

## **The complaint**

Ms D complains that Studio Retail Limited lent to her irresponsibly.

## **What happened**

Ms D applied for a credit facility with Studio in June 2020. Studio assessed her application and agreed a limit of £150, which it increased to £350 in October 2020. Ms D says the limits were unaffordable for her and if Studio had done proper checks, it ought to have refused to lend.

Studio looked into Ms D's complaint. It said she had declared an income of £18,000 per year and her credit file showed no County Court Judgements (CCJ) or current arrears on her active accounts. Studio acknowledged that her file contained five defaulted non-mail order accounts. But it said the monthly repayment on the limit of £150 was just £10 which it felt was affordable for Ms D. Four months later, Studio says it reviewed the account performance and increased the limit to £350. Overall it said it had taken reasonable steps to ensure the repayments would be sustainable for Ms D and rejected her complaint.

Ms D didn't accept what Studio said and referred her complaint to us. One of our investigators looked into it. She noted that a credit report provided by Ms D, showed she was in arrears with other creditors on active accounts at the time of the account opening and had been for several months. Our investigator felt that these arrears ought to have indicated to Studio that it was unlikely the repayments would be sustainable for Ms D, so it should have refused to open the account. She also considered the limit increase four months later and felt that, as Ms D had already missed a payment, the limit increase shouldn't have been given. Our investigator upheld the complaint.

Ms D accepted what our investigator said, but Studio didn't. It said that the arrears didn't show on the search it carried out, but even if they had, it would still have agreed to open the account. And it said that as Ms D made up the missed payment in September 2020 quickly, it was reasonable to allow the limit increase.

As there was no agreement, the complaint has been passed to me for 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.

We've set out our approach to complaints about irresponsible and unaffordable lending on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding this complaint.

Studio needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Ms D irresponsibly. I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Studio carry out reasonable and proportionate checks to satisfy itself that Ms D was in a position to sustainably repay the credit?
- If not, what would reasonable and proportionate checks have shown at the time, and did Studio make a fair lending decision?
- Did Studio act unfairly or unreasonably towards Ms D in some other way?

It's not about Studio assessing the likelihood of it being repaid, but it had to consider the impact of the repayments on Ms D. There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the monthly repayments and the overall circumstances of the borrower.

Did Studio carry out reasonable and proportionate checks to satisfy itself that Ms D was in a position to sustainably repay the loan?

Studio ran Ms D's application for credit through its usual process which includes a check of her credit file. From what it's told us in this case, it relies heavily on information received from credit reference agencies and its own score card. It says the information it received from the credit reference agency suggested Ms D could have afforded a much higher limit.

Studio says the credit reference agency search it carried out showed no current arrears or CCJs, but did show five defaulted accounts. These defaults totalled almost £2,000. Given the volume of defaulted accounts and the value relative to her income, I think it would have been sensible for Studio to take a closer look at Ms D's application. It follows that I don't think it carried out sufficient checks to ensure she'd be able to sustainably repay any credit it offered.

What would reasonable and proportionate checks have shown at the time, and did Studio make a fair lending decision?

I can't say for sure what Studio would have seen had it carried out further checks to get a better understanding of Ms D's financial situation. While there's no set list of checks it ought to have carried out, it could have looked at other credit reference agencies, or asked for Ms D's bank statements for instance.

In this case, Ms D has provided a copy of her credit file dated November 2022. While it's more recent than her application, I'm confident that it shows most of what Studio ought to have seen when it assessed her application. It shows Ms D had a CCJ for £896 in January 2018, albeit she satisfied it a month later. In line with what Studio found, it shows the five defaulted accounts.

But it also shows that Ms D had previously held an account with Studio which had fallen into arrears, and she'd had to make an arrangement to pay. Furthermore, it clearly shows she was in arrears on two other current credit agreements. She had fallen into arrears on each within four or five months of opening them and, by June 2020 when she applied to Studio, she'd been in arrears for a year on one and three months on the other.

While Studio says its initial credit search didn't reveal the arrears, it ought to have been aware of the previous account. And it has said that even if it had been aware of the arrears, it would have reached the same decision to lend.

I've thought carefully about whether its decision to lend was fair, and I don't think it was. It's clear to me that Ms D has struggled with her finances for some time – from the previous account with Studio to the five defaults it was aware of. If it had used that information to take a closer look, it would have been aware she was not meeting other credit payments. So

however small the repayments might have been to the new account, I think Studio ought to have taken a decision not to lend to Ms D as it was unlikely she could afford any further commitments.

Given that I think it ought to have refused to open the account in the first place, it follows that I don't think it ought to have increased the credit limit just a few months later for the same reasons.

#### Did Studio act unfairly or unreasonably towards Ms D in some other way?

I've carefully read and thought about all the evidence provided by each party to this complaint. Having done so, I don't think Studio has acted unfairly or unreasonably towards Ms D in some other way.

But I do think Studio should have refused to lend to Ms D, so I am upholding this complaint.

#### **Putting things right**

When I find that a business has done something wrong, I'd normally direct that business to put the complainant in the position they would be in now if the mistake it made hadn't happened, as far as is reasonably practical. In this case, that would mean putting Ms D in the position she would now be in if she hadn't been given the credit.

But Ms D has been given the credit and she's spent the money, so it's right she should repay that. But it's not right for Studio to benefit from its mistake through interest and charges. So I have to consider if there's another way of putting things right fairly and reasonably given the circumstances of this complaint. So, I think Studio should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied.
  - If this results in a credit balance, this should be refunded to Ms D along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement. Studio should also remove all adverse information regarding this account from Ms D's credit file.
  - Or, if after the rework, there is still an outstanding balance, Studio should arrange an affordable repayment plan with Ms D for the remaining amount. Once she has cleared the balance, any adverse information in relation to the account should be removed from her credit file.
- As Studio has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

\* If Studio considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms D how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

#### **My final decision**

My final decision is that I uphold this complaint for the reasons set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 11 December 2023.

Richard Hale  
**Ombudsman**