DRN-3609455

The complaint

Mrs Y, who is represented by a third party, says Studio Retail ("Studio Retail"), trading as Ace, irresponsibly lent to her. She has requested that interest and late payment charges she paid on the account from October 2016 be refunded.

What happened

This complaint is about an Ace shopping account Studio Retail provided to Mrs Y. The account was opened in October 2016 when Mrs Y was given an initial credit limit of £100. This limit was increased 12 times until it eventually reached £1,950 in February 2020.

Mrs Y also complained to us about two other Studio Retail accounts. Our adjudicator has found that these complaints were brought to us too late under our rules, so I won't be looking at those accounts in this decision.

Our adjudicator partially upheld Mrs Y's complaint and thought that Studio Retail ought to have realised Mrs Y simply wasn't in a position to sustainably repay any further credit by the time it offered Mrs Y the increased credit limit on her account from £665 to £790 in July 2018.

Studio Retail said it said it carried out appropriate checks given the relatively low level of initial credit given. It also said the credit limit increases were granted based on affordability scoring and checking with credit reference agencies.

As Studio Retail disagrees with our adjudicator, 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.

Studio Retail 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 Y 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 Studio Retail 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 he thought Studio Retail shouldn't have provided Mrs Y with any further credit from July 2018 onwards, when her credit limit was increased on the eighth occasion, from £665 to £790. Our adjudicator did this having received copies of Mrs Y's bank statements as well as reviewing her credit report.

Nonetheless in preparing this decision I've looked at the overall pattern of Studio Retail's lending history with Mrs Y, with a view to seeing if there was a point at which Studio Retail should reasonably have seen that further lending was unsustainable, or otherwise harmful. If so, that would mean Studio Retail should have realised that it shouldn't have increased Mrs Y's credit limits.

When Mrs Y opened her account in October 2016, Studio Retail 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 £100 she was given, I don't think there is enough evidence or information to suggest that it would have been unreasonable for Studio Retail to have approved the account. However, I've seen that Studio Retail didn't ask about Mrs Y's income, and this may have helped it begin to build a picture of Mrs Y's financial circumstances.

Going forwards, taking into account that Studio Retail was giving Mrs Y regular credit limit increases I think it ought to have taken steps to verify her income and committed expenditure. I agree with our adjudicator that by August 2017, having already given Mrs Y four credit limit increases that year, Studio Retail ought to have been doing more to carry out proportionate checks on her financial situation. I further agree that a point was reached in July 2018, when giving Mrs Y her sixth limit increase that year, that Studio Retail ought to have seen that she was likely getting into difficulty with managing her money to the extent that her total level of borrowing was unsustainable.

I say this having noted that Mrs Y had been making minimum payments to her account for at least nine consecutive months by this point. By then - when Mrs Y's credit was increased from £665 to £790 – I don't think she would have been able to continue making sustainable payments. Our adjudicator noticed that Mrs Y's committed expenditure appeared to be at around £2,780, taking into account her mortgage, other unsecured borrowings (including loans and credit cards) plus her regular housing and living costs. But her household income only came to around £2,300, taking into account her salary, child benefit and contribution from her partner. This wouldn't have left her with any disposable income to manage the account – in other words she would be in a negative disposable income situation.

I've seen that Mrs Y made larger payments to her existing credit card account during this month, rather than the minimum payments. But I've also kept in mind that her credit report shows she had just arranged a loan for £4,200 in June 2018, with monthly repayments of £286. It's very possible that the increased credit card payments were made as a result of this loan. But in any event, I can see that going forward Mrs Y likely would have been left with no or very little disposable income if she continued to service her ongoing level of unsecured borrowing. And I can see that her financial position continued to worsen in the months that followed.

It follows that I think better proportionate checks, such as asking Mrs Y about her income and committed expenditure and taking steps to verify it, will have likely shown Studio Retail that by July 2018 Mrs Y was already struggling to manage the credit and still keep up with her day-to-day living expenses alongside her other debt commitments. In short, Studio Retail ought to have done more than simply relying on the way she was managing her account.

To summarise, I consider that Studio Retail actions in further increasing Mrs Y'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. So Studio Retail should put things right.

Putting things right – what Studio Retail needs to do

- Rework Mrs Y's account to ensure that from July 2018 onwards interest is only charged on balances up to £665, 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 Studio Retail should contact Mrs Y to arrange an affordable repayment plan. Once Mrs Y has repaid the outstanding balance, it should remove any adverse information recorded on her credit file from July 2018 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 Y, along with 8% simple interest per year on the overpayments from the date they were made (if they were) until the date of settlement. Studio Retail should also remove any adverse information from Mrs Y's credit file from July 2018 onwards.†

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

My final decision

For the reasons set out, I'm partially upholding Mrs Y's complaint. Studio Retail 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 Y to accept or reject my decision before 13 October 2022.
Michael Goldberg
Ombudsman