

The complaint

Mrs F says J D Williams & Company Limited ("J D Williams"), trading as Marisota, irresponsibly lent to her. She has requested that interest and late payment charges she paid on the account from October 2013 be refunded.

What happened

This complaint is about a Marisota catalogue shopping account J D Williams provided to Mrs F. The account was opened in October 2013 when Mrs F was given an initial credit limit of £150. This limit was increased 7 times until it eventually reached £2250 in September 2015.

Mrs F also complained to us about a second account she held with J D Williams – a Simply Be account – but our adjudicator noted that the only transaction made on this account was later cancelled. So I won't be looking at that account in my decision.

JD Williams said it said it carried out appropriate checks given the relatively low level of credit given. In March 2017 JD Williams entered into a repayment plan with Mrs F which avoided interest and other charges being added to her account.

Our adjudicator first explained why she considered that Mrs F's complaint had been brought to us in time under our rules. I see that J D Williams hasn't disagreed with that finding so I don't need to consider that here.

Our adjudicator then partially upheld Mrs F's complaint and thought that J D Williams ought to have realised Mrs F simply wasn't in a position to sustainably repay any further credit by the time it offered Mrs F the increased credit limit on her account to £400 in February 2014. As J D Williams disagreed with what they said, the complaint has now 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 Mrs F 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 she thought J D Williams shouldn't have provided Mrs F with any further credit from February 2014 onwards, when her credit limit was increased from £250 to £400. Our adjudicator did this having received copies of Mrs F's payslips and bank statements. In particular, she noticed that Mrs F's committed expenditure appeared to be at such a level that she was only left with £30 of disposable income. And by the time Mrs F was given her fifth increase, in September 2014, her committed expenditure was so high that she was left with a disposable income of minus £880. But by February 2014 Mrs F's financial position had already deteriorated to the extent that she wasn't in a position to sustainably support the further borrowing that J D Williams had made available to her.

J D Williams didn't agree with what our adjudicator said. It said that Mrs F's credit limit increases were modest, that she met her minimum account payments and only used a limited amount of her available credit. It also pointed out that Mrs F did not show signs of financial difficulties until August 2016 and didn't contact J D Williams until March 2017 to say she was having problems meeting her payments.

Nonetheless in preparing this decision I've looked at the overall pattern of J D Williams' lending history with Mrs F, 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 F's credit limits.

When Mrs F opened her account in October 2013, J D Williams has told us 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 limit of £150 she was given, I don't think there is anything to suggest that it would have been unreasonable for J D Williams to have approved the account. J D Williams didn't ask about Mrs F's income, and this may have helped it begin to build a picture of Mrs F's financial circumstances.

Given the particular circumstances of Mrs F's case, however, I agree with our adjudicator that a point was reached when J D Williams ought to have taken proportionate steps to check whether she may have been getting into difficulty with managing her money. I agree

that point came in February 2014 when Mrs F's credit was increased to £400 – more than double the opening credit limit. Whilst I've seen that whilst Mrs F was making above minimum payments to her account, and hadn't missed any payments, her bank statements showed she was operating from her overdraft for much of the time and that her income wasn't enough to meet the total cost of her daily living expenses and other debt commitments. These debt commitments include what appears to be a regular reliance on short-term loans. So I think J D Williams ought to have been able to see by this point that there was a significant risk that by increasing her credit limit in these circumstances would lead to her indebtedness increasing unsustainably.

It follows that I think proportionate checks, such as asking Mrs F about her other committed expenditure, will have likely shown J D Williams that by February 2014 Mrs F was already struggling to manage the credit and still keep up with her day-to-day living expenses alongside her other debt commitments. I also note that from July 2014 the balance on her account gradually increased. And I've seen that Mrs F's overall financial position continued to worsen, to the point she had a minus-level of disposable income after meeting her day-to-day living expenses and sums owed to other creditors.

I consider that J D Williams actions in further increasing Mrs F's credit limits on this account unfairly prolonged her indebtedness by allowing her to use credit she couldn't afford over an extended period of time, with the result that her indebtedness continued to increase.

I think that Mrs F therefore lost out because J D Williams provided her with further credit from February 2014 onwards. In my view, J D Williams' actions unfairly prolonged Mrs F'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 F's account to ensure that from 1 February 2014 onwards interest is only charged on balances up to £250, 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 F to arrange an affordable repayment plan. Once Mrs F has repaid the outstanding balance, it should remove any adverse information recorded on her credit file from 1 February 2014 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 F, 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 F's credit file from 1 February 2014 onwards.†

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

Given that J D Williams sold the outstanding balance on this account to a third party in January 2018, 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 F an amount to ensure that it fully complies with this direction.

My final decision

For the reasons set out, I'm partially upholding Mrs F'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 F to accept or reject my decision before 6 April 2022.

Michael Goldberg
Ombudsman