DRN-3465057

The complaint

Mrs D has complained that J D Williams & Company Limited irresponsibly lent to her.

What happened

Mrs D opened a shopping account with J D Williams in May 2016. Her account limit was initially very low - £200. Over the course of the next two years Mrs D's account limit was increased seven times until, in September 2018, it was £3,000.

Mrs D says that JD Williams shouldn't have lent to her. She says that J D Williams should have consulted her credit file and asked her more questions to find out if the credit was affordable for her.

J D Williams says it did all the necessary checks before it lent to Mrs D – and when it increased her credit limit.

Our adjudicator thought that Mrs D's complaint should be partially upheld. They thought that the initial credit given to Mrs D was acceptable, but that by the time her credit was increased for the seventh time, J D Williams didn't act fairly or reasonably in doing so.

Our adjudicator said that JD Williams should pay back interest and charges it made as a result of the credit that was unfairly extended to Mrs D.

Mrs D agreed with the adjudicator's assessment. J D Williams didn't agree. It said that although Mrs D had missed two payments prior to the relevant credit limit increase that Mrs D's account history showed she generally managed her account well and that she often overpaid her minimum repayment amount. J D Williams said that although her balance wasn't going down significantly, this was because she continued to spend on her account as she made repayments.

As J D Williams didn't agree, the case has been passed to me to make a decision.

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 and I've taken that into account when considering Mrs D's complaint.

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 D 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 Mrs D'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 JD Williams should fairly and reasonably have done more to establish that any lending was sustainable for Mrs D. These factors include:

- Mrs D'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 amount due to be repaid, reflecting that it could be more difficult to meet a higher repayment from a particular level of income;
- The frequency of borrowing and the length of time Mrs D had 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 that the lending was unsustainable.

When Mrs D opened her account in May 2016, JD Williams has told us there were no signs of financial difficulties based on the checks it did. Having reviewed the checks, I don't think there is anything to suggest that it would have been unreasonable for JD Williams to have approved the account. JD Williams didn't ask about Mrs D's income, and this may have helped it begin to build a picture of Mrs D's financial circumstances. But even if it had, at this stage, I don't think it would have made a difference to its decision to extend the credit. From the bank statements Mrs D has provided to us it seems that her joint income with her husband was almost £5,000 a month and her original credit limit was £200.

In July 2016, JD Williams increased Mrs D's credit limit to £400. Between August 2016 and June 2017 Mrs D's credit limit was increased five times until it reached £2,300.

JD Williams did checks before each increase. The credit checks showed that there was a historic default on Mrs D's credit file. But the account history shows that Mrs D was making regular payments above the minimum amount required which showed she was maintaining the account well. While I think it would have been appropriate for J D Williams to have checked Mrs D's income for these limit increases (to help build a picture of her circumstances) I haven't seen anything to suggest that J D Williams ought to have thought the credit was unaffordable for Mrs D at this time. So, I don't think JD Williams did anything wrong providing these increases.

However, in late September 2018 the credit limit was raised to £3,000 from £2,300. Our adjudicator set out in some detail why they thought J D Williams shouldn't have provided Mrs D with the credit limit increase in September 2018. J D Williams said that the checks it completed when Mrs D's credit was extended were sufficient and that Mrs D's full credit limit was never fully utilised and Mrs D often paid more than the minimum payment due. It says that was how it monitored the account to ensure that the lending was suitable.
However, in the four months prior to the increase in this limit Mrs D missed making her repayments three times. Although she made one payment for more than her minimum required repayment this appeared to only cover a further purchase. Her outstanding indebtedness to J D Williams increased significantly over those months, from £880 to £1,300 – even with a payment made of £300. And it seems that Mrs D's borrowing on other revolving credit facilities had increased by over £2,000 since the last increase.

I think it would have been proportionate for JD Williams to have found out more about Mrs D's expenditure at this point, such as her living costs, as well as her income. I say this because at this stage J D Williams appears to have still had little understanding of what Mrs D's financial circumstances were outside of the credit check it completed. I've seen that in the months leading up to September 2018, Mrs D was significantly overdrawn on her joint current account for a prolonged period of time; I think it's likely this would have been visible on any credit check JD Williams completed. Her bank statements indicate Mrs D was repaying JD Williams with other credit (her overdraft) rather than from any disposable income she may have had. And we know that Mrs D also missed making repayments on her account.

I think if J D Williams had made these enquiries it would have seen that Mrs D was struggling to manage her borrowing and that she would not be able to afford increased repayments. I note J D Williams' point that Mrs D continued to spend on her account and that this was why her balance wasn't reducing significantly, but this does not negate the fact that I consider that further checks as I have described would have alerted J D Williams to Mrs D's existing difficulties in managing her balances.

So I don't think it was fair or reasonable for JD Williams to have increased the limit to £3,000 in September 2018.

Putting things right

I think it's fair and reasonable for J D Williams to refund any interest and charges incurred by Mrs D as a result of the credit unfairly extended to him. I don't think the limit should have been increased from 26 September 2018 onwards therefore J D Williams should rework the account and:

- remove any interest and charges incurred after 26 September 2018 as a result of any increases (including any buy now pay later interest). That is, J D Williams can only add interest accrued on the balance up to the credit limit of £2,300 - being the credit limit before 26 September 2018.
- J D Williams should work out how much Mrs D would have owed after the above adjustments. Any repayment Mrs D made since 26 September 2018 should be used to reduce the adjusted balance.
- If this clears the adjusted balance any funds remaining should be refunded to Mrs D along with 8% simple interest per year* - calculated from the date of overpayment to the date of settlement.
- If after all adjustments have been made Mrs D no longer owes any money then all adverse information regarding this account should be removed from the credit file
- from September 2018. My understanding is that this will be the case as Mrs D cleared her account in 2021.

*HM Revenue & Customs requires J D Williams to deduct tax from any award of interest. It must give Mrs D a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

I think JD Williams acted unfairly when it extended further credit to Mrs D on 26 September 2018. To put this right I direct JD Williams & Company Limited to pay compensation as explained above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs D to accept or reject my decision before 12 September 2022.

Sally Allbeury
Ombudsman