

Complaint

Mrs W has effectively complained that J D Williams & Company Limited (trading as “Simply Be”) irresponsibly provided her with a catalogue shopping account and limit increases despite the fact that they were unaffordable.

Background

Mrs W was provided with a catalogue shopping account by Simply Be, which had a credit limit of £500, in February 2022. Mrs W’s credit limit was increased on three occasions until it reached £1,250.00 in June 2022.

One of our investigators looked at everything provided and didn’t agree that proportionate checks would have shown Simply Be that it shouldn’t have provided this account or the subsequent credit limit increases to Mrs W. So she didn’t think that Mrs W’s complaint should be upheld.

Mrs W disagreed with our investigator’s conclusions and asked for an ombudsman’s review of the complaint.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully considered everything, I’ve decided not to uphold Mrs W’s complaint. I’ll explain why in a little more detail.

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.

Simply Be 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 Mrs W 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 consumer’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 Simply Be should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors, are not limited to but, 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.

I've kept all of this in mind when deciding Mrs W's complaint.

Mrs W's account was opened in February 2022 with a credit limit of £500. The catalogue shopping account Simply Be provided Mrs W with was a revolving credit facility. This meant that Simply Be was required to understand whether Mrs W could repay £500 within a reasonable period of time.

What is important to note is that a credit limit of £500 required relatively small monthly payments in order to clear the full amount owed within a reasonable period of time. I appreciate that she might have had previous difficulties with credit in the form of defaults. But the last of them was over a year before this application took place. So I don't think that the adverse information in itself meant that Mrs W shouldn't have been lent to.

Equally, I've not been provided with any clear evidence to show that Mrs W circumstances were such that I could reasonably conclude she didn't have the funds to make the low monthly payment required. As this is the case, I'm satisfied that it wasn't unreasonable for Simply Be to have agreed to this account. And I find that Simply Be didn't treat Mrs W unfairly when it initially opened Mrs W's account with a credit limit of £500 in February 2022.

As I've explained in the background section of this decision, Simply Be subsequently increased Mrs W's credit limit on three occasions until it eventually reached £1,250.00 in June 2022.

The first two limit increases were relatively modest. So I wouldn't have expected Simply Be to have done too much more for them than it did when determining whether to initially provide the account. And, for much the same reasons, my findings in relation to these limit increases are the same as those for when the account was originally opened.

However, by the time of the third limit increase in June 2022, Mrs W's credit limit was being increased to £1,250.00. So I would have expected Simply Be to have found out more about Mrs W's income and expenditure (particularly about her actual regular living expenses) before providing this and any further credit limit increases.

Simply Be has been unable to evidence having done this in this instance. As this is the case, I don't think that the checks it carried out before it provided the June 2022 limit increase was reasonable and proportionate.

Where a firm failed to carry out reasonable and proportionate checks before providing credit or increasing the amount available to a customer, I need to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown. So I've looked at the information Mrs W has provided to get an idea of what Simply Be is likely to have learned had it carried out further enquiries into Mrs W's living expenses.

In particular, I've looked at the current account statements Mrs W has provided for the period leading up to the June 2022 credit limit increase. I've also thought about what Mrs W has said about her finances being in a difficult position.

However, the statements provided do show that Mrs W was receiving regular funds and when her regular living costs and monthly expenditure are deducted from what she received, Mrs W does appear to have enough in funds left over to make the increased repayments needed for the limit increases offered.

I accept that Mrs W's actual circumstances may not been reflected in the information she may have provided. And I note that she says that she was withdrawing around £1,200.00 in order to make rent and car payments. But I can't see these on the statements provided. As this is the case, I'm simply not in a position to include this as committed expenditure – especially as this wasn't declared to Simply Be and wouldn't have shown up in any credit searches either.

In these circumstances (i.e. the amount of the repayments appeared affordable), I don't think that further checks would more likely than not have prevented Simply Be from offering Mrs W the June 2022 credit limit increase either.

In reaching this conclusion, I've considered Mrs W arguments regarding having other complaints upheld and that she has queried how it is possible for this complaint not to be upheld in these circumstances.

I can understand why Mrs W might find it strange that she's received different outcomes on complaints which she perceives to be materially the same. But we consider complaints on an individual basis and looking at the individual circumstances. And what will constitute a proportionate check will very much depend on the particular circumstances of the individual application – a proportionate check – even for the same customer - could look different for different applications.

I'm not bound by the outcomes reached by investigators or even other ombudsmen. Ultimately, I'm required to consider the facts of a case and reach my own conclusion. That said and with a view to providing some clarity and reassurance to Mrs W, it might help for me to explain that there are some key differences between this complaint and Mrs W' other ones.

Firstly, there were instances where the lender concerned provided more than one account. And on at least one other complaint the amount being lent was significantly more than the amount in this case. This will have affected the level of information that will have needed to have been obtained to begin with and in those cases it looks like the finance was provided a few years earlier.

So while I'm not required to replicate the outcomes reached by other investigators and ombudsmen, nonetheless I don't consider that my answer here is incompatible or inconsistent with the ones Mrs W received on her other cases, notwithstanding the differing outcomes.

In any event and most importantly of all, it's probably worth me stating as some of Mrs W's complaints have been upheld, the compensation she's received has effectively placed her in the position she would be had she not been provided with the credit in those cases in the first place.

As this correction has been made and that is effectively the position that Mrs W is now in, it would not be fair and reasonable for me to now 'double count' this, by considering her

payments in relation to this account as well as her position in relation to the accounts she's already been placed in the position of not having.

To do so would seek to place Mrs W in the position she would be in if she shouldn't have been provided with any of her credit at all, because Mrs W was in a position where she couldn't afford any repayments at all to any of her lenders.

I don't think that this is the position that reasonable and proportionate checks will have shown that she was in. And therefore I don't think that the outcomes in some of Mrs W's other cases mean that it should follow that this complaint should also be upheld.

Overall and having carefully considered everything, I've not been persuaded that proportionate checks would have shown that Simply Be that it shouldn't have provided this account, or any of the subsequent credit increases to Mrs W. And I'm therefore not upholding Mrs W's complaint.

I appreciate this will be very disappointing for Mrs W. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 27 May 2024.

Jeshen Narayanan
Ombudsman