

## **The complaint**

Mr S complains that J D Williams & Company Limited ("J D Williams"), trading as Simply Be, irresponsibly granted him a catalogue shopping account he says he couldn't afford to repay.

## **What happened**

In September 2015 Mr S entered into an agreement with J D Williams to have access to credit by way of a Simply Be catalogue shopping account with an opening credit limit of £125. There followed a series of ten credit limit increases, beginning in December 2015 with an increase to £200 and ending in December 2017 with a credit limit increase up to £2,500. The account went into default and was passed to a third-party collection agency in December 2018.

Mr S says that J D Williams didn't complete adequate affordability checks when it opened the account and shouldn't have granted him the account and further credit when it allowed him further credit limit increases. He says he was already struggling financially at the time.

J D Williams has offered to refund Mr S all the interest and charges he incurred as a result of his credit limit being increased from £750 to £1,200 on 24 September 2016 and the further credit limit increases that followed. Our adjudicator looked into the complaint and thought the offer was fair.

Mr S wasn't happy with this and so requested that his complaint be passed to an ombudsman for a 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.

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 Mr S could afford to repay what he 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 Mr S'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 Mr S. 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 thought that the first five increases to Mr S's credit limit on the account, between December 2015 and May 2016, didn't show or suggest irresponsible lending by J D Williams. I agree that Mr S's use of his account showed that he was generally managing it well and I don't think the level of increases was such that they raised a concern in light of his spending pattern on the account.

By September 2016, however, when the credit limit was increased to £1,200 and Mr S had missed making two regular monthly payments and made an underpayment since the previous limit increase in May 2016, he appears to have been getting into financial difficulty. I've also noticed that a new default was recorded against other borrowing in July 2016 – a further suggestion that Mr S may have been experiencing difficulty in managing his finances. Also, since March 2016 Mr S had begun to use up more of his available credit limit.

So I think by September 2016 J D Williams ought to have been on notice that Mr S might be getting into difficulty with making payments, including those to other lenders. Although from what I've seen the checks carried out by J D Williams didn't show the level of defaults Mr S has told us about, I think the missed payments, underpayment and increasing level of default were likely enough to raise a concern with J D Williams so that it shouldn't have given him any further credit limit increases.

I have also considered the terms of the offer. I can see that it's in line with the redress we ask J D Williams to pay and reflects the particular circumstances of the account. Mr S is unhappy that J D Williams hasn't removed the default or other adverse information from his account. But our general approach to cases like this is to require adverse information to only be removed from a credit file once the outstanding account balance has been cleared. This is fair and reasonable given that the Mr S has already had the benefit of the money he spent.

It follows that I consider J D Williams's offer to be fair and reasonable given the circumstances of this complaint. I'm sorry that I'm not able to help Mr S further on this occasion.

It follows that I am partially upholding this complaint.

### **Putting things right – what J D Williams needs to do**

- Rework Mr S's account to ensure that from 24 September 2016 onwards interest is only charged on balances up to the total credit limit of £750, 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 or the third party collection business should contact Mr S to arrange an affordable repayment plan for this account. Once Mr S has repaid the outstanding balance, it should remove any adverse information recorded on Mr S's credit file from 24 September 2016 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 Mr 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. J D Williams should also remove any adverse information from Mr S's credit file from 24 September 2016 onwards.†

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

### **My final decision**

I partially uphold this complaint and require J D Williams & Company Limited to pay compensation to Mr S as set out above.

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

Michael Goldberg

**Ombudsman**