

complaint

Miss C complains that Studio Retail Limited ("Studio") lent to her in an irresponsible manner.

background

Miss C was provided with a catalogue shopping account by Studio in June 2000. Her credit limit was initially set at £234 and was then gradually increased until it reached £1,164 in March 2002. Over the following years Miss C struggled to manage her account on occasion and her credit limit fluctuated. But in March 2012 her credit limit was increased from £1,950 to £2,200.

In January 2011 Miss C entered into a debt management plan (DMP). But she didn't include her debt to Studio in that plan as she says she was hoping that it was manageable. That didn't however prove to be the case and Miss C entered an additional DMP in June 2013 that included her debt to Studio. At that time Studio stopped adding interest to the account and Miss C has been making reduced repayments.

Miss C's complaint has been assessed by one of our adjudicators. He thought that by the time Miss C entered the first DMP, Studio should have realised that she was facing serious problems managing her money and started to show forbearance by not adding any further interest or charges to her account. So he asked Studio to put things right for Miss C.

Disappointingly Studio hasn't responded to that 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 C 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 C's complaint.

Lending of this nature first became regulated in April 2007. So I am not able to make any findings in this decision about anything that happened before then. Though I will obviously consider that period of time to help understand the history of Miss C's relationship with Studio. And for a few years after that date the guidance regarding lending of this type was evolving.

But certainly by 2010 the rules and regulations required Studio to carry out a reasonable and proportionate assessment of whether Miss C 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 a relationship and each time there was a significant increase in the credit limit. And Studio also needed to monitor the account for any signs that Miss C 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 C. In practice this meant that Studio had to ensure that making the required repayments wouldn’t cause Miss C 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 C.

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 enough to manage the credit it was offering to Miss C.

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 C 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 C’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 C about her specific circumstances.

But in the specific circumstances of this complaint I don’t think that matters. The complaint that Miss C has made relates to what happened around the time she entered the first DMP in 2011. Her complaint is that Studio’s lending became irresponsible around that time. So that will reasonably form the focus of my decision.

Studio has said that in January 2011, when Miss C entered her first DMP, it had no indication that she was experiencing financial problems. And it appears to draw comfort from the fact that Miss C didn’t include its account in the DMP that its lending was affordable for her. But I don’t agree.

As I said earlier, Studio was required to ensure that Miss C could afford to repay what she owed when any substantial increase was made to her credit limit. But given the passage of time I don't have details of when her limit was changed in the year or two before March 2012. So it is difficult for me to make any findings in that regard without further evidence. But Studio was also required to monitor Miss C's repayment record for any signs that she was struggling.

Over 2010 Miss C was required to make monthly repayments. I can see that during that year Miss C was charged six "default sums". That would suggest that on around half of her repayments she failed to meet her contractual obligations. I think that would have been a clear indication to Studio that she was facing problems managing her money.

Studio has said that it would have also used information provided by credit reference agencies when looking at Miss C's account. I appreciate that the information recorded by credit reference agencies in 2011 might not have been as comprehensive as we see today. And as a result some data might be missing or anonymised, or the data might not be up to date. But Miss C's DMP in 2011 included seven different accounts totalling almost £4,000. I think it unlikely that the adverse information about at least some of those accounts wouldn't have been seen on any credit check.

So I think Miss C's repayment record in 2010 should have made Studio aware that it needed to pay greater attention to her financial position. And I think that at least some of the causes of her needing to enter a DMP in January 2011 would have been visible to Studio from its credit checks. So I think at that point Studio should have identified that Miss C was facing severe problems managing her money and offered to treat her account with forbearance.

From the limited information available to me, Miss C was making little progress in repaying what she owed. It seems much of the repayments she was making each month was being used to settle Studio's interest and charges rather than reducing her outstanding balance. I think, given what I have said above about the financial problems she was facing, that Studio should have shown forbearance at that time and stopped adding additional interest and charges to her account.

putting things right

I think that Studio should have exercised forbearance and stopped adding new interest and charges to Miss C's account from January 2011. So, to put things right, Studio should reconstruct Miss C's account by making the following adjustments;

- rework the account to reflect that no interest at all should have been added to the account from January 2011 onwards. All late payment and over limit fees added after that date should also be removed; and
- If an outstanding balance remains on the account once these adjustments have been made Studio should contact Miss C to arrange a suitable repayment plan for this. If Studio considers it appropriate to record negative information on Miss C's credit file, it should backdate this to January 2011.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Miss C, along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Studio should remove any adverse information from Miss C's credit file.†

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

If Studio has sold the outstanding balance on this account to a third-party debt purchaser it either needs to buy the account back from the third party and make the necessary adjustments, pay an amount to the third party in order for it to make the necessary adjustments, or pay Miss C an amount to ensure that it fully complies with this direction.

my final decision

My final decision is that I uphold part of Miss C'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 C to accept or reject my decision before 27 April 2021.

Paul Reilly
ombudsman