

The complaint

Ms S believes Studio Retail Limited trading as Ace acted irresponsibly by agreeing a revolving credit account she'd applied for.

What happened

On 29 November 2018, Ms S opened a revolving credit account with Ace. They provided her with a credit limit of £200 which was increased six times to £1,325 by November 2020.

Ms S has complained that Ace didn't act responsibly when approving the account. She's said it wasn't affordable and, had they properly assessed her financial circumstances at the time, they wouldn't have approved her application. Ace didn't agree they'd acted irresponsibly, so Ms S brought her complaint to us for investigation.

Our investigator said that the checks Ace had done when they approved Ms S's application showed she had a significant amount of credit commitments and didn't have enough disposable income to support all her borrowing. He also said that Ms S was in a payment arrangement at the time of the application, which indicated financial difficulties. So, he didn't think Ace should've approved the application. And he said that Ace should remove all interest and charges from the account, and refund Ms S any overpayments.

Ace didn't agree. They provided further information and said that Ms S *"passed our lending thresholds to be accepted for both creditworthiness and affordability"* for a credit limit of £675. They also said that, although Ms S was in a payment arrangement, she didn't have any missed payments in the last six months, nor did she have any CCJ's and hadn't been declared bankrupt. So, they didn't think they'd done anything wrong.

The investigator considered the additional information provided by Ace, but it didn't change his mind. So, Ace asked for an ombudsman to make a final 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.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did Ace complete reasonable and proportionate checks to satisfy itself that Ms S would be able to repay the credit in a sustainable way?
 - a. if so, did Ace make a fair lending decision?
 - b. if not, would reasonable and proportionate checks have shown that Ms S could sustainably repay the borrowing?
2. Did Ace act unfairly or unreasonably in some other way?

And, if I determine that Ace didn't act fairly and reasonably when considering Ms S's application, I'll also consider what I think is a fair way to put things right.

Did Ace complete reasonable and proportionate checks to satisfy itself that Ms S would be able to repay the credit in a sustainable way?

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration and payments of the finance being applied for; as well as the borrowers' personal circumstances at the time of each application.

Ms S declared that her income, at the time of the application, was £15,000 a year. Ace took this at face value and conducted a credit check to establish her regular outgoings. I've seen a copy of the summary credit report that Ace undertook. This scorecard says that Ms S has a "derogatory scorecard" with nine active credit accounts and a "disposable income of £-169" and the "applicant in an arrangement."

While, in their comments on the investigator's view Ace have said that "there were no arrangement indicators on the account" this isn't supported by the credit summary they've provided. Ace have also said that the -169 "is an index used within the assessment ... and not reflective of £ value when compared to customers actual disposable income." However, in their case notes, Ace have said "the credit report shows [Ms S] had a negative -£169 amount for disposable income ... the credit reference agency checks could not accurately verify their income, and this was not relied on exclusively in [our] decision making."

Based on what I've seen and Ace's comments, even though the credit limit was only £200, I'm not satisfied that reasonable checks were carried out – there was an indication of financial difficulties (the arrangement) and of a lack of affordability (-£169 disposable income). As such, I think that Ace should've carried out more checks to establish Ms S's actual income and expenditure, to see whether this account was affordable for her.

Would reasonable and proportionate checks have shown that Ms S would be able to repay the credit in a sustainable way?

Ms S has provided her bank statements for the period 15 May to 23 October 2018. Her account with Ace was opened on 29 November 2018 and, while I wouldn't necessarily have expected Ace to ask for bank statements, I think these statements give a good indication of what Ace would likely have discovered if they'd asked about Ms S's income and expenditure at the time.

The bank statements for the three-month period before the account with Ace was opened show Ms S had an average income of £384.97 a month with average payments to her credit commitments of £301.70 a month. This would leave her with £83.27 a month disposable income. However, this figure doesn't take into consideration any housing costs (rent/mortgage, council tax, energy bills etc.) or any outgoings for food, clothing, transport etc. When these are taken into consideration, it's clear that Ms S wasn't able to afford any additional credit. Which also matches with the negative disposable income Ace had calculated.

So, taking all this into consideration I'm satisfied that, had Ace carried out proportionate checks, they would've seen that the finance wasn't affordable. And they therefore acted irresponsibly when approving the credit. So, they need to do something to put things right.

Did Ace act unfairly or unreasonably in some other way?

I haven't seen anything to make me think Ace acted unfairly or unreasonably in some other way.

Putting things right

As I don't think that Ace acted fairly, I need to consider how to put Ms S back in the position she would've been in, if the finance hadn't been approved. But I also think that, as Ms S has purchased goods from Ace using this account, and had the benefit of these goods, she should be responsible for paying the cash price. But she shouldn't have to pay any interest or charges, including any Buy Now Pay Later interest.

So, Ace should:

- close the account;
- remove any negative information relating to this account from Ms S's credit file;
- remove all interest and charges applied to the account, and recalculate the balance based on the cash price of the goods purchased and the payments made by Ms S only;
 - if the adjusted balance means that Ms S has paid more than the amount she borrowed, Ace should refund any overpayment along with 8% simple yearly interest calculated from the date Ms S made the overpayments to the date of the refund[†]; or
 - if the adjusted balance means that Ms S still has an outstanding balance, Ace should treat her with due consideration and forbearance when agreeing an affordable repayment plan.

[†]HM Revenue & Customs requires Ace to take off tax from this interest. Ace must give Ms S a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained above I uphold Ms S's complaint. Studio Retail Limited trading as Ace must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 2 February 2023.

Andrew Burford
Ombudsman