

The complaint

Mr S has complained, in summary, that JD Williams & Company Limited, trading as Jacamo, ("Jacamo"), lent to him irresponsibly. He said the lending was unaffordable for him.

What happened

Jacamo opened a credit account for Mr S in April 2016 with a credit limit of £125. This type of credit was an open-ended or running account which Mr S used to pay for goods bought from Jacamo's catalogue. Jacamo then increased Mr S's credit limit as follows:-

	Date	Credit limit
Account opening	19/4/2016	£125
First increase	21/6/2016	£225
Second increase	16/8/2016	£400
Third increase	13/9/2016	£600
Fourth increase	8/11/2016	£900
Fifth increase	28/2/2017	£1,000
Sixth increase	28/3/2017	£1,250
Seventh increase	23/5/2017	£1,500

I understand the account was defaulted in April 2018.

Mr S says that Jacamo should never have increased his credit limit on many separate occasions. If Jacamo had checked properly, it would have seen missed payments on his account that should have told the lender he was struggling to pay back what was owed. As the credit limit increased, he couldn't keep up with the payments culminating in a default being placed on his account.

In its final response letter, Jacamo said that it had assessed all credit limit increases using several sources of information, including information provided by a credit reference agency. It was happy Mr S was managing his account well, and on all occasions his internal and external data was positive. But with regard to the credit limit increase in May 2017, it said that after reviewing Mr S's account history, it was clear this increase wasn't in his best interests. So, it was happy to refund interest and administration charges from this date.

Our investigator's view

The investigator noted that Jacamo had upheld Mr S's complaint from the credit limit increase in May 2017 and said he wouldn't be investigating this increase in his assessment of the complaint. He thought Jacamo should have taken steps to build a more detailed picture of Mr S's financial situation from the credit limit increase in November 2016. But he hadn't seen anything in the information provided which suggested the lender would've known that Mr S wouldn't have been able to sustainably meet the account repayments. So, he concluded that he wouldn't be asking Jacamo to do anything more.

Mr S disagreed and asked for an ombudsman to review his complaint.

As this complaint hadn't been resolved informally, it was passed to me, as an ombudsman, to review and resolve.

My provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr S and to Jacamo on 29 July 2022. I summarise my findings:

I'd said that I wasn't investigating the credit limit increase in May 2017 as Jacamo had already said that the increase wasn't in Mr S's best interests and it agreed to refund interest and charges from the date of the increase.

I'd noted that we'd 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'd taken that into account when considering Mr S's complaint.

Jacamo told this Service that its assessment into Mr S's complaint had been done in line with the rules and regulations, primarily set out within CONC at the time. I'd set out some of the guidance from CONC which was in place at the time of the opening of the account and the credit limit increases. But I didn't think Jacamo's assessment was in line with some of that guidance.

CONC 5.3.1G said that:

(2) The creditworthiness assessment and the assessment required ... should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

Repaying debt in a sustainable manner was defined as being able to meet repayments out of normal income while meeting other reasonable commitments; without having to borrow further to meet these repayments; without having to realise security or assets (CONC 5.3.1G (6)) or without incurring or increasing problem indebtedness (the Office of Fair Trading's Irresponsible Lending Guidance (ILG) 4.3).

CONC 5.3.1G also said that:

(9) For a regulated credit agreement for running-account credit the firm should set the credit limit based on the creditworthiness assessment or the assessment required by CONC 5.2.2R (1) and taking into account the matters in CONC 5.2.3 G, and, in particular, the information it has on the customer's current disposable income taking into account any reasonably foreseeable future changes.

[Note: paragraph 4.6 (box) of ILG]

Paragraph 4.6 (box) of ILG said:

We consider that the credit limit should have been set by the creditor (presumably aware of the borrower's current disposable income and any reasonably foreseeable future changes in the level of his disposable income – for example, if the borrower is close to retirement age and facing a significant fall in disposable income) on the basis of having undertaken an appropriate affordability assessment.

I'd kept all of this in mind when thinking about whether Jacamo did what it needed to before agreeing to open an account for Mr S, and before making the subsequent increases to his credit limit. I'd considered the following questions:

- did Jacamo complete reasonable and proportionate checks when assessing Mr S's credit application and subsequent credit limit increases to satisfy itself that he would be able to repay the credit in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?

Did Jacamo complete reasonable and proportionate checks?

Mr S asked this Service to look at the whole account and in particular the credit limit increases as he felt these were what led him into a future spiral of getting in more debt.

In order for Jacamo to reasonably assess whether Mr Jacamo could manage to meet repayments on his credit account out of his normal income while meeting his usual commitments and without having to borrow further, I thought the lender needed to understand Mr S's monthly income and expenditure levels.

As I'd not seen any information about Mr S's income and living costs in Jacamo's business file, I'd asked the investigator to ask Jacamo for the steps it took to estimate Mr S's disposable income at the time of the application and to provide the income and expenditure information obtained from Mr S (if any) at the time of the credit limit increases in 2016 and 2017.

I'd noted that Jacamo told this Service in response:-

"We assess all credit applications and credit limit increases using several sources of information, which includes information provided by [a] Credit Reference Agency.... Details regarding employment status are not requested as this is not a barrier to gaining credit. As you are aware Jacamo does not request a customer I&E [income and expenditure] to complete the application process or apply any credit limit increases."

Jacamo had provided us with information about its credit file checks when Mr S applied for his account and some basic information from its regular credit file checks after that. The credit checks carried out by Jacamo appeared to provide it with no concerns.

I'd also considered Mr S's repayment history from the account data supplied by Jacamo. I could see that he was just making minimum repayments to his account for the first five months and he then made no payment in October 2016. Notwithstanding this, Jacamo increased the credit limit two months after account opening to almost double the original credit limit. The second credit limit increase less than two months later was more than three times the original credit limit. And even though Mr S had made just the minimum payment four months running, his credit limit was increased to £600 in September 2016 which was almost five times his original credit limit. The following month Mr S didn't make his minimum payment. Nevertheless, the following month Jacamo increased his credit limit to £900 and Mr S's balance more than doubled the following month. In early January 2017, Mr S paid less than the minimum payment and at the end of January 2017 he'd again missed his monthly payment. Notwithstanding this, Jacamo again increased his credit limit the following month to £1,000 and again the month after to £1,250.

I thought Mr S's failure to make his full minimum payment on three occasions between October 2016 and January 2017 suggested that he wasn't managing his account well. In addition, from account opening until December 2016 he'd made just the minimum payment in six out of seven months. In the other month he'd paid £1.74 more than the minimum payment. Mr S's account balance was mostly rising month by month and at no time had he been successful in repaying all that he owed. I thought that all this should have been of increasing concern to Jacamo.

I'd noted that Jacamo had told this Service that there had been times when Mr S had made the minimum payment on the account. But that customers making only the minimum payment required on the account, by itself, could not be considered a sign of financial difficulties as stated within CONC 6.7.3B (3). However, CONC 6.7.3B (3) didn't come into force until May 2021 and so wouldn't have applied at the time of the credit limit increases.

As I'd said above, CONC specifically referred to a lender taking into account the information it had on a customer's disposable income when setting the credit limit. We hadn't received any information from Jacamo about Mr S's income and living costs at account opening or at the time of the credit limit increases. In order to assess whether Mr S could meet his repayments sustainably I thought it needed to understand that he had sufficient disposable income to do so.

And I thought that by November 2016, Jacamo ought to have carried out proportionate checks that included verifying Mr S's monthly income and living costs. By then, Mr S had only made minimum repayments for the first five months, missed a repayment in October 2016, his account balance was building up and overall, he wasn't making inroads into the increasing amount he owed Jacamo.

However, concluding that Jacamo ought to have done more before lending to Mr S didn't automatically mean his complaint should succeed. I also needed to be persuaded that what I considered to be proportionate checks would have shown Jacamo that Mr S couldn't sustainably afford the credit. So, I'd looked at Mr S's bank statements, his credit report and considered what he'd said about his costs at the time to see what better checks would have shown the lender. I wasn't suggesting Jacamo ought to have done this, but these gave me some understanding of Mr S's living costs and how he was managing his money.

What would reasonable and proportionate checks have shown?

Account opening

As I'd said above, I would have expected Jacamo to obtain information about Mr S's disposable income before lending and I couldn't see that it did that.

Mr S had provided some bank statements from around the time he'd applied for the account which I'd reviewed to see what better checks would have suggested about Mr S's income and expenses. Although Mr S told us in his complaint form that he was earning £1,350 and spending £1,200 on regular expenses in 2016, I could see in April 2016 that Mr S's income was around £1,625 and his spending on living costs appeared to be around £1,130.

Overall, I wasn't persuaded that better checks would reasonably have led Jacamo to conclude that it shouldn't have lent to Mr S. I didn't think the bank statements showed any obvious evidence that Mr S was facing problems managing his finances and that the credit limit of £125 would be unsustainable for him. And I didn't think his finances would have appeared under so much pressure that Jacamo should have declined his application.

Credit limit increases

I'd reviewed Mr S's bank statements for the period April 2016 to March 2017 to understand what his income, living costs and credit commitments were around that time. I'd also reviewed Mr S's credit report but couldn't see any credit accounts (other than Jacamo's account and a phone account) on that report from April 2016 to March 2017.

From April 2016 to mid-September 2016, I didn't think the bank statements showed any obvious evidence that Mr S was struggling to manage his finances and that the credit limit increases up to £600 would be unsustainable for him.

But from late September 2016, I thought it was more likely than not that Jacamo would have learned or reasonably ought to have suspected through proportionate checks that Mr S was having problems managing his money to the extent that it was unlikely he'd be able to repay further credit sustainably. From late September 2016 to March 2017, I could see that Mr S was spending beyond his means. There were returned payments most months including returned payments to Jacamo, utility and insurance companies. I could see that the payments to Jacamo on 28 September 2016 and 26 October 2016 were returned. As Mr S's account didn't appear to have an overdraft facility, he was often left with very little or no money for several days before being paid. I could also see that Mr S was using a short term lender around this time. So, I thought that Mr S had lost out because Jacamo increased his credit limit from November 2016 onwards.

And I'd said that if Jacamo had made better checks, it was likely to have found that Mr S's circumstances at the times of the credit limit increase in November 2016 and subsequent credit limit increases suggested that the additional credit wasn't likely to be sustainable. So, I wasn't persuaded that Jacamo had acted responsibly at these times and subject to any further representations by Mr S or Jacamo, I'd said that I intended to uphold this complaint in part and that Jacamo should put things right as follows:

Putting things right – what Jacamo needs to do

I didn't think that Jacamo had acted responsibly when it increased the credit limit on Mr S's account beyond £600 from 8 November 2016. In order to put Mr S back into the position he would have been in had this not happened meant he shouldn't have to pay any interest or charges on amounts he borrowed above £600. So Jacamo should:

- Rework Mr S's account to ensure that from 8 November 2016 onwards interest and charges are removed on amounts borrowed above £600 and interest is only charged on the first £600 outstanding on the account to reflect the fact that no further credit limit increases should have been provided; and
- Apply Mr S's repayments after this date to this adjusted balance;
- If the effect of this reworking results in there no longer being an outstanding balance to pay, then any remaining amounts paid by Mr S should be treated as overpayments and returned to him along with 8% simple interest* on the overpayments from the date they were made until the date of settlement. In this case Jacamo should remove any adverse information about the account from Mr S's credit file;
- If an outstanding balance remains on the account once these adjustments have been made, Jacamo needs to ensure that Mr S is only liable for this adjusted balance. Jacamo should look to arrange an affordable payment plan with Mr S for the outstanding amount. In this case, once Mr S has cleared the balance, any adverse information should be removed from the credit file;
- If the debt has been sold Jacamo should either repurchase it or liaise with the current debt owner to ensure the above steps are taken.

* HM Revenue & Customs requires Jacamo to take off tax from this interest. Jacamo must give Mr S a certificate showing how much tax it had taken off if he asks for one.

Mr S responded to my provisional decision to say that he agreed with it.

Jacamo responded to my provisional decision to say that it accepted it.

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.

I've also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Given that Mr S and Jacamo have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold this complaint in part and require Jacamo to take the steps set out above under the heading "Putting things right - what Jacamo needs to do".

My final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order JD Williams & Company Limited, trading as Jacamo, to take the steps set out above under the heading "Putting things right – what Jacamo needs to do".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 September 2022.

Roslyn Rawson

Ombudsman