DRN-5061505

The complaint

Miss M complains that J D Williams & Company Limited (JDW) lent to her irresponsibly.

What happened

In May 2021 Miss M applied for a running account credit agreement with JDW under their Simply Be brand. Her application was successful and JDW gave her an initial credit limit of £500. The credit limit was increased twice until it reached £1,200. I've set out the details in the table below:

Credit limit change	Amount of increase	New credit limit
October 2021	£300	£800
January 2022	£400	£1,200

In September 2022 Miss M applied for a second account with JDW – this was JD Williams branded. JDW accepted her application and gave Miss M an initial limit of £300. There were no increases to the credit limit.

Miss M complained to JDW in August 2023. She said that at the time of her application for the Simply Be account she had significant other credit commitments, which she was only making minimum payments towards. Miss M said that at the time of the credit limit increases (CLIs) and her application for the JD Williams account her financial situation hadn't improved and therefore, JDW shouldn't have lent to her. She asked JDW to refund all interest and charges associated with the accounts.

JDW didn't think they'd done anything wrong when agreeing to lend to Miss M. They said they'd undertaken appropriate checks before agreeing to open the accounts and the data they gathered supported their decision to lend. JDW added that they'd carried out assessments of Miss M's account before each credit limit increase. And they informed her of each proposed increase so she could have contacted them to reduce to credit limit to a level she was comfortable with. And so, they didn't uphold Miss M's complaint.

Miss M wasn't happy with JDW's response and referred her complaint to our service. One of our investigators looked into what had happened, but she didn't think the complaint should be upheld. She thought JDW had undertaken proportionate checks before opening the accounts and when they increased Miss M's credit limit on the Simply Be account for the first time. And she said that the information JDW learned during those checks wouldn't have raised any concerns about Miss M's ability to make repayments. Our investigator didn't think JDW's checks before the second CLI went far enough. But she concluded that further checks would have shown Miss M could afford the CLI.

Miss M didn't agree. She said she was keeping up with payments by increasing her borrowing elsewhere, including cash withdrawals from credit cards and a loan. As no agreement could be reached Miss M asked for an Ombudsman's decision – and it came to me.

I issued a provisional decision on 19 September 2024 explaining why I was minded to partially uphold the complaint. I said:

"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 intend to uphold Miss M's complaint in part. I'll explain why below.

What lenders must do

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case. I'll review each lending decision in turn, starting by considering if JDW's checks were proportionate. If I think they were proportionate I'll consider if JDW made a fair lending decision. If I conclude that JDW ought to have done more, I'll consider what proportionate checks would likely have found – and how this would have impacted JDW's decision-making.

May 2021 – Simply Be account opening

JDW looked at Miss M's credit file and said this didn't reveal any concerning information. Their report showed Miss M had no County Court judgments (CCJ) or defaults. JDW noted Miss M had nine active credit accounts which appeared to be managed well, with no arrears being recorded in the last six months. I've reviewed the data JDW sent us, and while it shows how many open accounts Miss M had, it doesn't show what the outstanding balances were.

CONC 5.2A.12 R (1) and (2) requires firms to consider the customer's ability to make repayments under the agreement as they fall due over the life of the agreement and, where the agreement is an open-ended agreement, within a reasonable period. Repayments should be out of, or using, the customer's income unless the customer has clearly indicated they have access to income received by another person or that they intend to repay using savings or other assets.

I haven't seen anything to suggest that JDW asked Miss M about her income or that they knew how much she owed on her other open accounts. So I can't see how they could fairly assess Miss M's ability to make repayments as set out in CONC 5.2A.12 R. It follows that I don't think JDW carried out proportionate checks before agreeing to open the Simply Be account.

I've gone on to consider what proportionate checks would likely have shown. I asked Miss M about her income in May 2021, and she said it was around £2,557 net per month. Miss M also sent us a copy of her credit report, and this provides more details about her credit commitments at the time of the account opening. I could see Miss M owed around £9,177 across three credit cards. CONC requires a firm to assume that revolving credit is repaid over a reasonable term. I'm inclined to say JDW should have used at least 5% of the outstanding amount (around £490) to reflect that. The credit report also shows a loan repayment of £31 per month. So, I think JDW would likely have found that Miss M had credit commitments of around £521 per month.

JDW were approving a credit limit of £500. Miss M wasn't required to make a set repayment each month. CONC 5.2A.27 R requires a firm to assume when carrying out its assessment that the entire credit limit is drawn down at the earliest opportunity and repaid in equal instalments over a reasonable period. I've not seen anything to show what assumptions JDW made, but I think with the proposed credit limit they could have reasonably assumed Miss M would need to pay them around £25 each month.

So, the new lending would take Miss M's credit commitments to £546 per month, against a monthly net income of around £2,557. That would have left Miss M with around £2,011 to meet her other committed and discretionary expenditure. So I'm inclined to say that if JDW had carried out proportionate checks they'd have been able to fairly conclude the lending was affordable.

October 2021 – Simply Be CLI 1

By October 2021, Miss M had had her account with JDW for five months. She was managing the account well, staying within the agreed limit and paying the full statement balance most months. JDW ran a credit check, and this showed Miss M was a month in arrears with another lender but was managing her other accounts well. I've thought about this carefully. A missed payment doesn't necessarily indicate financial difficulties. Instead, it could have been a genuine mistake or oversight that led to the payment being missed. So the missed payment in isolation doesn't necessarily mean JDW ought to have conducted more checks.

Miss M's own credit report doesn't show any additional adverse information. The limit increase of £300 wouldn't have required a significant increase in Miss M's monthly payments to JDW. I wouldn't have expected JDW to check Miss M's income again given that only six months had passed since her initial application. But I think they needed to understand what Miss M's credit commitments were to allow them to assess the affordability of the increase in line with CONC 5.2A.12 R. It doesn't appear that JDW obtained any details about Miss M's other debts, and so I can't reasonably conclude their checks were proportionate.

Miss M's credit report shows that her revolving credit had increased from around £9,177 to around £23,943 in the space of five months – an increase of around £14,766. Miss M had also taken out a loan, and although I couldn't see what the loan capital was, Miss M was required to make repayments of £320 per month. Credit Reference Agencies (CRA) usually report credit balances so JDW could have found out about the substantial increase in Miss M's overall indebtedness.

Overall, I think that proportionate checks would have led to JDW finding out that Miss M was required to make repayments of around £1,868 to meet her credit commitments, out of her income of around £2,557 – leaving her with around £689 to cover any other committed and discretionary expenditure. And this might have raised concerns about whether the proposed increase was affordable. But I think the sharp increase in indebtedness and the arrears with another lender were enough for JDW to have realised that Miss M was likely struggling financially, and that adding any further lending would be unsustainable. For that reason, I've provisionally decided to say JDW shouldn't have agreed to increase Miss M's credit limit in October 2021.

Where I think that a business shouldn't have agreed to lend at any point in their relationship with a consumer, I'd usually go on to consider each lending decision that followed. This is because the consumer's circumstances might have changed, which *would in turn mean that the business could reasonably have reached a fair lending decision.*

Looking at the information available to JDW at the time of the second CLI on the Simply Be account and the opening of the J D Williams account, I can see that Miss M's situation hadn't changed substantially. She remained in arrears with another lender. Miss M's credit file shows her revolving credit balance reduced to around £18,341 in January 2022, but this appears to have been the result of Miss M paying a lump sum of £5,477 on one of her credit cards in October 2021. Miss M told us she'd taken a loan of £7,500 that month and sent us bank statements showing it being credited to her account. So, Miss M's overall indebtedness had increased further. By September 2022 she owed around £23,114 in revolving credit and had taken out additional loans.

As Miss M's circumstances hadn't changed substantially since the first CLI in October 2021, I don't think I need to review the checks JDW conducted prior to lending and whether they made fair lending decisions. Based on what I've seen my provisional finding is that JDW ought to have realised Miss M was in a debt spiral and any additional lending would put her under additional pressure. It follows that they couldn't have fairly decided to lend to Miss M in January and September 2022.

<u>Did JDW act unfairly in any other way?</u>

I've also considered whether JDW acted unfairly or unreasonably in some other way given what Miss M has complained about, including whether their relationship with Miss M might have been unfair under s.140A Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Miss M in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case."

Both parties responded and said they had nothing further to add.

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.

As neither party has raised any additional arguments or provided further information for me to consider, I've got nothing further to add – my findings are unchanged from those set out above.

Putting things right

I've concluded that JDW shouldn't have given Miss M a credit limit of more than £500 on the Simply Be card. And they shouldn't have approved her application for the JD Williams card. So, JDW should do the following to resolve the complaint:

<u>Simply Be account</u>

- Rework the account to remove all interest, fees and charges that have been applied to balances above £500
- If the reworking results in a credit balance, this should be paid to Miss M with the addition of simple interest at 8% per year from the date of each overpayment to the

date of settlement.
• Or, if an outstanding balance remains, JDW should look to arrange an affordable payment plan with Miss M for the outstanding amount. If any debt was sold to a third party, JDW should either repurchase the debt or liaise with the third party to ensure the above steps are undertaken. Once Miss M has cleared the balance, any adverse information applied to Miss M's credit file after the October 2021 credit limit increase should be removed.

<u>J D Williams account</u>

- Remove all interest, fees and charges that have been applied
- Calculate the balance outstanding after the above adjustments
- If the reworking results in a credit balance, this should be paid to Miss M with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.
- Or, if an outstanding balance remains, JDW should look to arrange an affordable payment plan with Miss M for the outstanding amount. If any debt was sold to a third party, JDW should either repurchase the debt or liaise with the third party to ensure the above steps are undertaken. Once Miss M has cleared the balance, any adverse information relating to the account should be removed from Miss M's credit file.

HM Revenue & Customs (HMRC) requires JDW to deduct tax from any award of interest. They must provide Miss M with a certificate showing how much tax has been deducted if she asks for one.

My final decision

For the reasons set out above, I'm upholding this complaint and I direct J D Williams & Company Limited to take the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 1 November 2024.

Anja Gill
Ombudsman