DRN-3644806

The complaint

Ms S says Studio Retail Limited ("Studio Retail") irresponsibly lent to her. She has requested that interest and late payment charges she paid on the account from when she was given a credit limit increase in March 2013 be refunded.

What happened

This complaint is about a shopping account Studio Retail provided to Ms S. The account was opened in August 2012. From the available information it seems that the opening credit limit was around £800 and that by February 2014 this had been increased to £1,650. It was then reduced in August 2014 to £1,500.

Our adjudicator initially upheld this complaint from March 2015. This was largely based on Studio Retail only having limited information prior to that date due its data retention policies But having received further information from Ms S, he decided instead to uphold it from January 2014, when the credit limit was increased from £,1050 to £1,350 .

Studio Retail said it didn't agree that it was fair for our adjudicator to uphold the account for a time where it has retained only limited information. So, 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 Ms S 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 has set out in some detail why he now thinks Studio Retail shouldn't have provided Ms S with any further credit from January 2014 onwards, when Ms S's credit limit was increased from £1,050 to £1,350. Nonetheless in preparing this decision I've looked at the overall pattern of Studio Retail's lending history with Ms S, based on the evidence and information provide by both Studio Retail and Ms S, 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 Ms S's credit limits.

We don't have details of the exact checks Studio Retail carried out when it opened the account in 2012. Whilst I can see Ms S had other unsecured borrowing that she owed at the time, and had taken out at least two pay day loans shortly prior to the account being opened, I don't think it was necessarily unreasonable for Studio Retail to have approved the account. I say this taking into consideration that at that time Ms S didn't have any defaults or other issues recorded on her credit files.

Going forwards, having noted that the available information shows Studio Retail was giving Ms S regular credit limit increases, I would have expected it to have carried out credit checks on each occasion. But I also think, given the frequency of the limit increases, it would have been proportionate for Studio Retail to have taken steps to verify her income and committed expenditure. Our adjudicator noted that by August 2013, when Ms S's credit was increased to £1050, Ms S was already using a significant amount of her available credit. By this time Ms S had been unemployed for several months (having been made redundant in May 2013) and so her financial situation was likely to be deteriorating. I've seen from Ms S's credit report that Ms S had two loans in place at the time she was granted the account which she was still paying off at this point, plus a significant amount of unsecured borrowing. Whilst the impact of this may not yet have been immediately evident from her credit file, had Studio Retail enquired about her job income and committed expenditure at that point it would have seen that her employment status had changed. And I think that had Studio Retail carried out better checks, it would have seen that Ms S's financial situation was becoming further stretched.

From what Ms S has told us, I can see that by January 2014 Ms S's circumstances had worsened further. I've seen she had a county court judgement registered against her in December 2013, plus account defaults in January 2014. I've also seen that Ms S was making constant use of her overdraft at around this time and was reliant on monthly benefit income of around £700. She also took out a further payday loan that month and was continuing to service existing pay day loans that had been taken out in the previous three months.

I think it follows that when giving Ms S the further credit limit increase in January 2014, Studio Retail ought to have carried out checks on Ms S's income and committed expenditure at that time. Had it done so it is very likely that it would have found that Ms S was getting into serious difficulty with managing her finances to the extent that her total level of borrowing was unsustainable. In the 12 months that followed, the amount Ms S owed continued to increase and by May 2014 she had started getting into arrears and missing payment dates. I've seen that Ms S remained unemployed until December 2014.

To summarise, I consider that Studio Retail actions in further increasing Ms S's credit limit from January 2014 had the effect of worsening her financial situation by making the account unaffordable to her and unsustainable going forward. So Studio Retail should put things right.

And notwithstanding that by January 2018 Ms S had reduced her credit to the point that she could pay off the balance, she went on to build up further debt once again, to the extent that it went over the previous credit limit of £1,050 that had been granted in August 2013, when late payment and overpayment fees were incurred. To further clarify, the redress I award from January 2014 only applies to account balances that exceed that credit limit in place before that increase.

I would add that I would expect Studio Retail to continue to act with appropriate forbearance in seeking to support Ms S in her efforts to find a fair and manageable way to pay back any balance that is still owing on her account.

Putting things right – what Studio Retail needs to do

- Rework Ms S's account to ensure that from January 2014 onwards interest is only charged on balances up to £1,050 (being the credit limit in place before that date), including any buy now pay later interest, 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 Ms S to arrange an affordable repayment plan. Once Ms S has repaid the outstanding balance, it should remove any adverse information recorded on her credit file from January 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 Ms S, 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 Ms S's credit file from January 2014 onwards.†

†HM Revenue & Customs requires Studio Retail to take off tax from this interest. Studio Retail must give Ms S 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 Ms S'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 Ms S to accept or reject my decision before 14 October 2022.
Michael Goldberg
Ombudsman