DRN-5922765

The complaint

Mr M complains that J D Williams & Company Limited (JDW) acted irresponsibly in lending to him.

What happened

Around August 2019 Mr M applied for a revolving credit facility (catalogue account) with JDW. His application was successful with the account opened with a £175 credit limit. The credit limit was increased incrementally, December 2019 to £200, January 2020 to £300, March 2020 to £500 and April 2020 to £700.

Around November 2023 Mr M applied for a second catalogue account with JDW under the trading name of Jacamo. His application was successful and JDW opened the account with a credit limit of £500. They increased Mr M's credit limit incrementally, in January 2024 to £600, March 2024 to £900, August 2024 to £1,300 and in October 2024 to £1,900.

Around November 2024 Mr M applied for a third catalogue account with JDW trading as Home Essentials. His application was successful with the account being opened with a £500 credit limit. No further credit limit increases were applied.

Mr M complained to JDW saying they hadn't sufficiently checked whether any of the lending was affordable for him. He said he was already heavily indebted, and the repayments weren't sustainable for him which meant he'd had to borrow further.

JDW said their checks were reasonable and proportionate for the type and amount being borrowed. They said these checks showed Mr M was managing his active credit well being up to date without any adverse information.

Mr M wasn't happy with JDW's response and referred his complaint to us.

Our investigator said JDW's checks weren't sufficient as they didn't gather enough data about Mr M's credit commitments. After reviewing Mr M's income and expenditure they said that none of the lending decisions were fair as the repayments were unsustainable for Mr M. They asked JDW to put things right.

JDW didn't agree to our investigator's outcome, so Mr M's complaint has been referred for an ombudsman 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.

Having done so I'm upholding Mr M's complaint. I'll explain why.

Our approach to unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - is set out on our website and I've applied this in deciding Mr M's complaint.

I’ve considered the relevant rules and guidance on responsible lending set by the regulator, laid out in the consumer credit handbook (CONC). In summary, these say that before JDW offered the credit facility they needed to complete reasonable and proportionate checks to be satisfied Mr M would be able to repay the debt in a sustainable way.

In deciding what was proportionate JDW needed to consider things such as (but not limited to): the amount of credit, the size of any regular payments (taking into consideration the rules and guidance in CONC relating to assumptions concerning revolving credit), the cost of credit and the consumer’s circumstances.

There isn’t a set list of checks a lender must do. This means to reach my decision I need to consider if JDW carried out proportionate checks at the time of each of Mr M’s lending decisions; if so, did they make fair lending decision based on the results of these checks; and if not, what better checks would most likely have shown. I also need to consider the circumstances at the time of each additional advance in credit, whether there was a point at which JDW ought reasonably to have realised they were increasing Mr M’s indebtedness in a way that was unsustainable or causing financial duress.

What’s important to note is that Mr M was provided with a revolving credit facility rather than a loan. As it was revolving credit there’s no set amount that needed to be repaid each month, but CONC requires a firm to assume when carrying out their assessment that the entire credit limit is drawn down at the earliest opportunity and repaid in equal instalments over a reasonable period. I can see that Mr M had an initial credit limit of £175, so he would have needed to repay less than £10 each month to clear any outstanding balance within a reasonable time. As this is a relatively low amount, I wouldn’t expect JDW’s due diligence to be comparable say to that had Mr M been seeking a high amount of credit repayable over a longer period. I think its reasonable to conclude that a less detailed affordability assessment was proportionate such as validating Mr M had a regular income and that he was actively managing his credit commitments - especially in the early stages of a lending relationship.

But the affordability assessment should also be “borrower-focused”, meaning JDW needed to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mr M. Basically it’s not enough for JDW to only think about the likelihood of Mr M being able to pay them back they must also consider the impact of repayment on Mr M himself.

CONC says a lender must take reasonable steps to estimate a consumer’s income and non-discretionary outgoings. And must base its credit worthiness assessment on information they’re aware of or obtained from the consumer or a credit reference agency (CRA).

But from the evidence provided by JDW I can’t see any details as to Mr M’s income or an understanding of his credit commitments other than he’d nine active accounts that were up to date. And that he’d an historic default. I don’t think the evidence provided by JDW is sufficient for me to say their checks were reasonable and proportionate.

As outlined above I wouldn’t expect a lender to carry out a detailed income and expenditure assessment for such a relatively low amount. But I can’t say on the evidence provided by JDW that they had a reasonable understanding of Mr M’s income and non-discretionary expenditure.

Mr M has provided his credit report which would show his credit commitments at the time of the lending. And his bank statements which would show his income.

From Mr M’s credit report, I can see he was heavily reliant on credit as he’d 10 credit cards and two mail order accounts. He was utilising 99% of his available credit card limits. And

76% of his mail order credit limits. While Mr M was actively managing his credit commitments, I think his credit report shows he was heavily reliant on credit. I've also considered Mr M's bank statements for the three months prior to the lending to gain a good understanding of his income to see whether this could sustain the level of credit commitments he had.

I can see from these that Mr M had a regular salaried income paid into his account. But I can also see that he was also reliant on high-cost borrowing to manage his day to day finances, as I can see regular payments into his account from these sources each month. I think had JDW carried out proportionate and reasonable checks they would have seen that Mr M was overly indebted. And was borrowing to meet his non- discretionary outgoings.

While on paper it might have appeared that the lending was affordable, so it was likely JDW would get their money back. I don't think JDW made a fair lending decision by agreeing to Mr M having a catalogue account with them. As outlined above any lending should be borrower focussed, and I think by adding to Mr M's financial burden when he was already heavily reliant on credit was unfair. I don't think the repayments were sustainable as it was evident Mr M was already borrowing to pay other borrowing. As I don't think JDW should have opened the account by extension they shouldn't have provided any subsequent credit limit increases.

I've applied the same reasoning to the catalogue account Mr M opened around November 2023. Again, JDW has shown they did the same checks, but these didn't give an understanding of Mr M's income and non-discretionary outgoings. Having reviewed Mr M's credit report for the time of this application I can see his reliance on credit had escalated. As he now had 11 credit cards, with 94% usage. As well as several loans, credit sales and mail order accounts. So, I think Mr M was clearly over indebted and any further lending would on balance be detrimental to him. As I don't think JDW should have opened the account by extension they shouldn't have provided any subsequent credit limit increases.

And I've applied the same reasoning for the third catalogue account that Mr M opened around November 2024. Again, JDW has shown they did the same checks, but these didn't give an understanding of Mr M's income and non-discretionary outgoings. Having reviewed Mr M's credit report for the time of this application his reliance on credit had increased further as he now had 12 credit cards, several loans, credit sales and mail order accounts. So, I don't think JDW should have opened the account as I think Mr M was clearly over indebted and any further lending would on balance be detrimental to him.

While Mr M was managing these accounts I think had JDW properly checked they would have seen Mr M was overly indebted and reliant on credit. And that it was more likely than not that Mr M would have to borrow to meet the repayments. So, I don't think they acted responsibly in agreeing to these accounts or any subsequent credit limits.

Putting things right

To put things right we'd usually ask a business to put a consumer back into the position they were in before the business did something wrong. But in cases of irresponsible lending this isn't possible given Mr M has had the benefit of the monies lent to him by JDW. So, I think its only right he should pay this back. But as I don't think JDW should have opened any of the accounts, I don't think it's fair for them to be able to apply any interest or charges under the credit agreements.

I've also considered whether the relationship might have been unfair under Section140A of the Consumer Credit Act 1974. But I'm satisfied the redress I have directed below results in fair compensation for Mr M in the circumstances of his complaint. I'm satisfied, based on what I’ve seen, that no additional award would be appropriate in this case.

My final decision

I uphold this complaint. And ask J D Williams & Company Limited to:

- Rework the accounts removing all interest, fees, charges and insurances (not already refunded) that have been applied.
- If the rework results in a credit balance(s), this should be refunded to Mr M along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement.
- Remove all adverse information regarding these accounts from Mr M’s credit file. Or,
- If after the rework there is still an outstanding balance(s), they should arrange an affordable repayment plan with for the remaining amount(s). Once Mr M has cleared the balance, any adverse information in relation to the account(s) should be removed from his credit file.

If J D Williams & Company Limited has sold the debt to a third party, they should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

*His Majesty’s Revenue & Customs requires J D Williams & Company Limited to deduct tax from any award of interest. It must give Mr M a certificate showing how much tax has been taken off if he asks for one. If they intend to apply the refund to reduce an outstanding balance, they must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before .

Anne Scarr
Ombudsman