

The complaint

Mr F, who is represented by a third party, complains that Shop Direct Finance Company Limited ('Shop Direct'), irresponsibly granted him credit he couldn't afford to repay and caused him to get into financial difficulties as a result.

What happened

In May 2012, Mr F entered into an agreement with Shop Direct to have access to credit by way of a Very credit card account. He was given an initial credit limit of £750. This was followed by a total of 12 credit limit increases, with the most recent in July 2015, when the credit limit reached £5,000. My understanding is that the account remains open.

In November 2013, Mr F entered into a second agreement with Shop Direct, this time for a Littlewoods account. This account had an opening credit limit of £1,200 and there were no credit limit increases. I've seen that up to the time the account was closed, in October 2019, Mr F never made use of the account.

Mr F says that Shop Direct didn't complete adequate affordability checks and so failed to ensure he'd be able to manage the cards sustainably, causing him considerable distress.

Shop Direct said the complaint had been made too late. This was because the accounts had been opened more than six years earlier. Also, given that Shop Direct had reduced Mr F's credit limit on the Very account in July 2012, it said Mr F ought reasonably to have realised that he might have cause for complaint. So, he has started his complaint too late under the three-year part of the time limit rules set out with the complaint handling rules we must apply.

Mr F therefore brought his complaint to this service.

Our investigator said he wouldn't be looking into the Littlewoods account as it was never used. Also, our investigator didn't recommend the complaint about the Very account be upheld. Ultimately, he thought Shop Direct didn't act unfairly or unreasonably by approving the granting of the initial credit or the limit increases that followed up until the 10th increase in December 2014 – the significance of that date was that Mr F had never gone over the £4,100 credit increase he received then. Whilst our investigator thought Shop Direct ought to have carried out better checks when opening the account and increasing the limits than what we'd seen, ultimately he didn't find conclusive evidence or information to show it had made unfair lending decisions.

As Mr F doesn't agree with our investigator's finding, his 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.

In this decision, given that Mr F never used the Littlewoods account - and therefore never incurred any financial loss – I will not be considering the merits of granting that account.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Shop Direct thinks this complaint was referred to us too late because the account opening and all of the credit limit increases took place more than six years ago. Our investigator also briefly explained that he was considering the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974. That means that Mr F's complaint about having an allegedly unfair lending relationship between him and Shop Direct has been referred to us in time.

Seeing as I've decided not to uphold Mr F's complaint, and given the reasons for this (which I'll go on to explain), whether Mr F referred this complaint to us about lending decisions that happened more than six years ago in time or not has no impact on that outcome. I think Mr F's complaint should be considered more broadly than just the lending decision, seeing as he complained not just about the decision to lend but also the impact this had on him over the course of his relationship with Shop Direct. Mr F's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of his relationship with Shop Direct.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr F's complaint can be reasonably interpreted as being about the fairness of his relationship with Shop Direct, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974 ("CCA").

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Shop Direct) and the debtor (Mr F), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship.

S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given what Mr F has complained about, I therefore need to think about whether Shop Direct's decisions to lend to Mr F or its later actions created unfairness in the relationship between him and Shop Direct such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr F's relationship with Shop Direct is therefore likely to be unfair if it didn't carry out proportionate affordability checks, where doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

When assessing affordability, there wasn't a set list of checks that Shop Direct needed to complete, but they needed to be borrower focussed and proportionate to things like the type of lending, the cost of the lending as well as the amount, and how long Mr F would need to be making repayments for to pay off the credit.

Before granting the credit, Shop Direct looked into Mr F's financial situation. I've seen a few details taken from the credit checks that Shop Direct carried out. And it seems that Mr F was in full-time employment at the time he applied for the card. The credit check at the point of application showed that Mr F owed £300 in other credit. It also showed he'd had a county court judgment issued against him 23 months earlier and account arrears 24 months earlier.

I've also seen some high-level credit reference agency data used by Shop Direct to check whether each of the credit limit increases were affordable. Broadly speaking, Mr F appears to have managed his credit well, having mostly made payments that were the minimum required or slightly above. The most significant issue I've seen is that Mr F missed two payments shortly after taking out the card, incurring late payment fees and resulting in his credit balance being reduced from £750 to £200. Shop Direct's credit check information suggests Mr F was having a problem with another credit product at around the same time. But he seems to have got his account back into good order by the following month and went on to be given two credit increases in 2012, taking his credit limit back up to £600. The next increase after that was in April 2013, when the limit was increased to £1,100.

I therefore agree with our investigator that, bearing in mind the lack of available detail about Shop Direct's credit checks – plus the account default issued soon after Mr F was granted the credit – that Shop Direct ought to have done more to establish that the credit was both affordable and capable of being repaid sustainably in view of Mr F's financial circumstances. Without knowing more about how his income was being used and put towards day-to-day living expenses and his existing debt, I can't say that Shop Direct did enough by way of a reasonable and proportionate check before granting the initial credit and increases that followed. Good account management can provide a fair indication of a consumer's financial welfare. But I think in Mr F's case given the early default and relatively steep level of limit increases – Mr F's available credit had increased more than five-fold by December 2014 – better checks were needed.

Our investigator requested bank statements from Mr F in order to better understand what Shop Direct would likely have seen had it carried out reasonable and proportionate checks. Unfortunately, Mr F hasn't been able to provide these. He gave us some further details about his financial situation, plus a credit report produced in 2017. Mr F says he didn't have enough income to cover his essential spending. The figures he's given us, together with estimated bills and debts, suggests that Mr F may have been financially stretched. I can see from his credit report that Mr F was taking a significant number of short-term high-cost loans between 2013 and 2015. And in 2020 Mr F asked for a payment freeze due to financial difficulties arising from the impact of the covid pandemic.

The key issue I am looking at here is whether or not Shop Direct made a fair lending decision at the Very account opening and with the credit limit increases that followed. So, I need to understand what, if anything, Shop Direct might have found out if it completed reasonable and proportionate checks. Unfortunately, Mr F hasn't provided sufficient information to help me determine whether or not Shop Direct was wrong to grant the initial credit and then go on to increase it.

Having also looked through the available account history, I don't think Shop Direct acted unfairly or unreasonably in the way it provided support to Mr F after he got into difficulty with meeting repayments in 2012 and then again much later, in 2020.

Overall, and based on the available evidence I don't find that Mr F's relationship with Shop Direct is currently unfair. It's not clear enough to me that Shop Direct created unfairness in its relationship with Mr F by lending to him irresponsibly. And I don't find Shop Direct treated Mr F unfairly in any other way either based on what I've seen.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 21 March 2025.

Michael Goldberg

Ombudsman