DRN-3211065

The complaint

Mrs D says J D Williams & Company Limited ("J D Williams"), trading as Fashion World, irresponsibly lent to her. She has requested that interest and late payment charges she paid on the account from July 2017 be refunded.

What happened

This complaint is about a Fashion World catalogue shopping account J D Williams provided to Mrs D. The account was opened in October 2016 when Mrs D was given an initial credit limit of £200. This limit was increased 8 times until it eventually reached £2,750 in November 2018.

Our adjudicator partially upheld Mrs D's complaint and thought that J D Williams ought to have realised Mrs D simply wasn't in a position to sustainably repay any further credit by the time it offered Mrs D the increased credit limit on her account to £2000 in November 2017. As J D Williams has disagreed with what they said, although they accepted that it shouldn't have increased Mrs D's credit limit in November 2018, 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.

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 Mrs D could afford to repay what she 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 set out in some detail why he thought J D Williams shouldn't have provided Mrs D with any further credit from November 2017 onwards. J D Williams didn't agree with what our adjudicator said. It said Mrs D's ability to repay didn't become unsustainable until later, in November 2018.

Nonetheless I've also looked at the overall pattern of J D Williams' lending history with Mrs D, with a view to seeing if there was a point at which J D Williams should reasonably have seen that further lending was unsustainable, or otherwise harmful. If so, that would mean J D Williams should have realised that it shouldn't have increased Mrs D's credit limits.

Given the particular circumstances of Mrs D's case, I also think this point was reached in November 2017, when JD Williams increased Mrs D's credit limit to £2000. I say this because proportionate affordability checks would have likely shown J D Williams that Mrs D was by that time having difficulty managing her money. I've seen that from early 2017 Mrs D was making only minimum payments, and on two occasions failed to meet them.

Also, by November 2017 Mrs D had by then accumulated debt commitments to several other creditors - including a significant amount of short-term lending. And I can see that from August 2018 she had started to get into difficulty with meeting some of these payments too, which I think demonstrates the further credit JD Williams gave her was unaffordable.

So I think that proportionate checks will have likely shown J D Williams that Mrs D was already struggling to manage the credit she already had and that there was a significant risk increasing her credit limit in these circumstances would lead to her indebtedness increasing unsustainably.

I think that Mrs D lost out because J D Williams provided her with further credit from November 2017 onwards. In my view, J D Williams' actions unfairly prolonged Mrs D's indebtedness by allowing her to use credit she couldn't afford over an extended period of time and the interest being added got her into further debt. So J D Williams should put things right.

Putting things right – what J D Williams needs to do

- Rework Mrs D's account to ensure that from 9 November 2017 onwards interest is only charged on balances up to £1500, 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 Mrs D to arrange an affordable repayment plan. Once Mrs D has repaid the outstanding balance, it should remove any adverse information recorded on her credit file from 9 November 2017 onwards.

OR

- If the effect of removing all interest, fees and charges results is there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mrs D, 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 Mrs D's credit file from 9 November 2017 onwards.†

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

Given that J D Williams sold the outstanding balances on the account to a third party in August 2019, it either needs to buy the account back from the third party and make the necessary adjustments; pay an amount to the third party so it can make the necessary adjustments; or pay Mrs D an amount to ensure that it fully complies with this direction.

My final decision

For the reasons set out, I'm partially upholding Mrs D'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 Mrs D to accept or reject my decision before 11 March 2022.
Michael Goldberg
Ombudsman