DRN-3279052

The complaint

Mr T 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 two accounts he had be refunded.

What happened

This complaint is about two catalogue shopping accounts provided by J D Williams to Mr T. Account A was opened in November 2015 with Mr T being given an initial credit limit of £150. This limit was increased 6 times until it reached £2300 in February 2019. Account B was opened in April 2018 Mr T was given an initial credit limit of £150. This limit was increased 8 times until it reached £2300 in September 2020.

Mr T says he's unhappy that J D Williams continued to increase his credit limit on each account when he was only making minimum payments each month and was in financial difficulties.

Our adjudicator partially upheld Mr T's complaint and thought that J D Williams ought to have realised that Mr T wasn't in a position to sustainably repay any further credit on either account by the time it offered Mr T the increased credit limit on Account B on 29 August 2018. J D Williams has disagreed with what they said, saying that it had no reason to think that Mr T 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.

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 T 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 she thought J D Williams shouldn't have provided Mr T with any additional credit from August 2018 onwards. J D Williams didn't agree with what our adjudicator said. It said the credit limits it set were affordable for Mr T and there were no periods of consecutive or sustained missed payments – with the exception of a single late payment for one account. It also it didn't agree that Mr T had a history of being in financial difficulty and it did not regard the default on Mr T's credit file as being an indication of such difficulties.

Nonetheless I've also looked at the overall pattern of J D Williams' lending history with Mr T, 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 T's credit limits.

Mr T says that J D Williams should not have increased his credit limits, given that he made only minimum payments on his accounts each month. He has also told us that he has been in financial difficulties for several years and has a poor credit rating, with a history of missed payments and money being owed to other creditors, including payday lending. He also told us he had incurred debt from gambling.

Unfortunately, Mr T hasn't been able to provide us with copies of his bank statements covering the period he had these account. But given the particular circumstances of Mr T's case, based on the information Mr T and J D Williams has given, I nevertheless think that a point was reached by 29 August 2018, when J D Williams increased Mr T's total credit limit to £2,400 (not £3100 as our adjudicator said), which ought to have prompted J D Williams to realise further credit as likely to be unaffordable or otherwise harmful to Mr T. I say this because proportionate affordability checks would have likely shown J D Williams that Mr T 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 T had been increasingly making only minimum or near-minimum payments. From the little information we have about his other existing commitments, it appears he was also showing some signs of payment difficulty as well as a recent increase in the amount of credit commitments he had. Further, J D Williams' own checks appear to indicate that in the months leading up to this increase there was a relative amount of volatility in Mr T's overall indebtedness with other creditors, suggesting he was relying on short term loans. Going forwards from 29 August 2018, I can also see the balance owed on Account A had reached more than £500. And whilst the balance owed on Account B had reached just over £200, I note that it steadily increased in the following six months to over £1000, which I think demonstrates that the further credit J D Williams had given Mr T was unaffordable. That means he was likely unable to reduce the increasing debt on these accounts 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 T was in difficulty with managing his two accounts 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 T lost out because J D Williams provided him with further credit from August 2018 onwards. In my view, J D Williams' actions unfairly prolonged Mr T'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 T's account to ensure that from 29 August 2018 onwards interest is only charged on balances up to the total credit limit of £2100 (Account A £1400 and Account B £700), 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 T to arrange an affordable repayment plan for these accounts. Once Mr T has repaid the outstanding balance, it should remove any adverse information recorded on Mr T's credit file from 29 August 2018 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 T, 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 T's credit file from 29 August 2018 onwards.†

†HM Revenue & Customs requires J D Williams to take off tax from this interest. J D Williams must give Mr T 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 T'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 T to accept or reject my decision before 11 March 2022.
Michael Goldberg
Ombudsman