

The complaint

Mrs C says J D Williams & Company Limited trading as Simply Be (“J D Williams”) irresponsibly lent to her. She has requested that the interest and late payment charges she paid on the account be refunded.

What happened

This complaint is about a catalogue shopping account provided by J D Williams to Mrs C. It seems the account was opened in 2013 with Mrs C being given an initial credit limit of £125. This limit was increased ten times reaching, at its height, a credit limit of £3500 in September 2019.

Our adjudicator partially upheld Mrs C’s complaint and thought that J D Williams ought to have realised Mrs C simply wasn’t in a position to have her credit limit increased to £2250 in August 2015. Both parties have disagreed with what they said. J D Williams said that it had no reason to think that Mrs C was experiencing financial difficulties. Mrs C said that she should not have had her credit limits increased before the date our adjudicator said. The complaint was therefore passed to me to decide.

I issued my provisional decision in respect of this complaint on 25 May 2022, a section of which is included below, and forms part of, this decision. In my provisional decision I set out the reasons why I didn’t agree with the adjudicator’s view and that it was my intention to partially uphold Mrs C’s complaint but from earlier in the life of the account. I set out an extract below:

“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 C 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 C with any additional credit from July 2016. J D Williams didn't agree with what our adjudicator said. It said the credit limits it set were affordable for Mrs C. J D Williams told us it obtained credit reference data about Mrs C at the time of the account opening and prior to each credit limit increase and that it took into consideration how the account was being managed.

Mrs C's complaint is that J D Williams made credit available that was unaffordable. It's possible that J D Williams failed to make adequate checks before providing Mrs C with both the credit and the credit increases. But even if that's true, I don't think better enquiries would have caused J D Williams to think the initial credit limit or the early credit increases were unaffordable.

I say that because the initial credit limit and the early credit limits were modest and the maximum monthly payments for that credit would have been relatively modest. And subsequently through some of the credit increases the account was mostly well managed; the payments were not missed or under paid for the most part and Mrs C was not using the full credit limit available to her.

Nonetheless I've also looked at the overall pattern of J D Williams's lending history with Mrs C, 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 C's credit limits. Having done so, I think there was such a point in August 2014 when J D Williams raised the credit limit to £1500. I think there was a pattern of lending that ought to have put J D Williams on notice that putting up the credit limit in August 2014 was unsustainable as Mrs C would not have been able to afford to repay what she was being lent in a sustainable manner, most likely. I explain why I say that.

In October 2013 the credit limit was raised to £225 when the balance was £89.76. The credit limit increased each month until by February 2015 the credit limit was £1000 and the balance had risen to £471.06. The credit limit had risen fourfold and the balance had increased in excess of that rate. The pattern of lending seemed to show that the higher the credit limit the higher Mrs C made her balance. And the February 2014 credit increase is also notable as it's the first payment that Miss C made that was an under payment. And so, the pattern of lending could also have suggested to J D Williams that with a lower credit limit Mrs C was able to manage her account well. But the higher credit limit led Mrs C to raise her balance to a level where she couldn't afford to make the repayments fully on time. J D Williams chose to take no action on the account at that time.

Between April 2014 and 2 August 2014 there were five monthly payments. Mrs C made one non-payment followed by four underpayments of the minimum payment. And in the six months since the credit limit was raised to £1000 the balance rose from £471.06 to £774.34. Again, the pattern of lending could have suggested to J D Williams that with a lower credit limit Mrs C was able to manage her account well. But the higher credit limit led Mrs C to raise her balance to a level where she couldn't afford to make the repayments fully on time.

J D Williams chose not to intervene to limit Mrs C's credit at that time. Instead, on 29 August 2014 J D Williams chose to raise the credit limit to £1500. Subsequently, the balance grew and Mrs C was unable to make much progress in reducing the balance when it had grown.

So, it is my view currently that J D Williams should reasonably have seen that further lending was likely unsustainable, or otherwise harmful, and it shouldn't have further increased Mrs C's credit limit on 29 August 2014 to £1500.

It's not easy to accurately determine Mrs C's circumstances at the time. Mrs C has not provided us with copies of all her bank statements from that time. Mrs C has provided testimony that her income was modest and the evidence I have seen from statements a little after August 2014 seems to confirm that. J D Williams have not been able to provide details of Mrs C's income and expenditure from the time, as it seems that it chose not to source either of these things during that time in the life of the account or subsequently. So, I've seen no evidence to call into question Mrs C's testimony about the nature of her income she said she received at that time.

So, given the particular circumstances of Mrs C's case, based on the information Mrs C and J D Williams have given, I nevertheless think that a point was reached by 29 August 2014, when J D Williams increased Mrs C's total credit limit to £1500, which ought to have prompted J D Williams to realise further credit would most likely be unaffordable or otherwise harmful to Mrs C. I say this because the way Mrs C had managed her account until that point would have shown J D Williams that Mrs C would not find it easy to repay a balance that rose anywhere near the new credit limit, whilst at the same time having to meet her daily living expenses.

I also think there was a significant risk that further increases to her credit limits could have led to her indebtedness increasing unsustainably, such that she had no funds available to meet her regular outgoings.

It follows that I think that Mrs C lost out because J D Williams provided her with further credit from 29 August 2014 onwards. In my view, J D Williams's actions unfairly prolonged Mrs C's indebtedness by allowing her to use credit she couldn't afford over an extended period of time and the interest being added would only have the effect of putting her into further debt.

It follows that J D Williams should put things right.

Putting things right – what J D Williams needs to do

- *Rework Mrs C's account to ensure that from 29 August 2014 onwards interest is only charged on balances up to the total credit limit of £1000, 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 C to arrange an affordable repayment plan for this account. Once Mrs C has repaid the outstanding balance, it should remove any adverse information recorded on Mrs C's credit file from 29 August 2014 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 Mrs C, 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 C's credit file from 29 August 2014 onwards.†

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

I asked the parties to the complaint to let me have any further representations that they wished me to consider by 8 June 2022. J D Williams has acknowledged receiving the decision and has said it agrees the outcome and will make the calculation of redress when it receives Mrs C's acceptance. Mrs C has acknowledged receiving the provisional decision and she told us she has accepted the arguments in the provisional decision. Neither party has suggested they wish to make any further submissions. So, I am proceeding to my final 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.

J D Williams will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

Given that both parties have accepted my provisional findings and there's no new information for me to consider following my provisional decision, I have no reason to depart from those findings. And as I've already set out my full reasons for partially upholding Mrs C's complaint, I have nothing further to add.

Putting things right

J D Williams & Company Limited trading as Simply Be, should put things right in the way set out above

My final decision

For the reasons set out, I'm partially upholding Mrs C's complaint. J D Williams & Company Limited trading as Simply Be, should put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 29 June 2022.

Douglas Sayers
Ombudsman