

## complaint

Mrs P complains that JD Williams ("JDW") was irresponsible to lend to her by increasing her credit limit multiple times.

## background

Mrs P held catalogue shopping accounts with JDW under the Simply Be and Viva La Diva brands. I will deal with both those accounts in this decision.

Mrs P says JDW should never have increased her credit limits as she was only making the minimum repayments and JDW should have known she wouldn't be able to repay the balance within a reasonable period of time. She adds that if JDW had properly checked her credit file it would also have seen she had a poor credit record, including late payments and defaults.

JDW says it checked Mrs P's credit file and increased her credit limit in line with how she managed her account. It says her payments were generally kept up to date, but there were occasions when they were late and, as a result of non-payment, her account was defaulted in July 2010. It says Mrs P settled the account in March 2012.

JDW adds that, due to a policy change, four of Mrs P's late payment charges would no longer have been applied, so it offered to refund these as a goodwill gesture. It says it sent a cheque for £60.50 to refund these, plus the £12.50 credit on her account.

Mrs P says her debt was sold to a third party in March 2012 and it took her a few years to clear via a debt management company. She adds that JDW's response only addressed her complaint about one of her accounts.

Consumer Credit came under the jurisdiction of this Service in April 2007. So I am not able to deal with matters that happened before that date. This decision, and hence our consideration of Mrs P's complaint will only deal with events after 6 April 2007.

Given the time that has passed it hasn't been possible for JDW to confirm the exact dates on which Mrs P opened her catalogue shopping accounts. But it seems to me that it is probable that both accounts were opened before 6 April 2007. If that is the case, I cannot deal with what happened when the accounts were opened.

But JDW has given us details of increases that were applied to Mrs P's credit limits following that date. The regulations require JDW to conduct proportionate assessments of Mrs P's ability to repay what she is being allowed to borrow under those credit limits. So it is those credit limit increases, after 6 April 2007, that form the basis of the complaint I am considering here:

Viva La Diva Credit Increases		
<u>Date</u>	<u>From</u>	<u>To</u>

Simply Be Credit Increases		
<u>Date</u>	<u>From</u>	<u>To</u>

18 Jan 2007	£400	£500
15 Feb 2007	£500	£600
15 Mar 2007	£600	£700
12 Apr 2007	£700	£800
10 May 2007	£800	£900
7 Jun 2007	£900	£1,050
13 Mar 2008	£1,050	£1,600

16 Jun 2007	£200	£300
11 Aug 2007	£300	£400
26 Jan 2008	£400	£600
22 Mar 2008	£600	£900
5 Jun 2008	£900	£1,400
28 Aug 2008	£1,400	£2,000
27 Aug 2009	£2,000	£2,250

I understand that, around 2010, Mrs P faced problems repaying her accounts. As a result they were transferred to a third-party debt collection company. Mrs P has told us that the accounts have now been repaid.

JDW has told us that it thinks Mrs P's complaint has been made too late. It considers that she ought to have been aware that she had cause to complain more than three years before she referred the matter to the business. I can see that Mrs P made her complaints to JDW in April and May 2018.

An ombudsman has already considered JDW's arguments that the complaint was brought too late. He decided that Mrs P's complaint was made within the applicable time limits and, therefore, that this service can now look at the merits of the complaint.

So I can now decide whether or not it was reasonable for JDW to offer the credit limit increases to Mrs P.

One of our adjudicators has already considered the merits of the complaint and she recommended the complaint should be upheld. She wasn't satisfied that JDW's checks were good enough and considered Mrs P's credit limits should not have been increased from March 2008 onwards. She also found that Mrs P's account should have been frozen in August 2008 and that she should not have been allowed any new purchases after 28th August 2008.

Our adjudicator said:

- JDW should remove any interest and charges incurred as a result of any credit limit increases subsequent to March 2008;
  - So it should only add interest accrued on the balance up to the credit limit in place before the March 2008 increases for both accounts;
- Both accounts should have been frozen on 28 August 2008 so JDW should remove all interest and charges added to the accounts since then, including delivery fees, Buy Now Pay Later interest accrued after that date and any insurance premiums;
- JDW should work out how much Mrs P owed after the above adjustments and any repayments she's made since March 2008 should reduce the adjusted balance;
- If this clears the adjusted balance any funds remaining should be refunded to Mrs P with 8% simple interest - calculated from the date of overpayment to settlement date;

- Or, if an outstanding balance remains, JDW should look to set up a suitable payment plan with her for the outstanding amount. Although, Mrs P says both balances have now been cleared;
- JDW should remove any negative information about the account from Mrs P's credit file from March 2008 onwards once the amount owed has been settled;
- As the accounts were passed to a third party, JDW may need to liaise with them to ensure the above is carried out.

JDW responded to say, in summary, that Mrs P was regularly making minimum repayments and there was nothing to indicate there had been a change in the way in which she was managing her accounts. It says that a creditworthiness check was carried out at the point of each credit increase and no adverse information was apparent. JDW adds that it does not have the information available to understand the interest and charges applied from 2008.

### **my provisional findings**

I issued a provisional decision to Mrs P and to JDW on 22 December 2020. I summarise my findings here:

Based on the relevant guidelines at the time, as outlined in my provisional decision, I wasn't satisfied that JDW had completed appropriate and proportionate checks because:

- I'd seen no evidence that JDW asked Mrs P about her income or expenditure;
- Over a period of 19 months, Mrs P's credit limit increased by £3,200;
- Mrs P's payment history showed she was only paying the minimum repayments and was sometimes late in paying;
- JDW says it used credit checks and account management information to make decisions about increasing the credit limits, but did not mention that Mrs P's income or expenditure was taken into account;

So I then considered what JDW was likely to have found had it carried out proportionate checks by looking at Mrs P's bank statements from the time:

- Mrs P's bank account was in significant credit for some of 2007 from the proceeds of what appears to be a house sale. So I didn't think JDW would have made a different decision about any credit limit increases that year had it carried out better checks.
- I couldn't see there was anything to indicate Mrs P was struggling to manage her money in December 2007 or January 2008, so I couldn't conclude JDW was wrong to increase her credit limit by £200 on 26 January 2008.
- But I didn't think JDW should have increased her limit by a further £550 on 13 March 2008 because:
  - A review of Mrs P's regular income and expenditure showed she had little disposable income each month;

- Mrs P's total monthly income was around £2,600, off which over £2,000 was already committed to regular payments and most of the remainder was spent on food and travel;
  - Around two-thirds of Mrs P's income was already being paid to credit providers;
  - I thought it was likely that Mrs P was paying at, or close to, minimum payments on her four credit card accounts;
  - Mrs P's bank account was regularly overdrawn and having taken out a large loan in September 2007, she extended this by several thousand pounds in January 2008.
  - I considered there were clear indications that Mrs P was starting to struggle to manage her money and I thought it was irresponsible to further extend her credit limits.
- So I found it likely that if JDW had carried out proportionate checks, it would not have increased her credit limit by £550 on 13 March 2008, or by a further £1,650 between then and August 2009.
- By August 2008, proportionate checks would also have shown Mrs P was already making regular payments to a debt management company and she hadn't made any real inroads to the payments she was making to her credit cards. At this point, I considered it would have been reasonable to prevent any further purchases and thereby limit Mrs P's overall debt.

In summary, my provisional decision was that JDW should not have increased Mrs P's credit limits from March 2008 onwards, and that it should have prevented further purchases from August 2008.

Ordinarily, JDW should:

- Refund any interest and charges incurred as a result of any credit limit increases from March 2008 onwards and;
- Refund all interest and charges added to the accounts since 28 August 2008;
- Add 8% simple interest - calculated from the date of overpayment to the date of settlement;
- Remove any negative information about the account from Mrs P's credit file from March 2008 onwards;

But I accepted that JDW said it does not have complete records from 2008 to when the accounts were fully repaid. So, I said that JDW should use what information it does have, make a reasonable estimate of the refund due and explain its calculations to Mrs P, along with its assumptions.

Mrs P responded to say she had no further information to add.

JDW did not respond to my provisional 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 neither Mrs P, nor JDW, offered any further information, I see no reason to depart from my provisional decision.

### **my final decision**

My decision is that J D Williams & Company Limited should provide the refund as outlined above, based on its best estimation, and remove any negative information from Mrs P's credit file from March 2008 onwards.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 8 March 2021.

Amanda Williams  
**ombudsman**