DRN-3676821

The complaint

Ms B says J D Williams & Company Limited ("J D Williams") irresponsibly lent to her. She has requested that the interest and late payment charges she paid on the two accounts she had be refunded.

What happened

This complaint is about two catalogue shopping accounts provided by J D Williams to Ms B. Account 1 was a Fashion World account that was opened in January 2009, with Ms B being given an initial credit limit of £125. This limit was increased 11 times until it reached £3,500 in August 2014. Account 2 was a J D Williams account that was opened in January 2014, with Ms B being given an initial credit limit of £200. This limit was increased 6 times until it reached £2,250 in March 2016.

The accounts were eventually passed to a third party collection service after Ms B got into difficulty.

Ms B says she's unhappy that J D Williams granted her the credit and then continued to increase her credit limit on each account when she was only making minimum payments each month and already had a history of financial difficulties.

Our adjudicator partially upheld Ms B's complaint and thought that J D Williams ought to have realised Ms B wasn't in a position to sustainably repay any further credit on either account by the time it offered Ms B the eighth increased credit limit on Account 1 in March 2011. It followed that our adjudicator also upheld Account 2 in its entirety.

As J D Williams didn't fully accept what our adjudicator said, the complaint has therefore 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.

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 Ms B 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 Ms B'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 Ms B. These factors include:

- the *lower* a Ms B'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 J D Williams shouldn't have provided Ms B with any additional credit from March 2011. J D Williams didn't entirely agree with what our adjudicator said about that particular uphold point.

I've therefore looked at the overall pattern of J D Williams' lending history with Ms B, with a view to seeing if there was a different point – or any point at all - at which J D Williams should reasonably have seen that further lending was likely to be unsustainable, or otherwise harmful. If so, that would mean J D Williams should have realised that it shouldn't have further increased Ms B's credit limits.

Ms B says that J D Williams should not have increased her credit limits given that she had been making only minimum payments on Account 1 since opening it. I've seen that Miss B had missed payments within a few months of opening Account 1. However, throughout 2009, when the first six credit limit increases occurred, Ms B was only using a relatively low proportion of her available credit. And by October 2010, when the credit limit was increased to £2,000, she was still using only around a third of the available credit.

I should also mention here that I've noticed how Ms B had started regularly missing payments soon after opening Account 2 in January 2014, which I think underscores the fact that her finances had further deteriorated by then.

Unfortunately, Ms B hasn't been able to provide us with copies of her bank statements covering the period she had these accounts. She told us her monthly income was around £1,300 per month at around the time she was granted Account 1. What detail I've seen about Ms B's other borrowing I've gained mainly from the credit report and loan information she's sent us. J D Williams has only given us limited information about the checks it carried out.

I see that Ms B told our adjudicator that by December 2009 she owed money on three credit cards, had one other catalogue account and three active loan accounts with the same lender. I agree with our adjudicator that by this point, with the available credit reaching £1,400, J D Williams ought to have carried out better checks to find out more above Ms B's overall financial situation, including her regular monthly income and other committed credit obligations. I say this especially as Ms B had already by this time missed payments, in May and August 2009. The credit reports she's given us shows that loan accounts at that point were costing her £162 per month and she was paying a monthly contribution to her family, who she lived with, of £500, plus paying for food on top of that.

I've next looked at the credit limit increase to £2,000 J D Williams gave her in October 2010. I can't see that, aside from consolidating her three loan accounts into one, Ms B's position had changed significantly, either to her benefit or detriment. But she continued to make only minimum payments with her account balance gradually edging up.

By March 2011, when the credit limit was increased to £2,500, Miss B had already missed a payment, in the January of that year. Given the particular circumstances of Ms B's case, and taking into consideration that Ms B's other financial commitments were continuing at the same level, I think that the point was reached by then when J D Williams ought to have carried out checks to see if this level of credit was still likely to be affordable for Ms B. She was progressively increasing her level of the debt on this account and beginning to show signs of struggling. And as I've already mentioned, during the time she had these accounts and up to this point, Ms B had in the main been making only minimum or near-minimum payments. I think proportionate checks would likely have shown that Ms B was experiencing increasing difficulty with managing her account alongside her other debts and day-to-day living expenses. I also think there was a significant risk that further increases to her credit limits could have contributed to her indebtedness increasing unsustainably, such that she had no funds available to meet her debts and regular outgoings.

It follows that I think that Ms B lost out because J D Williams provided her with further credit from March 2011 onwards. And as her total indebtedness continued to increase going forwards, it follows that J D Williams ought not to have granted her Account 2, given her overall financial situation had appreciably worsened by the time it granted her the account in January 2014.

It follows that J D Williams should put things right.

Putting things right – what J D Williams needs to do

- Rework Ms B's account to ensure that from 26 March 2011 onwards interest is only charged on balances up to the total credit limit of £2,000 for both accounts, including any buy now pay later interest, (being the credit limit in place before that date for Account 1) 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 Ms B to arrange an affordable repayment plan for these accounts. Once Ms B has repaid the outstanding balance, it should remove any adverse information recorded on Ms B's credit file from 26 March 2011 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 Ms B, 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 Ms B's credit file from 26 March 2011 onwards.†

- Given that J D Williams sold the outstanding balances on these accounts to a third party, it either needs to buy the account back from the third party and make the necessary adjustments; pay an amount to the third party so it can make the necessary adjustments; or pay Ms B an amount to ensure that it fully complies with this direction.

†HM Revenue & Customs requires J D Williams to take off tax from this interest.
J D Williams must give Ms B 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 B's complaint. J D Williams & Company 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 B to accept or reject my decision before 15 December 2022.
Michael Goldberg
Ombudsman