this complaint for much the same reasons as our investigator.

As our investigator did, I'll quickly address Mr C's point about the APR charged on his account. JD Williams has demonstrated that the APR on the account when it was taken out was 64.9% and it remained at this level throughout the time the account was open. So I can't see that this was increased at any point beyond the rate agreed when Mr C applied for the borrowing.

Our approach to unaffordable/irresponsible lending can be found on our website and I've followed this approach when considering Mr C's complaint.

The Consumer Credit Sourcebook (CONC) set's out rules and regulations in place when JD Williams provided Mr C with the credit account. These require JD Williams to carry out a credit worthiness assessment with reasonable and proportionate checks to determine whether Mr C could afford to repay the credit in a sustainable way. These need to be borrower focused which means the consideration should be given to whether, repaying the credit in a sustainable way could result in difficulties for Mr C.

There is no set list of checks that need to be carried out for each lending application to define what a proportionate check is. And with these needing to be borrower focused, it follows that what is proportionate for one person may not be for another, and as people's circumstances change, what was proportionate before may no longer be.

JD William have explained that before increasing a customer's credit limit, it carries out an assessment which includes checks with credit reference agencies – so it doesn't rely on the information gathered with the initial assessment. It also uses its knowledge of the customers behaviour with their account. It feels these checks are reasonable and proportionate for the level of borrowing it offers and it would be disproportionate to go further based on what it knew about Mr C when conducting these checks at each increase.

Although CONC doesn't set out a definite list of factors that should be considered when lending to determine if checks were proportionate, it does list things that a business would need to consider. This includes the type and amount of credit as well as the likely duration of it.

JD Williams feels that Mr C's credit reference information together with the management of his account with it demonstrated he was able to repay the borrowing in a sustainable way. And that these checks were proportionate for each credit increase.

With the amount of credit changing each time, I think it's fair to expect that the level of checks needed would increase as the credit did. And so while these checks might be reasonable and proportionate at one point, they may later not be.

In September 2017 Mr C's account had it's first increase applied. The previous usage showed he'd at times been close to or more than his credit limit. But payments had been made regularly and the information returned on his credit reference didn't flag any concerns. This coupled with the amount of credit being extended to only £200 means I feel the checks at this point were reasonable and proportionate.

The next increase was to £300 in December 2017. The balance at this point was still relatively low and while Mr C had often been close to his previous new limit of £200, I don't think it's reasonable to expect JD Williams to have carried out any further checks when it increased the limit in December. Mr C continued to use the account in a similar way to how he had previously once the limit was increased, he quickly took advantage of this and remained close to or over the limit.

In January 2018 the credit limit was increased again, this time to £500. Although now significantly higher than his opening credit limit balance, the total amount of available borrowing was low. And although Mr C often ran the account close to its limit, the regular payments to it together with the information returned from the credit report didn't flag any areas of concern. So I think to this point, the checks completed by JD Williams were reasonable and proportionate. And I think it demonstrated that it was likely Mr C was able to repay this borrowing in a sustainable way.

At the end of January 2018 Mr C's outstanding balance had risen to over £400 against his credit limit of £500. So as with previous months and his credit increase, he'd quickly used the additional funds available.

In February 2018, JD Williams increased the limit on Mr C's account again using the same checks as before. However, the credit limit was now increasing to £700. The interest rate on the borrowing was high and as the credit limit increased, the potential repayments even to maintain the minimum repayment on the account increased. And with Mr C's behaviour over the months prior to this now clearly demonstrating a need to use the majority of the credit limit in a very short space of time, I think JD Williams should have gone further with it's checks at this point to understand whether the increased borrowing was still affordable to Mr C based on his circumstances.

I think it would have been reasonable and proportionate to request more information from Mr C ahead of the credit limit increase in February 2018 to validate his income and understand his expenditure. Had bank statements been requested, it would have been clear Mr C's main income was his benefit payments and his transaction history demonstrated a large number of gambling transactions.

I think had this information been requested, it's likely JD Williams would have realised that the increased credit limit wasn't something that Mr C could demonstrate was affordable to him on a sustainable basis. Because of this, I think the increases to the credit limit in February 2018 were unfair and it follows the subsequent increases should not have been offered had adequate checks been carried out at this point.

Putting things right

As I've explained, I think the checks carried out to a point were reasonable and proportionate and I think JD Williams made a fair lending decision when increasing Mr C's credit limit up to £500. But after this point I think it should have gone further with its checks and this would have demonstrated that additional increases in the credit limit were unaffordable and unsustainable to Mr C. JD Williams needs to do the following to put things right:

1. JD Williams needs to identify the interest and charges Mr C paid on any borrowing in excess of £500.
2. As Mr C's account has now been closed, it should refund the interest charges identified when carrying out point one with 8% simple interest added*.
3. Remove any adverse information from Mr C's credit file as a result of the charges and interest.

*HM Revenue & Customs may require JD Williams to take off tax from this interest. If this is the case, JD Williams must give Mr C a certificate to confirm how much tax it's taken of if he asks for this.

My final decision

For the reasons I've explained above, I uphold Mr C's complaint against JD Williams & Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 March 2022.

Thomas Brissenden
Ombudsman