

## The complaint

Miss B complains that Freemans Plc lent to her irresponsibly.

## What happened

Miss B had a credit account with Freemans from February 2000. We don't know what the opening credit limit was, but we do have limited information about it from October 2009 onwards as shown below.

Event	Date	Credit limit
Earliest limit known	21 October 2009	£3,500
Limit increase	22 November 2009	£3,900
Limit increase	21 March 2010	£4,300
Limit decrease	21 January 2014	£1,400
Limit increase	21 July 2014	£1,600
Limit decrease	21 September 2014	£800
Limit increase	21 February 2015	£900
Limit increase	21 June 2015	£1,000
Limit increase	21 November 2015	£1,200
Limit increase	21 September 2016	£1,400
Limit decrease	21 August 2017	£1,300
Limit increase	21 December 2017	£1,500
Limit decrease	23 March 2021	£1,350

On 8 April 2023, Miss B complained to Freemans. She said it had acted irresponsibly by *“not checking [her] income and doing credit checks”*. As a result she told us *“financially it's been a nightmare. [She has] been in arrears with rent and council tax and is still in financial hardship”*. She asked Freemans to refund all interest and charges she paid on the account.

Freemans looked into Miss B's complaint. It said due to the time elapsed it has no *“meaningful information...in respect of [its] decision to initially grant the credit”*. The earliest data it had available was from May 2014 when Miss B's credit limit was £1,400. It said having reviewed the account, it shouldn't have increased her limit to £1,600 in July 2014, so it upheld Miss B's complaint. It offered to refund all charges and interest from then on for any balance over £1,400. This amounted to £322.45. Freemans said it would offset the refund against her outstanding balance of £549.29.

Miss B was unhappy with Freemans' response so she referred her complaint to our service. One of our investigators looked into the complaint and ultimately recommended that Freemans should refund interest and charges on balances over £800 from 21 February 2015. She said if this cleared Miss B's balance, then any excess should be paid to Miss B along with interest at 8% simple per year from the date of overpayment to the date of settlement, and any adverse information should be removed from her credit file.

Miss B accepted our investigator's recommendation, but we didn't hear from Freemans despite chasers. As a result, the complaint was passed to me for a 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.

### *The current position*

The circumstances involved in this complaint are well known to both Miss B and Freemans and have been summarised for each party by our investigator. I have carefully considered all the evidence available and I agree with our investigators view of how things should be put right for Miss B.

I asked Freemans if it was now prepared to make the offer recommended by our investigator. It apologised for not having responded sooner and improved on what our investigator said. It offered to refund interest and charges on balances over £800 from 21 July 2014 – six months earlier than our investigator had recommended.

This meant it's offer was now £1,243.16 which it said would settle the outstanding balance and the remainder would be repaid to Miss B. I thought this was a fair offer, and put it to Miss B. She rejected it saying redress should be paid back to 2009, and that Freemans had charged £4,136 in total. She said she had sent evidence of her bank statements and other documents dating back to 2009 which she feels supported her complaint, but these have been lost either in the post or our mailroom.

### *Our jurisdiction*

The rules that govern our service are set out in the Handbook of the Financial Conduct Authority, specifically the Dispute Resolution section (DISP). DISP 2.8.2 sets out the time limits in which we have to work. The parts of the rule relevant to this case are that we cannot consider a complaint brought to the respondent business or to us more than:

- six years after the event complained of; or (if later)
- three years from the date on which the complainant became aware (or ought reasonably to have become aware) of their cause for complaint, unless
- in the view of the Ombudsman, the failure to comply with the time limits was as a result of exceptional circumstances; or
- the respondent business consents.

Ordinarily, under the rules I would be saying that I can only look at lending decisions which took place within six years of Miss B raising her complaint in April 2023. But in this case Freemans has consented to us looking at the complaint which means I am able to consider the whole of it rather than events since April 2017.

That said, while I have the power to do so, I can only make a finding where evidence exists of unfairness or mistakes being made.

### *Irresponsible lending*

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.

Freemans needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Miss B 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 Freemans carry out reasonable and proportionate checks to satisfy itself that Miss B was in a position to sustainably repay the credit?
  - If not, what would reasonable and proportionate checks have shown at the time?
- Did Freemans make a fair lending decision?
- Did Freemans act unfairly or unreasonably towards Miss B in some other way?

It's not about Freemans assessing the likelihood of it being repaid, but it had to consider the impact of the repayments on her. 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.

Due to the time that's passed, Freemans doesn't have information about lending decisions that took place prior to June 2014. This isn't unusual as businesses are not required to hold information indefinitely. Indeed, in my experience, May 2014 is longer ago than I'd normally expect to see.

This means that I can't reasonably comment on the checks that Freemans carried out prior to May 2014 as there is no evidence of what it did or what it found. Miss B says she sent us copies of information that pre-dated this, but unfortunately she doesn't have copies and it didn't reach us. Sadly, I have to assume it no longer exists.

As we know, the account has been open since 2000 and I can't comment on anything earlier than 2014. So the account was in existence by then and I can't make a finding that it shouldn't have been because I have no evidence to support that. And at the earliest point I can consider, Miss B's limit was £1,400, so this has to be my starting point.

I can see in July 2014, her limit was increased to £1,600 before being reduced to £800 two months later. So, by September 2014, the maximum Freemans was content to lend Miss B was £800. I can't reasonably say that decision was incorrect. I've looked at what happened around that time and since.

Having done so I think it's evident from her account performance that Miss B was struggling with the Freemans account. I say this because she was charged a '*missed payment fee*' in June, August, September and November 2014 and January 2015. But despite payments being missed every other month, Freemans increased her limit to £900 from February 2015. The pattern of missed payments continued through to August 2017 when it appears Miss B was able to make payments on time with the odd exception. However, at that time she was making only the minimum payments which meant the balance was only reducing very slowly.

Given what I can see, I don't think Freemans reached a fair decision to lend when it increased Miss B's limit above £800 because she was already struggling with the account at that time.

#### Did Freemans act unfairly or unreasonably towards Miss B in some other way?

I've thought carefully about the circumstances here and reviewed all the evidence to have available to me. I've not seen anything which leads me to conclude that Freemans has acted unfairly towards Miss B in some other way.

I've considered whether Miss B's relationship could be considered to have been unfair as described by Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have set out below results in fair compensation for Miss B 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.

### **Putting things right**

As I don't think Freemans should have increased Miss B's credit limit above £800, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Miss B has had the benefit of all the money she spent on the account so I think she should pay this back. I think this removes the unfairness that was created by Freemans' failure to ensure the increases were affordable for Miss B.

Therefore, Freemans should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £800 after 21 July 2014.
- If the rework results in a credit balance, this should be refunded to Miss B along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement. Freemans should also remove all adverse information recorded after 21 July 2014 regarding this account from Miss B's credit file.
- Or, if an outstanding balance remains, Freemans should look to arrange an affordable payment plan with Miss B for the outstanding amount. Once Miss B has cleared the outstanding balance, any adverse information recorded after 21 July 2014 in relation to the account should be removed from her credit file.

\*HM Revenue & Customs requires [Business] to deduct tax from any award of interest. It must give [Consumer] a certificate showing how much tax has been taken off if he/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**

My final decision is that I uphold this complaint. Freemans PLC should put matters right for Miss B set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 5 May 2025.

Richard Hale  
**Ombudsman**