

The complaint and what happened

Miss P complains that Studio Retail Limited (“Studio”) provided her with a catalogue shopping account that she could not afford, and then increased the limit on it.

I’ve included relevant sections of my provisional decision from November 2022, which form part of this final decision. In my provisional decision I set out the reasons why I was planning to uphold this complaint. In brief that was because I thought the checks that Studio should have carried out more in-depth checks before lending, and that those checks would likely have shown that the borrowing was not affordable and sustainable for Miss P.

I asked both Miss P and Studio to let me have any more information they wanted me to consider. Neither party has responded to the provisional decision, except to confirm they received 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.

Having done so, I’m upholding it, and have included here the relevant sections of my provisional decision:

“What happened

In October 2021 Studio approved a catalogue shopping account with an initial limit of £350 for Miss P. It then increased that limit in April 2022 to £500. It would appear that her account remains in good order.

After Studio rejected her complaint, Miss P brought the case to our service. One of our adjudicators looked at the evidence and thought that Studio hadn’t done anything significantly wrong. Miss P didn’t accept that and asked that the case be passed to an Ombudsman for review.

What I’ve provisionally 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.

Having done so, I’m planning to uphold this complaint and I’ll explain why.

Studio is aware of its obligations under the rules and regulations in place at the time of these credit limit increases, including the Consumer Credit Sourcebook (“CONC”), so I won’t repeat them here. But, briefly, it was required to carry out sufficient checks to ensure that Miss P would be able to repay the borrowing it was making available to her in a sustainable way. As set out in CONC 5.3.1G(2) that means that she could manage the repayments,

“...without...incurring financial difficulties or experiencing significant adverse consequences”

Essentially, Miss P needed to be able to meet all her financial commitments and not have to borrow elsewhere to repay Studio for the credit limit to be considered affordable and sustainable.

Did Studio carry out proportionate checks?

Studio carried out a high-level credit check, asked Miss P about her income, and made some statistical assumptions about disposable income before approving the lending.

The adjudicator thought that Studio ought to have carried out more in-depth checks, both at the time of the account opening in October 2021 and before granting a credit limit increase in April 2022.

I agree, noting particularly the low income of less than £1,000 per month declared by Miss P, meaning that I think there was a substantial risk around affordability for her. Therefore, Studio needed to look into her actual situation, e.g. by asking about her outgoings, to proportionately assess her application. (I say that despite the high-level credit checks indicating that her ‘income’ was almost double what she had declared. However, I can only assume that figure was based on transfers into Miss P’s current account, much of which was transferred out again, and in fact the income she declared looks more accurate.)

What would Studio have found had it done proportionate checks?

When considering this second question, our service has had the benefit of several months of bank statements to review. I accept that there was and is no requirement on a lender to obtain any particular type of information: they are permitted to source and rely on a range of evidence when assessing affordability, and so Studio could have opted to gather more information about Miss P’s financial position in a range of ways. However, it didn’t, and, in the absence of anything else provided, I’m happy to rely on the statements to demonstrate what Studio would most likely have discovered if it had completed proportionate checks.

The relevant statements suggest that Miss P had some financial struggles and essentially had no disposable income. Of key concern are the following issues evident from the bank statements:

- A persistently very low balance, typically under £20.
- Occasionally being overdrawn, seemingly without an agreed overdraft.
- Apparent borrowing from friends/family.
- A returned direct debit on a priority household bill.
- Probable arrears on a priority household bill.

So I have seen no evidence of any disposable income with which Miss P could have made repayments to this account, despite the fact that any repayments may well have been modest. It is an almost inescapable conclusion, therefore, that Miss P would have had to borrow to do so. I have already explained that, under the rules in force, that does not equate to the lending being affordable and sustainable for her. It therefore follows that I don’t think Studio should ever have approved this account for Miss P, and I plan to uphold this complaint.”

As neither party has responded to the findings contained in my provisional decision, I have no reason to depart from them. It therefore follows that I uphold this complaint.

Putting things right

In order to put things right for Miss P, I direct Studio to do the following:

- Rework the account to remove all interest and charges (including any BNPL interest) incurred on the account since opening.
- If after the rework the balance would have been cleared, Studio must refund any overpayments to Miss P with 8% simple interest per year*, calculated from the date of overpayment to the date of settlement.
- If after the adjustment an outstanding balance remains, Studio must try to arrange an affordable repayment plan with Miss P. Once the balance has been fully cleared, whilst I'm not aware of any, should there be adverse information about the account on Miss P's credit file, that should be removed.

*HM Revenue and Customs requires Studio to deduct tax from any award of interest. It must give Miss P a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

For the reasons I've explained here and in my provisional decision, I uphold this complaint and direct Studio Retail Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 11 January 2023.

Siobhan McBride

Ombudsman