

complaint

Mr G complains that Shop Direct Finance Company Limited (“SDFC”) gave him credit he couldn’t afford to pay back on a catalogue shopping account.

background

Mr G opened a catalogue shopping account in 2010. It was subject to the following credit limit changes.

date limit changed	credit limit	change
9 February 2010	500	n/a (account opened)
28 August 2010	275	-225
23 October 2010	175	-100
15 January 2011	125	-50
12 February 2011	75	-50
10 March 2011	500	425
7 December 2011	700	200
20 February 2012	950	250
5 May 2012	1,450	500
25 August 2012	1,950	500
12 January 2013	1,075	-875
9 February 2013	975	-100
9 March 2013	900	-75
10 January 2015	250	-650
27 January 2016	0	-250 (account closure)

I issued a provisional decision in August 2018 where I explained why I thought Mr G’s complaint should be upheld. An extract of my provisional decision is attached and forms part of this final decision.

Following my provisional decision, SDFC agreed to refund any buy now pay later and extended term amounts, and any administration charges since December 2011 plus 8% simple interest per year.

But SDFC did not agree to remove any adverse information from Mr G’s credit file. It said notwithstanding any failure on its part, Mr G was not obliged to use the credit made available to him. So removing adverse information from his credit file would mean reporting an inaccurate history to the credit reference agencies as well as removing any accountability Mr G had for his own actions.

As SDFC did not agree with everything I intended to tell it to do to put things right, the case has been referred back to me for a final decision.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As SDFC has agreed to the refunds I asked it to make in my provisional decision, all I'm left to decide here is whether it should also remove adverse information from Mr G's credit file.

I've thought about the reasons SDFC has given for not wanting to do this. But I don't agree. However much responsibility SDFC wants to put on Mr G, it was SDFC's responsibility to make sure he could afford the repayments before offering him more credit. It failed to do this and the adverse information recorded on his credit file is the likely and foreseeable result of this failure. So it should be removed.

my final decision

My final decision is that I uphold Mr G's complaint. To put things right Shop Direct Finance Company Limited must:

- refund all interest (if any) and charges from 7 December 2011 onwards on any balance over £500;
- add interest to these amounts of 8% simple per annum from the date Mr G paid them to the date of settlement, and;
- remove any adverse information from Mr G's credit file in relation to the this period.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 22 October 2018.

Michael Ball
ombudsman

extract of provisional decision

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've only been asked by Mr G to look at credit limit changes from December 2011 onwards here – because SDFC disputed whether we could look at loans before this. So I make no findings on any changes before this.

I recognise Mr G never asked for any of the credit limit increases. But SDFC was permitted to do this by the terms of his account. So what I need to consider is whether it was appropriate for it to increase the limit each time it did this.

In deciding whether it is reasonable to advance credit, lenders must undertake reasonable and proportionate checks to see if the lending is affordable. What is expected of a lender depends on several factors, including things like the amount of credit, the repayments, what the lender knows about the customer, and the information that the customer has provided.

I've taken into account the regulatory guidelines published by the Office of Fair Trading at the time of the credit limit increases. These said that '*we consider before.....significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner*'. The OFT also said that '*the creditor's assessment should have regard to the borrower's ability to pay off the maximum amount of credit available (equivalent to the credit limit) over a reasonable period of time*'.

So I need to decide whether SDFC carried out appropriate checks when they increased Mr G's credit limits. And if I find that they didn't, I'd need to decide whether it would still have agreed to those increases if the checks had been appropriate.

SDFC says it made its decisions to increase Mr G's credit limit based on information it received from credit reference agencies and the way he operated his account. It says it did these same checks each time it increased the limit. But it doesn't have the results of the checks so I don't know what information it would have seen. SDFC suggested we look at Mr G's credit file to get this information. So that's what I've done.

£500 - £700 on 7 December 2011

SDFC says Mr G had a good recent payment history. It's given us statements which start in October 2011. These show that Mr G didn't use the account between September 2011 and December 2011. SDFC hasn't given us statements from earlier in 2011 but it looks like Mr G's credit limit was reduced twice – in January and February – down to as low as £75. SDFC has said that it lowered credit limits if customers had a bad repayment history or adverse information on their credit file. So in the absence of any other explanation, I think it's reasonable to assume this is what happened in Mr G's case. I can't check this because the information no longer shows on Mr G's credit file.

I've thought about how this impacts SDFC's affordability assessment. When SDFC increased Mr G's credit limit in December 2011 it had been nine months since the last time it reduced his credit limit. But from the statements it's sent me there's not much to suggest that Mr G's situation had improved because he hadn't been using the account. So I don't agree that Mr G had been managing the account well, he just hadn't used it in a while.

I've also had a look at the copy of Mr G's credit file that he's given us to see what SDFC might've seen. The report shows no recent late payments or defaults at the time SDFC would have been making its decision to increase the credit limit. However there is some recent history of payday lending and short term instalment loans – at least six in the six months before the increase. These kinds of loans are intended to address very short term cash flow issues so the frequency of these ought to have been a cause for concern – especially in light of what SDFC already knew about Mr G's repayment history with it.

So in summary, there's not much to suggest Mr G was managing his account well, he had a fairly recent history of quite significant limit decreases and there were signs of back to back short term loans. Taken in the round, I think SDFC should've been having a closer look at Mr G's situation before agreeing to give him more credit.

It's not for me to say exactly which checks SDFC should have done and this isn't specified in the OFT guidance. But I think it should at least have gathered some basic information about Mr G's income and expenditure – and given what was on his credit file, his short term commitments also. I've looked at Mr G's bank statements to get this but SDFC could just as easily have asked him for it.

If it had done this SDFC would have discovered that Mr G's income was around £1,600 per month. And his normal living expenses and financial commitments were around £1,300. But he also had considerable short term commitments which made his expenditure in the following month more than his income. I don't think the repayments on further credit would've been affordable for Mr G without having to borrow more elsewhere. So I don't think SDFC would've agreed to the credit limit increase with proportionate affordability checks.

£700 - £950 on 20 February 2012

Between this limit increase and the last, Mr G's credit file shows he'd got into early arrears on a home credit loan. And he'd taken out another payday loan with the same lender he'd taken previous loans with. He'd also paid off some of his other home credit loans but taken new ones again.

Two months had passed since the last credit limit increase and Mr G made a late payment on one of those. So there really wasn't much still to suggest that he was managing his account well.

By now I think SDFC should've been having an even closer look at Mr G's finances than before. But even if it had gathered the same kind of information I thought it should have before the previous limit increase, it would still have seen that further credit wasn't affordable as Mr G's situation hadn't changed. So I don't think it would've agreed to this credit limit increase either with proportionate checks.

£950 - £1,450 on 5 May 2012

Mr G's circumstances didn't really change before any of the remaining credit limit increases. And by now SDFC should've known about his situation. So it should have been doing more detailed checks each time it was proposing to increase his limit. These would've revealed that Mr G still couldn't afford to make the repayments *and* he was gambling in excess of his income.

SDFC increased Mr G's credit limit from £1,450 to £1,950 in August 2012. Mr G's account balance was never more than around £980. So even if I were to find SDFC should not have increased the limit on this occasion, Mr G hasn't lost out as a result because he never used the extra credit that was made available to him. And I've already said that the previous limit increases should not have been agreed in any event. So there's no need to consider whether this limit increase was affordable.

So overall, I don't think SDFC should have agreed to the credit limit increases from 7 December 2011 onwards. Mr G has lost out as a result of this because he's been charged late fees on sums that were over the limit he could afford to repay. So SDFC should refund Mr G any interest (if there was any) and charges on balances over £500 plus interest on this amount. And it should remove any adverse information on his credit file for this period too.

my provisional decision

I'm currently minded to uphold Mr G's complaint and ask Shop Direct Finance Company Limited to:

- refund all interest (if any) and charges from 7 December 2011 onwards on any balance over £500;
- add interest to these amounts of 8% simple per annum from the date Mr G paid them to the date of settlement, and;
- remove any adverse information from Mr G's credit file in relation to the this period.