

The complaint

Ms P complains J D Williams & Company Limited trading as Simply Be (Simply Be) irresponsibly lent to her because it didn't carry out reasonable and proportionate checks to ensure the lending was affordable.

What happened

Ms P had two accounts with Simply Be. The first account was opened in June 2002. The second account was opened on 3 March 2013 with an initial limit of £150. The credit limit was increased on the following occasions:

Date	Event	New Credit Limit
20 December 2014	Credit limit increase (CLI) one	£300
16 February 2015	CLI two	£500
16 March 2015	CLI three	£800
13 April 2015	CLI four	£1,300
13 February 2017	CLI five	£2,100
9 April 2018	CLI six	£3,000

Because of the time which has passed there is limited information about account one, and Ms P accepted our service couldn't consider this account. So, I won't comment further on this account and this decision is only about the lending decisions relating to the second account.

Ms P complained to Simply Be on 23 April 2024 about the lending decisions. She doesn't think she ought to have been provided with the account and it should have checked her credit history. She is concerned she was charged for late payments, but Simply Be continued to increase her limit. She also said she is in financial difficulties and pays the minimum every month, but the balance has not reduced.

Simply Be responded to the complaint on 4 June 2024 but explained that because of the age of the account there was limited information about the checks it carried out at the time or to substantiate Ms P's concerns it had lent to her irresponsibly.

Ms P remained unhappy and asked our service to look into things. Our Investigator explained to both parties why she felt we could consider the complaint about the second account. However, she went on to explain why she didn't think it should be upheld.

Ms P didn't agree with our Investigator's findings. She submitted a Subject Access Request to Simply Be in order to provide our service with evidence to support her complaint. Therefore, the complaint has been passed to me to decide.

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.

There are time limits for referring a complaint to the Financial Ombudsman Service. Our Investigator explained why she felt it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140 of the Consumer Credit Act 1974 (Section 140), and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our Investigator and think this complaint is one I can consider. I think this complaint can reasonably be considered as being about an unfair relationship as Ms P is concerned about the lending decision and has explained she had difficulty making repayments throughout the agreement. This may have made the relationship unfair. As I don't intend to make any award to Ms P, I won't comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Ms P's complaint can be reasonably interpreted as being about the fairness of her relationship with Simply Be, relevant law in this case includes Section 140A-C.

Section 140A says that a court may make an order under Section 140B if it determines that the relationship between the creditor (Simply Be) and the debtor (Ms P), 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.

Given what Ms P has complained about I need to consider whether Simply Be's decision to lend to her, or its later actions, created unfairness in the relationship between her and Simply Be such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Ms P's relationship with Simply Be is therefore likely to be unfair if it didn't carry out reasonable and proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

There are key questions I need to consider in order to decide what's fair and reasonable:

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

Simply Be had to carry out reasonable and proportionate checks to satisfy itself that Ms P would be able to repay the credit sustainably. It's not about Simply Be assessing the likelihood of being repaid, but it had to consider the impacts of the repayment 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. I'm also mindful that this account was a revolving credit facility. This meant Simply Be needed to ensure that Ms P would be able to afford repayments which would enable her to repay the total credit being provided within a reasonable period.

It's also worth noting that the information available from both parties is relatively limited particularly in respect of the circumstances at the time of the lending decisions. This is because of the amount of time which has passed and isn't unusual. Therefore, I've weighed up the information I do have. In doing so, I've considered what I think, on balance, was more likely to have happened than not.

Account Opening

I'm mindful the account was opened with a very modest limit of £150, and Ms P would only need to make small repayments each month to repay the total available credit within a reasonable period.

I appreciate Ms P's concern that she was allowed to open this account only two months after her previous account was sold in 2013. She has confirmed she was sent arrears communications on 39 separate occasions prior to the account being sold. However, Simply Be has confirmed its debt sale process at the time meant it only conducted this process once every 12 months. This meant Ms P's account went through the full arrears cycle by December 2011 and it was subsequently prepared to be sold in February 2012. However, it was not actually sold until the next annual debt sale in January 2013.

I find this explanation plausible and consistent with the information I've seen about the accounts. This also means a year had passed by the time the new account was opened. Whilst I'd expect Simply Be to consider how Ms P had managed her previous account, I don't necessarily think this was sufficiently close to the lending decision to say this in itself meant it was irresponsible for Simply Be to provide this account with an initial limit of £150.

Whilst Simply Be is unable to provide information about the full checks carried out, it has provided some data from a credit reference agency (CRA) about Ms P's credit management which it had at the time. Additionally, Ms P has been asked to provide information from the time of the lending decisions.

Weighing up all the information I have, I'm unable to say the lending decision was irresponsible here. I'm mindful Simply Be did obtain information from a CRA about Ms P's credit commitments and went on to provide the credit. Given this was a modest credit limit, I think it's unlikely to have seemed unaffordable for Ms P at the time. In any event, even if I concluded that Simply Be's checks weren't reasonable and proportionate because of the limited evidence, it wouldn't change the outcome here. This is because there isn't sufficient evidence for me to be able to say what was likely to have been discovered had further checks been carried out. It follows that I can't say Simply Be's decision to open the account was unfair.

CLI one (£300 – December 2014)

In December 2014, Simply Be doubled the credit limit on the account. However, the overall credit limit remained modest at £300. This represented a small increase in the monthly repayment amount which would be necessary to repay the total credit available within a reasonable period. I've seen the credit search and note there was one delinquent mail order account showing. Other searches had also shown one delinquent account. I have noted this, but I don't think this was enough in itself to say Simply Be shouldn't have provided this relatively modest limit.

I'm mindful Ms P made a significant payment towards her Simply Be account in the month of the lending decision. Notwithstanding the delinquent account, this seems to have indicated she could afford the modest increase. Additionally, even if I concluded further checks ought to have been carried out, I haven't seen anything to suggest Simply Be would reasonably have discovered it would be irresponsible to increase Ms P's credit limit. So, I don't think Simply Be's decision to increase her limit here was unfair.

CLI two (£500 – February 2015), CLI three (£800 – March 2015) and CLI four (£1,300 – April 2015)

The next three credit limit increases happened over three consecutive months. This included increases to £500 and £800 (which were still relatively modest limits), as well as an increase to £1,300. From what I've seen I don't think reasonable and proportionate checks were carried out by Simply Be for these increases. I don't think it had enough information to reasonably satisfy itself the lending was affordable and sustainable for Ms P.

I have reviewed a copy of the CRA information and the repayment history, and I can see there was one delinquent account showing and there seems to have been missed payments recorded for an account in February 2015. Additionally, Ms P doesn't seem to have paid what was expected in January 2015. This was quickly caught up on by Ms P. The account notes confirm this was discussed at the time and that she only missed this payment because she had forgotten to pay it.

The information isn't sufficient in itself for me to be able to conclude it was irresponsible for Simply Be to increase Ms P's credit limit on these occasions. Whilst I'm mindful there was some adverse information, the information about this is limited and I'm mindful Ms P had made a large payment in December 2014. I've also thought about the size of the credit limits being provided here.

Nevertheless, I'm not satisfied from the evidence I've seen that Simply Be had enough information to be able to make a fair lending decision. It's not clear what else it understood about Ms P's circumstances such as her income, living situation and expenditure. Without further information, I don't think it could be sure Ms P would be able to afford the additional credit.

Ordinarily, I'd go on to consider what such checks were likely to have shown had they been conducted by Simply Be prior to the increases. As mentioned, there is limited information available because of the time which has passed. For example, Ms P hasn't been able to provide us with bank statements from the time because it's been more than six years. Thinking about the information I do have, I'm unable to conclude appropriate checks were likely to have shown Ms P couldn't sustainably afford the credit or that it was irresponsible for Simply Be to lend. Therefore, I can't conclude Simply Be created unfairness in the relationship by increasing Ms P's credit limit on these occasions.

CLI five (£2,100 – February 2017) and CLI six (£3,000 – April 2018)

I have explained why I don't think Simply Be created unfairness by increasing Ms P's limit to £1,300. I've reviewed the account history, and I can't see Ms P's account balance exceeded this amount. This has also been confirmed by Simply Be. So, I'm satisfied that Ms P hasn't paid interest or charges on balances above £1,300. Therefore, it's not necessary for me to consider whether it was irresponsible for Simply Be to increase the limit in February 2017 (to £2,100) and April 2018 (to £3,000). This is because Ms P hasn't utilised the additional credit available to her here, and so I'm satisfied no unfairness was created.

Did Simply Be act unfairly or unreasonably towards Ms P in some other way?

Ms P has raised concerns she is in severe financial hardship, and she pays the minimum each month, but the balance does not come down. I've reviewed the account notes and repayment history, as well as the other information I have. There are rules which lenders need to follow to ensure borrowers pay off a credit balance within a reasonable period. This includes identifying consumers who are only making the required payments and are not reducing the balance. Also, lenders need to send correspondence with specific information included.

Simply Be confirmed it classified Ms P as being in persistent debt. It has also provided the templates of its persistent debt letters. This included the relevant information, and the system notes confirm they were likely to have been sent at the relevant times (in accordance with the rules). Ms P was encouraged to pay more than the minimum and had been given contact details for further support.

Following persistent debt correspondence in January 2023, it seemed her minimum payment increased to ensure she was paying down the balance. She was still able to spend on the card, and this had been explained in the persistent debt letter. She was invited to contact Simply Be about any financial difficulties she might be experiencing. I can see on receipt of the complaint Simply Be suspended spending on the account as Ms P had let it know the credit wasn't affordable.

Taking everything into consideration, I'm satisfied from the evidence that Simply Be seems to have treated Ms P fairly and I'm unable to conclude it ought to have done anything further here. Simply Be confirmed it will support her with the affordability of the remaining balance should she contact it, and I've seen she has been provided with the relevant contact details. Going forward, I'd remind Simply Be that it must treat Ms P with reasonable forbearance and due consideration.

Summary

Overall and based on all the available evidence, I don't find that Ms P's relationship with Simply Be is or was unfair. I appreciate my decision will be considerably disappointing for Ms P. However, it's not clear enough to me that Simply Be created unfairness in its relationship with Ms P by lending to her irresponsibly or, that it treated Ms P unfairly in any other way based on what I've seen.

My final decision

For the reasons outlined above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 13 November 2025.

Laura Dean

Ombudsman