

complaint

Miss A complains that Studio Retail Limited (“Studio”) lent to her in an irresponsible manner.

background

Miss A was provided with a catalogue shopping account by Studio in December 2011. Her credit limit was initially set at £150 and was then increased almost monthly until it reached £1,113 in January 2013. It was further increased to £1,363 in July 2013 and again to £1,613 in January 2014. When Miss A started to face problems making her repayments Studio decreased the credit limit to £1,580 in February 2014 before defaulting the account the following August.

Miss A’s outstanding balance was transferred to a third-party debt collection company in 2016. Miss A tells us that she had repaid around two thirds of the outstanding balance before the third party noticed that it wasn’t able to locate a copy of the credit agreement Miss A had signed in 2011. As a result, she says, it decided to write off the remaining balance on her account.

Miss A’s complaint has been assessed by one of our adjudicators. He didn’t think Studio’s initial decision to open an account for Miss A was unreasonable. And he thought the early credit limit increases had been made responsibly. But he thought that by the time the credit limit was increased in July 2013 Studio should have been aware of Miss A’s worsening financial situation and so shouldn’t have agreed that increase. And he thought that by the following month Studio should have reached the conclusion that Miss A would be unable to repay what she’d borrowed in a sustainable manner. So Studio should have stopped offering further credit at that point and prevented Miss A from making any new purchases using the account. So he asked Studio to put things right for Miss A.

Studio let us know that the assessment was being considered by one of its senior managers. But since then it has failed to provide any further response to the assessment. So, as the complaint hasn’t been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Miss A accepts my decision it is legally binding on both parties.

my findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. We’ve set out our approach to unaffordable/irresponsible lending complaints on our website and I’ve kept this in mind while deciding Miss A’s complaint.

The rules and regulations at the time required Studio to carry out a reasonable and proportionate assessment of whether Miss A could afford to repay what she owed in a sustainable manner. This assessment is sometimes referred to as an “affordability assessment” or “affordability check”. The check needed to be completed at the outset of the relationship and each time there was a significant increase in the credit limit. Studio also needed to monitor the account for any signs that Miss A was struggling to manage the credit she’d been given.

The checks had to be “borrower” focused – so Studio had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Miss A. In

practice this meant that Studio had to ensure that making the required repayments wouldn't cause Miss A undue difficulty or adverse consequences. In other words, it wasn't enough for Studio to simply think about the likelihood of it getting its money back, it had to consider the impact of any repayments on Miss A.

Checks also had to be "proportionate" to the specific circumstances at that time. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be, or has been, indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether Studio did what it needed to before agreeing to open an account for Miss A, and to agree the subsequent increases to her credit limit.

Given the time that has elapsed since the account was first opened, Studio has told us that it has little evidence of the checks that it performed to ensure that Miss A would be able to repay the credit in a sustainable manner. But it says that it would have used information from a credit reference agency to help determine the state of Miss A's finances.

I don't draw any adverse conclusions from Studio's inability to provide me with the results of its checks. But without that information it would be difficult to fairly conclude that the checks it did were proportionate. It doesn't seem to have gathered any information from Miss A about her specific circumstances.

But the credit limit it agreed when the account was first opened was relatively small - I don't think it would've been proportionate for Studio to ask Miss A for the amount of information that would be needed to show the lending was unsustainable before opening the account. So I don't think the original lending decision should cause me any great concerns.

And I think the same applies to the increases to the credit limit that took place over the following twelve months. During that time Miss A appears to have operated her account relatively well, maintaining its balance within the agreed credit limit, and making the required repayments on time. Although I think Studio should have started to become concerned towards the end of that time that Miss A wasn't making any inroads into repaying what she owed, and her outstanding balance was steadily increasing, I don't think it unfair that Studio continued to offer, and increase, the credit to Miss A.

Studio increased Miss A's credit limit by around 30% in January 2013. I've thought very carefully about that increase since Miss A's credit file shows that she had faced problems in 2012 with two other credit accounts. County Court Judgements (CCJ) had been issued against her in January and October 2012. But, whilst I am sure Studio would have been aware of the first CCJ, it is possible that its checks before the increase in January 2013 didn't yet identify the second. So on balance I've concluded that the increase to the credit limit it provided in January 2013, set against the background of Miss A's relatively good management of her account, wasn't unreasonable.

Studio didn't increase the credit limit again until July 2013. That increase was another large one, increasing the limit by a further 20%. By that time the second CCJ would have been visible on Miss A's credit file. And it is possible that a third CCJ, issued in May, would have been reported too. That would have been a clear indication that Miss A was facing serious problems managing her money.

But given the amount of credit that Studio was now extending to Miss A, I think its checks at that time might have need to go further than just a simple check of her credit file. So what I would consider to be proportionate checks at that time are likely to have identified the problems Miss A was facing managing her money even if the third CCJ hadn't yet been reported. So I don't think Studio should have increased Miss A's credit limit in July 2013 or subsequently in January 2014.

As I said earlier Miss A, over the life of her credit agreement, made little progress in reducing the overall amount that she owed. Her outstanding balance had generally risen in line with the increases to her credit limit. That didn't suggest that she would find it possible to repay what she owed in a sustainable manner over a reasonable period of time. But it does seem that she was meeting the minimum repayments that the agreement required her to make.

However that appears to have changed in August 2013. At that time Miss A was charged a default sum suggesting that her repayment was either late, or missed. I think that, together the other concerns I've explained above, should have led to Studio curtailing the credit it was offering to Miss A. I don't think it was appropriate for it to allow her to continue to make new purchases with the account, without a significant and sustained reduction in what she owed.

So in summary, I don't think Studio should have increased the credit limit on Miss A's account after, and including, the increase in July 2013. And I think it should have stopped Miss A taking any further credit from when she missed a repayment in August 2013. So I uphold part of Miss A's complaint and Studio needs to pay her some compensation.

putting things right

As I said earlier Miss A's account, that was transferred to the third party, has now been settled. But it seems part of that settlement was facilitated by the third party writing off monies where it couldn't locate a supporting credit agreement. I think it reasonable that the amount that was written off is accounted for in any compensation due to Miss A.

To put things right, Studio should reconstruct Miss A's account by making the following adjustments;

- I don't think Studio should have agreed to increase Miss A's credit limit after, and including, the limit increase in July 2013. So Studio should remove any interest

incurred on amounts above the previous credit limit of £1,113 from the date of increase in July 2013.

- I don't think Studio should have agreed to allow any further purchases to be made using the account following the missed payment in August 2013. So Studio should remove any interest and charges (including delivery fees, Buy Now Pay Later interest, and PPP insurance premiums) incurred on purchases made after 15 August 2013.
- Studio should remove any adverse information recorded on Miss A's credit file in relation to this account

If, after making these adjustments, Miss A's account was in credit at any time, Studio should pay Miss A interest at a rate of 8% simple* on the credit balance for the period it is in credit.

If a credit balance remains at the end of the calculations Studio should refund that amount to Miss A, adding interest at a rate of 8% simple* on the credit balance to the date of settlement.

* HM Revenue & Customs requires Studio to take off tax from this interest. Studio must give Miss A a certificate showing how much tax it's taken off if she asks for one.

In making these calculations it is reasonable for Studio to take account of any amount that was written off as part of Miss A's agreement with the third party. But, since Miss A's account is now closed, and the credit agreement terminated, no further liability should fall on Miss A.

Miss A has understandably expressed some concerns that the lack of information that Studio says it holds may make it difficult to accurately complete the above calculations. It may be that Studio needs to make some assumptions if it doesn't hold all the information it needs, however I am hopeful that, since my redress doesn't start until July 2013, that might not be the case. However, Studio should provide Miss A with sufficient detail of its calculations so that she can either check their correctness, or understand any assumptions that have reasonably been made if information is missing.

my final decision

My final decision is that I uphold part of Miss A's complaint and direct Studio Retail Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 18 April 2021.

Paul Reilly
ombudsman