

The complaint

Mr P complains that Shop Direct Finance Company Limited (Shop Direct) lent to him irresponsibly.

What happened

In December 2011 Mr P successfully applied for a catalogue shopping account with Shop Direct and was given a credit limit of £1,000. Shop Direct then periodically increased Mr P's credit limit until the account limit reached £8,100 in February 2016.

Mr P has said he shouldn't have been approved for the account as it was unaffordable, and so he asked Shop Direct to write off the debt.

Shop Direct considered Mr P's complaint and said it was satisfied that it did the appropriate affordability checks when the account was opened. However, it said Mr P paid off the account in 2016 and didn't spend on it again for another 8 months. It's said when Mr P started spending on the account again in 2017 it should have performed further checks. Had it done that Shop Direct has said it would have reduced the credit limit to £2,800.

Given this Shop Direct said it would refund the interest and charges on any closing balance above £2,800. At the time Mr P made the complaint, although the total balance was over £5,000 the balance due to be paid (the closing balance) was less than £2,800. This is because the buy now pay later (BNPL) purchases Mr P had made hadn't yet become payable. So, Shop Direct said there were no refunds due.

An investigator considered the evidence and agreed Shop Direct had acted fairly in this case. Mr P disagreed with the investigators findings and explained that he didn't see how no redress could be due when his balance was well over the £2,800 that Shop Direct had said was affordable. He also said that he only has an income of £8,000 a year and so didn't think an account limit of over £8,000 was affordable.

Since then, Shop Direct has refunded interest and charges that have become payable as a result of the interest free periods of BNPL arrangements coming to an end. Shop Direct has paid two refunds of interest and charges:

£493 on 4 April 2023

£942.99 on 13 July 2023

However, since Mr P making the complaint, the account has fallen into significant arrears and Mr P has maintained that the account isn't affordable. He has asked that if the debt can't be written off that Shop Direct work with him to arrange an affordable repayment plan.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

We explain how we handle complaints about unaffordable and irresponsible lending on our website. I've used this approach to help me decide Mr P's complaint. The key question for me to think about while looking at Mr P's complaint is:

Did Shop Direct complete reasonable and proportionate checks to satisfy itself Mr P would be able to repay the loan in a sustainable way? If so, did it make a fair lending decision?

I've considered this question carefully, but I think it would be helpful to explain which of the account balances on Mr P's account is most relevant to this complaint.

The account balances

Mr P has expressed confusion at why there would be no redress awarded when Shop Direct has agreed it should have reduced his credit limit to £2,800 in 2017, but he has spent over £5,000 on the account since then.

Where a customer has had the benefit of funds it's fair that they should pay back at least the amount they borrowed. There are only very rare and limited situations where we would ask a business to write off a debt. I haven't seen anything on this case that persuades me at the point Mr P made the complaint, Shop Direct should have written off Mr P's debt.

Most credit agreements (including Mr P's account) include a charge for the lending which is usually in the form of interest. Where it's considered the lending was unaffordable or irresponsible, we may consider that the charge for that lending caused a detriment to a customer and should be refunded.

In Mr P's case he's utilised his account for a high number of BNPL purchases, which means the charge for the borrowing is deferred until a later date. If the BNPL is repaid within the timeframe allowed, no charge is incurred. So, there are effectively two balances on Mr P's account:

- The total balance (which Mr P is referring too). This is the higher balance and shows how much Mr P has spent on the account.
- The closing balance. This is a lower balance and indicates the amount payable at the statement date and is the balance that interest is charged on.

As the closing balance is the point where interest is charged, and where Mr P may have suffered detriment if the lending was unaffordable, this is the balance I will focus on.

Did Shop Direct complete reasonable and proportionate checks to satisfy itself Mr P would be able to repay the loan in a sustainable way? If so, did it make a fair lending decision?

Shop Direct was required to carry out reasonable and proportionate checks to assess Mr P's ability to afford the credit limit it intended to offer. It had to be satisfied he could repay it sustainably over a reasonable period without causing financial difficulties

The regulations don't set out what checks a lender must perform, but say the checks should be proportionate, considering things like the type of credit, the amount borrowed, the duration of the credit agreement and the total cost of the credit. The lender must consider the information it gathers to make a fair lending decision ensuring repayments can be made sustainably without having to borrow further.

Before 2017

Shop Direct has provided a copy of the credit check it completed to determine affordability at the point the account was opened. Shop Direct relied on this information to determine what an affordable credit limit would have been.

The credit check revealed that there had been a CCJ around 8 years ago, that there were no other accounts that were in arrears and the total amount of other credit was £1,500.

I've thought carefully about the checks Shop Direct completed and I'm satisfied it's shown that it conducted reasonable and proportionate checks before agreeing to lend to Mr P in 2011. Based on what I've seen I think Shop Direct's decision to lend to Mr P was fair.

Shop Direct has said it carried out checks on Mr P before each of the increases given since the account opened until 2016. But it hasn't provided copies of the checks it carried out for each of the increases that took place.

However, Shop Direct has provided evidence of how the account was conducted since opening. I can see the account was handled very well up to the point it was paid off in 2016.

The relevant regulations at the time Shop Direct agreed to lend to Mr P, required it to carry out reasonable and proportionate checks. These were to assess Mr P's ability to afford the credit limit it intended to offer and be satisfied he could repay it sustainably, over a reasonable period of time without causing financial difficulties.

Looking at the evidence, there's no indication from the account history that the borrowing was unaffordable or that Mr P couldn't sustainably repay the debt. Mr P hasn't told us he struggled to make payments or had to borrow more money to maintain the account payments at that time. The closing balance only exceeded £2,200 once between 2011 and 2016 and at this point the account was paid off completely before any interest was applied. So, although Mr P had a credit limit of £8,100 available to him, he didn't use this and what he did use, on the evidence available appears to have been affordable. So, I don't think Mr P suffered any detriment between 2011 and 2016.

2017 until the date of the complaint to Shop Direct

Shop Direct has recognised that it should have carried out a further affordability check when Mr P started using the account again in 2017. I agree that would have been reasonable. Had it done so, it's said it would have offered a credit limit of £2,800.

To determine what the correct credit limit should be, Shop Direct looked at the payments Mr P had made to the account over the previous 12 months. It found on average he had paid around £196 a month. This is in line with the minimum payment on a £2,800 credit limit if fully utilised.

From 2017 onwards Mr P didn't utilise the full limit of £8,100. Looking at the account utilisation from that period the closing balance on the account didn't exceed £2,600. Although the total amount spent on the account did reach over £5,000, interest was only charged on the closing balance.

Mr P continued making regular payments to the account that often exceeded the amount due for the minimum payment. Given the account continued to be managed well from 2017 until the complaint was raised, it doesn't seem unreasonable that Shop Direct concluded that

£2,800 was an affordable limit. Overall, I think Shop Direct has acted fairly in agreeing the limit should have been reduced to £2,800 in 2017.

As the closing balance on the account was below £2,800 at the time of the complaint, Mr P didn't receive any refund of interest at that point. However, since the complaint has been brought to this service Shop Direct has refunded interest to the account where the closing balance has exceeded £2,800 which is the limit that should have been in place.

Shop Direct has also said that it will continue to monitor the account and refund any interest and charges while the balance exceeds £2800. Based on the information available to me I think this is reasonable.

However, Mr P has made it clear that he would like Shop Direct to agree a repayment plan with him. Since making the complaint Mr P hasn't kept up with the payments due on his account and it has fallen into arrears. This would suggest his circumstances have changed and that he may be in financial difficulty. As this has happened since the original complaint, I can't comment on it further here. Mr P should contact Shop Direct to discuss an appropriate repayment plan and I would remind Shop Direct of its responsibility to treat Mr P fairly if and when he does so.

My final decision

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 December 2023.

Charlotte Roberts
Ombudsman