

The complaint

Mr H 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 the account he had be refunded.

What happened

This complaint is about a catalogue shopping account provided by J D Williams to Mr H. The account was opened in July 2018 with Mr H being given an initial credit limit of £125. This limit was increased 4 times until it reached £900 in January 2019.

Mr H says he’s unhappy that J D Williams continued to increase his credit limit on the account when he was in financial difficulties.

Our adjudicator partially upheld Mr H’s complaint and thought that J D Williams ought to have realised that Mr H wasn’t in a position to sustainably repay any further credit on the account by the time it offered Mr H the increased credit limit in January 2019. J D Williams has disagreed with what they said, saying that it had no reason to think that Mr H was experiencing financial difficulties. 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 Mr H 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 set out in some detail why he thought J D Williams shouldn't have provided Mr H with any additional credit on 1st January 2019 when the credit limit was increased to £900. J D Williams didn't agree with what our adjudicator said. It said the credit limits it set were affordable for Mr H and there were no missed or late payments.

Nonetheless I've also looked at the overall pattern of J D Williams' lending history with Mr H, 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 H's credit limits.

Having done so, I'm not sure there was such a point. In saying that I have considered that the account had been running for less than six months, that there were no missed or late payments and that four of the five payments made were in excess of the minimum payment.

Mr H says that J D Williams should not have increased his credit limits, given that he was in financial difficulties before the account was opened and throughout the time it was running. Mr H has mentioned the large number of credit limit increases in several months only and that whilst he did not exceed any of them, he often allowed the credit balance to near the new credit limit.

Mr H has been able to provide us with copies of his bank statements covering the period he had the account. But given the particular circumstances of Mr H's case, based on the information Mr H and J D Williams has given, I nevertheless think that a point was reached by 1 January 2019, when J D Williams increased Mr H's total credit limit to £900, over seven times the original credit over less than six months, which ought to have prompted J D Williams to realise further credit as likely to be unaffordable or otherwise harmful to Mr H. I say this because proportionate affordability checks would have likely shown J D Williams that Mr H was by that time having difficulty managing his money. I've seen that during the time he had these accounts and up to this point, Mr H had been increasingly incurring daily overdraft fees each month and that he had a number of other debts including short term loans. From the information we have about his other existing commitments, it appears he was also showing some signs of payment difficulty (including having a number of loans in arrears) as well as a recent increase in the amount of credit commitments he had. I think it's likely J D Williams would have seen this too in the credit checks it completed at the time. That means he was likely unable to reduce the increasing debt on the account whilst at the same time having to meet his daily living expenses and other credit commitments.

So, I think that proportionate checks would likely have shown J D Williams that Mr H was in difficulty with managing his account alongside his other debts and day-to-day living expenses. I also think there was a significant risk that further increases to his credit limits could have led to his indebtedness increasing unsustainably, such that he had no funds available to meet his debts and regular outgoings.

It follows that I think that Mr H lost out because J D Williams provided him with further credit from 1 January 2019 onwards. In my view, J D Williams' actions unfairly prolonged Mr H's indebtedness by allowing him to use credit he couldn't afford over an extended period of time and the interest being added would only have the effect of putting him into further debt.

It follows that J D Williams should put things right.

Putting things right – what J D Williams needs to do

- Rework Mr H's account to ensure that from 1 January 2019 onwards interest is only charged on balances up to the total credit limit of £600, 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 H to arrange an affordable repayment plan for these accounts. Once Mr H has repaid the outstanding balance, it should remove any adverse information recorded on Mr H's credit file from 1 January 2019 onwards for each account.

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 H, 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 H's credit file from 1 January 2019 onwards.†

†HM Revenue & Customs requires J D Williams to take off tax from this interest. J D Williams must give Mr H 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 H'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 H to accept or reject my decision before 6 April 2022.

Douglas Sayers
Ombudsman