

## **complaint**

Mr E complained that John Lewis Financial Services Limited ("John Lewis") irresponsibly provided him with a credit card account. He says John Lewis has not helped him, given his financial difficulties and health issues; and he provided income and expenditure information and offered to make monthly repayments.

Mr E is unhappy John Lewis issued legal proceedings to recover the credit card debt which he has had difficulty dealing with; and he only missed one repayment because he did not have the account details. John Lewis has included his wife and family in its letters regarding the account.

## **background**

Two adjudicators have considered this complaint. They both recommended that the complaint should not succeed and made the following findings.

A court has decided that the credit card debt was repayable and established the level of debt that should be repaid, subject matters of the complaint effectively dealt with by the court judgement are not ones that the adjudicators felt able to come to an opinion about. That said, the first adjudicator did note that John Lewis had confirmed that credit checks and an affordability assessment were performed when the card was issued. And Mr E was in full time employment at the time.

The credit limit was later increased due to good account conduct and the account was used on three occasions for balance transfers, helping Mr E to reduce other debts. The account seems to have been managed satisfactorily for a number of years; and although Mr E says that he struggled during this period, there is no evidence to suggest that the bank knew.

The adjudicators did though consider whether the bank had met its obligations, more widely, to treat Mr E positively and sympathetically, given his financial difficulties. The adjudicators considered that the bank was not aware of Mr E's illness until after the account was passed to its solicitors, in December 2011, although Mr E says that he incurred the debt previously while suffering illness. Little further information about Mr E's illness was made available by Mr E for some time after, and that only after legal proceedings were commenced.

It was noted that John Lewis had taken various actions, in pursuit of treating Mr E positively and sympathetically. It suspended use of the credit facility; suspended interest and charges from being applied to the account from July 2009 when it became aware of Mr E's reduced income; and agreed to repayment plans through a debt advice agency.

A repayment plan was put in place from August 2009, but only one payment was made. In December 2009 another agreed plan was established, however less was paid than required. In March 2010, a three month plan was agreed but not complied with and in June 2010 the debt advice agency told the bank it had not received payments for eight months.

Mr E says that John Lewis failed to reply to repayment proposals and ultimately instead took legal action. But the bank says that it accepted various reduced repayment proposals between 2009 and December 2011 and none were properly adhered to. At one time John Lewis says it received Mr E's repayment proposal but no response to its own request for an income and expenditure form.

A financial business is entitled to take legal action if it makes a commercial judgment to do so and it tried to warn Mr E of its intentions, given there was no working repayment plan in place.

Mr E is concerned that the credit card has effectively become secured. But this came about as a result of the court judgment issued against Mr E on 18 April 2012; it was subsequently agreed Mr E would make payments of £20 per month. The first instalment was due on 23 May 2012. As this was not received John Lewis applied for a charging order to turn the unsecured judgment debt into a secured one, against the property mentioned in the court document. Mr E appears to have made a cheque payment on 31 May 2012, but this would not have been made in time.

Mr E has produced a copy letter dated 27 April 2012, in which he proposed a payment of £25 per month, but from December 2011 onwards, John Lewis' solicitors were dealing with the debt recovery. And by 18 April 2012 the judgment was in place with agreement to pay £20 per month. This meant that Mr E's offer was late and also should have been either addressed to the solicitors or to the court. In any event, John Lewis' system notes do not show that it received the letter.

And where Mr E says he was not given details of which account to pay the court ordered payments into, the adjudicators noted that the judgment order dated 18 April 2012 had a section entitled 'how to pay'. Mr E could have contacted the bank or the court in this regard if he was unsure. And although the account is in Mr E's name and court proceedings were addressed to him, Mr E's wife is joint owner of the property that is subject to the charging order, and was therefore sent information about it.

Overall, the adjudicators did not consider that John Lewis had failed to act in accordance with its obligations to appropriately assist Mr E during his financial difficulties. And it was not established that charges or interest had been applied to the account that the bank was not entitled to; or that the bank was not entitled to sell the account to another party.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

In asking that the complaint be referred to an ombudsman for review, Mr E has not submitted new evidence or arguments for consideration. But having taken account of all the evidence submitted by the parties to the dispute, I agree with the findings and conclusions of the adjudicators – which I have set out in some detail in the previous section so as not have to refer to them here - for the same reasons.

I do not believe it appropriate for me to consider the complaints around whether the debt was appropriately created, or its current value, given that these are subject matters that have been the subject of court proceedings where there has been a decision on the merits.

And as regards Mr E's concerns about how John Lewis treated him given his ill-health and financial difficulties, I also agree that - taking account of the steps taken by John Lewis to assist Mr E; the failure of Mr E to maintain payments in accordance with agreed repayment plans; that interest and charges do not seem to have been applied in a manner the bank was not entitled to; and that the bank is entitled to seek recovery of a debt including by use of the

courts – John Lewis cannot be said to have failed to treat Mr E positively and sympathetically.

I note Mr E is concerned about how his credit card debt, which was not secured, has become secured against his home; and how this is not appropriate given that the account's terms and conditions do not refer to this possibility. But this has not come about as a result of any action that John Lewis was entitled to take under the account's terms and conditions. The charging order which can be issued and secures a debt against a home – or indeed any other property owned by the debtor – comes about as a result of a legal process and not as a result of procedures for dealing with the credit card account.

Clearly the debt owed to John Lewis by Mr E arises from the credit card agreement between John Lewis and Mr E; and the courts have agreed that the debt is repayable by Mr E, presumably taking into account the account's terms and conditions. But with the court order in place requiring Mr E to make repayment to John Lewis, the charging order (securing the debt against the property) only comes about as a result of further legal proceedings related to the court's previous order not being complied with. There seems to me no reason for this process to be referenced in the credit card account's terms and conditions.

I recognise that Mr E is frustrated about his dealings with John Lewis and I do not doubt that he has difficulty with repayment of the debt. But I can see no basis on which I might make an award against, or direction to, John Lewis for the actions it has taken.

#### **my final decision**

In light of all I have said, my final decision is that I do not uphold this complaint.

Ray Neighbour  
**ombudsman**