

## **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 his account be refunded.

## **What happened**

This complaint is about a catalogue shopping account provided by J D Williams to Mr H. The account was in December 2015 with Mr H being given an initial credit limit of £125. This limit was increased 9 times until it reached £2750 in December 2017.

Mr H says he’s unhappy that when he first opened his account, J D Williams didn’t explain to him how it worked, including how charges would be applied. He says the account was unaffordable from the outset and that J D Williams continued to increase his credit limit on each account without making proper checks to find out whether he was experiencing financial difficulties.

J D Williams says it carried out enough checks when it agreed to give Mr H his account and also each time it increased his credit limit.

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 his account by the time it offered Mr H the increased credit limit in June 2017. She also thought that J D Williams ought not to have allowed new purchases on Mr H’s after May 2019 by freezing his account. J D Williams disagreed with our adjudicator’s finding and instead suggested there should have been no further credit limit increases after 11 December 2018, when Mr H began to miss monthly payments. This offer was put to Mr H but, in the absence of J D Williams providing a breakdown of its redress calculation on that basis, Mr H hasn’t accepted the offer.

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.

*Did J D Williams lend to Mr H irresponsibly?*

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.

When Mr H opened his account in December 2015, J D Williams 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 £125 he 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 however ask about Mr H's income, which may have helped it begin to build a picture of his financial circumstances.

Our adjudicator thought that the first increase to Mr H credit limit on the account, in February 2016, didn't show or suggest irresponsible lending by J D Williams. For the second to third increases, from 8 March to 3 May 2016, taking Mr H's credit limit up to £600, she thought that whilst it would have been reasonable for J D Williams to enquire about Mr H's living costs, there wasn't enough to show that if it had done so it might have decided not to lend to Mr H. For the four credit limit increases that took place between 31 May 2016 and 4 April 2017, taking Mr H's credit limit up to £1750, our adjudicator considered that J D Williams ought to have carried out additional checks as it seemed likely that Mr H might have become financially stretched had he used the full extent of his credit limit. Overall, I agree with our adjudicator that up to this point there wasn't enough to show that Mr H was likely to be experiencing financial difficulty to the extent that J D Williams shouldn't have increased his credit limits between February 2016 and April 2017.

Our adjudicator went on to set out in some detail why she thought J D Williams shouldn't have provided Mr H with any additional credit from June 2017 onwards, when Mr H's credit limit was increased to £2000, and then increasing again in December 2017, when it went up to £2750. Mr H hasn't been able to provide us with evidence of his income and expenditure – for instance, by way of bank statements. However, from what he told our adjudicator about his income, daily living costs and committed expenditure, she thought there was a likelihood he wouldn't have been left with enough disposable income to meet his borrowing with J D Williams. Had J D Williams carried out proportionate affordability checks at this time our adjudicator considered that it would likely have seen Mr H was struggling. She also thought it ought to have noted that Mr H continued to make only minimum payments whilst his account balance was increasing. This showed there was a

risk he would become unable to continue meeting his monthly payments. Our adjudicator therefore concluded that there should have been no further credit limit increases from that point.

J D Williams said the credit limits it set were affordable for Mr H and he only used an average 70% of his credit limit. It also pointed out that when purchasing high value items Mr H had chosen to spread the cost on a 'buy now pay later' basis. It also said that Mr H had continued to make minimum payments to his account until December 2018 when Mr H got into financial difficulty and could no longer meet his monthly minimum payments, at which point his access to account credit was withdrawn.

In making my decision I've looked at these points as well as 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.

Unfortunately, Mr H hasn't been able to provide us with copies of his bank statements covering the period he had the account. But he's given us some information about his financial situation. We've also seen from his credit report that he had at least two ongoing credit card commitments. Given the particular circumstances of Mr H's case, based on the information Mr H and J D Williams have given us, I agree with our adjudicator that a point was reached by June 2017 when J D Williams increased Mr H's total credit limit to £2000, which ought to have prompted J D Williams to realise further credit was likely to be unaffordable or otherwise harmful to Mr H. Mr H's account history showed that the proportion of the credit limit Mr H was using had been rising steadily whilst he continued to only make minimum repayments. So I think that based on the limited information we have about Mr H's existing commitments, his account history shows signs that he might have been getting into difficulty with making his monthly payments. And it seems unlikely that he would have been able to take steps to reduce the increasing debt on his account whilst at the same time having to meet his daily living expenses and other credit commitments.

I therefore think that had J D Williams carried out better checks at this stage as to Mr H's financial circumstances, given the way he was managing his account, it likely would have realised there was a significant risk that Mr H would be unable to reduce the increasing level of debt on the account whilst at the same time being able to meet his daily living expenses and other credit commitments. I also think that any further increase to his credit limit could have led to his indebtedness increasing unsustainably and to the point that he had no funds available to meet his regular outgoings and other debts. So I don't think it was reasonable for J D Williams to increase Mr H's credit limit at this point. I think it follows that beyond this point any further credit limit increases were likely to be unaffordable.

It follows that I think that Mr H lost out because J D Williams provided him with further credit from June 2017 onwards. In my view, J D Williams should have realised by then that Mr H was in getting into financial difficulty and was likely to experience problems in paying back even a modest amount of credit.

*Should J D Williams have taken further action?*

Our adjudicator also went on to find that by 1 May 2019, when Mr H contacted J D Williams to say he was in financial difficulty, the account ought to have been frozen –

putting the account on hold for 28 days wasn't enough. I agree. I've seen that J D Williams placed a 28-day hold on his account that lasted up to 4 October 2019, after which time the account charges continued. Having been alerted to the fact that Mr H was struggling financially, I consider that J D Williams ought to have taken proportionate measures to find out more about Mr H's financial circumstances – and in particular his level of committed income. Had it done so, I think it would have likely seen that that Mr H was struggling to manage the credit he already had and that there was a significant risk that any further spending on his account would lead to his indebtedness increasing unsustainably. So I think the appropriate next step would have been to put a freeze on his account.

It follows that I think Mr H lost out because J D Williams allowed him to continue spending on his account and didn't take sufficient and adequate forbearance measures from May 2019 onwards. In my view, J D Williams' actions unfairly increased and prolonged Mr H's indebtedness by allowing him to continue to use credit he couldn't afford over an extended period of time and the interest being added got him into further debt. So on this basis as well J D Williams should put things right.

Finally, I've seen that Mr H says that he was vulnerable and should not have been allowed to have the account when he first opened it. Given how long ago the account was opened, J D Williams no longer holds the account-opening information. However, other than the reasons I've given for upholding this complaint, I haven't seen anything to make me think that Mr H wasn't given enough information about the way the account would operate when he first opened the account, including the charges that could be made if he missed payments. Nor have I seen anything to persuade me that J D Williams knew or ought to have known that Mr H was vulnerable and therefore it would have been inappropriate to lend to him on that basis.

It follows that I agree 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 27 June 2017 onwards interest is only charged on balances up to the total credit limit of £1750, 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 also
- Rework Mr H's accounts to ensure that from 1 May 2019 all interest or charges be removed, including any buy now pay later interest (being the credit limit in place before that date), to reflect the fact that access to any remaining credit on the accounts shouldn't 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 this account. Once Mr H has repaid the outstanding balance, it should remove any adverse information recorded on Mr H's credit file from 27 June 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 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 27 June 2017 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 21 April 2022.

Michael Goldberg

**Ombudsman**