

## **The complaint**

Mrs S, who is represented by her son Mr S, says J D Williams & Company Limited ("J D Williams") irresponsibly lent to her. She and Mr S have requested that the interest and late payment charges she paid on the seven accounts she had be refunded.

## **What happened**

This complaint is about a total of seven catalogue shopping accounts provided by J D Williams to Mrs S.

The first two accounts were opened in February 2002 and February 2006. I should point out that this was before 6 April 2007 when this type of catalogue lending became regulated so that complaints about such lending could be brought to us. That means I'm unable to look at any activity on these accounts before that time. As J D Williams no longer holds records from the time these accounts were opened, it's unable to tell us when the earlier credit limit increases were applied to these two accounts. However, J D Williams was able to provide information showing that Mrs S's credit limit on the first account was £1000 in March 2009. And J D Williams has told us that in February 2010 Mrs S's credit limit on the second account was £300 and was increased twice, reaching a credit limit of £800 in June 2011.

The third account was opened in August 2009 with a credit limit of £400. This was increased six times, reaching a credit limit of £1600 by April 2018.

The fourth account was opened in August 2011 with a credit limit of £400. This was increased twice, reaching a credit limit of £900 in December 2011.

The fifth account was opened in October 2011 with a credit limit of £200. This was increased three times until it reached a credit limit of £900 in May 2013.

The sixth account was opened in September 2012 with a credit limit of £400. This was increased twice, reaching credit limit of £900 in January 2013.

The seventh account was opened in May 2016 with a credit limit of £400. This was increased twice, reaching a credit limit of £900 in October 2016.

Mr S says he's unhappy that J D Williams didn't make proper checks to find out if his mother was in financial difficulties. He also says that J D Williams continued to provide his mother with credit even after he requested in January 2019 that all of the accounts be closed and no more orders taken. I've seen that Mr S subsequently obtained legal authority to look after his mother's financial affairs.

J D Williams says it carried out enough checks when it agreed to give Mrs S each of her accounts and also each time it increased her credit limit. It also says it was able to open further accounts because her credit score remained positive and she also made regular

payments that were often above the minimum required. That also meant J D Williams was able to consider Mrs S for further credit increases.

Our adjudicator partially upheld Mrs S's complaint and thought that by October 2017 J D Williams ought to have realised that Mrs S may not have been in a position to sustainably repay any further credit on her accounts. As J D Williams doesn't accept our adjudicator's assessment the complaint has 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.

Having fully considered Mrs S's complaint, and noted the communications passing between J D Williams and our adjudicator further to the finding that this complaint should be partially upheld, I'm satisfied that this complaint is ready to be passed to me for a decision.

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 S could afford to repay what she was being lent in a sustainable manner. These checks could take into consideration 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.

JD Williams has said that when Mrs S opened each of her accounts, there were no signs of financial difficulties based on the checks it did. Having reviewed the checks, and taking into account the low opening credit limits that were applied, I don't think there is anything to suggest that it would have been unreasonable for J D Williams to approve the opening of each of these accounts.

Our adjudicator thought that by May 2013, following a further credit limit increases to the fifth account that made Mrs S's overall credit limit £5300, it would have been proportionate for J D Williams to have carried out checks on the level of Mrs S's living costs and sums owed to other creditors, with the aim of ensuring that it was likely she'd be able to repay this overall credit limit in a sustainable way. But based on the information he'd seen, he didn't think there was enough to show that J D Williams shouldn't have provided Mrs S with this level of credit.

Our adjudicator also thought that the increases made to Mrs S's accounts before October 2017 didn't show or suggest irresponsible lending by J D Williams. However, in October 2017 J D Williams increased the credit limited on the second account to £1200. This meant that she had an overall credit limit with J D Williams of £6800. By this time Mrs S had already missed a total of 25 payments on her various accounts. Our adjudicator also noted that Mrs S had previously missed 13 payments in the 12 months leading up to her previous credit limit increase – to her seventh account – in October 2016. At the same time there was evidence that her debt commitments elsewhere had increased and she'd begun to struggle to meet some of those repayments on time too. Our adjudicator thought that by that time it would have been proportionate for J D Williams to have taken steps to verify Mrs S's level of income and committed expenditure. Our adjudicator thought that taking into account the number of missed payments on her accounts, J D Williams ought to have been aware of the possibility that Mrs S could have been getting into financial difficulty.

Having reviewed the complaint in detail, I've reached the same outcome as our adjudicator did and for the same reasons.

When Mrs S opened each of her accounts, J D Williams has told us there were no signs of financial difficulties based on the checks it did. Having reviewed what we know about these checks, and taking into consideration the low opening credit limits that were set for each account, I don't think there's enough evidence or information to suggest that it would have been unreasonable for J D Williams to have approved these accounts. From what I've seen J D Williams didn't ask about Mrs S's income, which is something that may have helped it begin to build a picture of Mrs S's financial circumstances. However, from what I've seen I don't think knowing this information ought to have changed these early lending decisions.

J D Williams said the credit limits it set were affordable for Mrs S and that she was able to keep up with the payments for each account that were often more than the minimum. In making my decision I've looked at these points as well as the overall pattern of J D Williams' lending history with Mrs S, 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 Mrs S's credit limits.

Given the particular circumstances of Mrs S's case, and based on the information Mrs S and J D Williams have given, I agree that the point was in October 2017 when J D Williams ought to have been aware that Mrs S was having difficulty with meeting her monthly payments and appears to have also have been having problems meeting credit commitments elsewhere. I say this because the account information provided to us by J D Williams shows that by this time there was significant history of missed payments on her accounts that had started in 2015, accelerated in 2016 and continued in 2017. I think it follows that that there was a potential likelihood that any further credit would be unaffordable or otherwise harmful to Mrs S. So I agree with our adjudicator's view that J D Williams ought not to have increased her credit limit any further. This is because it

was clear she wasn't able to sustainably repay the balances currently outstanding on her accounts and hadn't been able to do so for a significant period of time.

I therefore think Mrs S lost out because J D Williams provided her with further credit from October 2017 onwards. In my view, J D Williams should have realised by then that Mrs S might well have been getting into financial difficulty, given that she was experiencing problems in meeting her monthly indebtedness to J D Williams.

Finally, I've seen that Mr S says he's unhappy about the way J D Williams continued to handle his mother's accounts, after he first contacted them in January 2019. I can see that perhaps JD Williams could have operated the accounts better by limiting further communications with Mrs S. But given that it didn't open any new accounts for her after that date and nor does it appear her spending on the accounts exceeded £6400, I can't say that its actions caused Mrs S any further difficulties other than by not taking action by October 2017, as I've already mentioned.

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

### **Putting things right – what J D Williams needs to do**

- Rework Mrs S's accounts to ensure that from 3 October 2017 onwards, interest is only charged on balances up to the total credit limit of £6400, 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 any account once these adjustments have been made J D Williams should contact Mrs S to arrange an affordable repayment plan for this account. Once Mrs S has repaid the outstanding balance, it should remove any adverse information recorded on Mrs S's credit file from 3 October 2017 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 Mrs S, 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 S's credit file from 3 October 2017 onwards.†

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

### **My final decision**

For the reasons set out, I'm partially upholding Mrs S'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 S and Mr S to accept or reject my decision before 12 April 2022.

Michael Goldberg

**Ombudsman**