

## **The complaint**

Mrs B complains that Marks & Spencer Financial Services Plc trading as M&S Bank (M&S) lent to her irresponsibly.

## **What happened**

Mrs B applied online for an M&S credit card in May 2018, following a referral from a comparison website. This was approved with a limit of £2000. In July 2018, the direct debit for payments to the card was returned and cancelled. She fell into arrears.

Mrs B complained that she shouldn't have been given the card in the first place – she was struggling with other debts, and M&S should've been aware of this when they agreed to give her the card. She had been on a debt relief order in the past.

M&S said they'd completed all their necessary credit checks when Mrs B applied for the card. These included checks at credit reference agencies (CRAs) - and none of the information at the time was found to be a problem. And the credit card was a non-advised sale – so it was up to Mrs B to choose the product she wanted and go ahead with her application.

Mrs B brought her complaint to us. Our investigator said he didn't consider that M&S had shown that they'd carried out the necessary, proportionate checks. Mrs B's credit file showed she had three debt management company arrangements in place (one of which had defaulted) and there were arrears with a utility company. So – he said that based on this evidence, Mrs B's complaint should be upheld. M&S should refund all interest and fees debited to the card (plus interest at 8% per annum simple), delete any adverse entries from her credit file, and put a repayment plan in place. Also, compensation of £50 should be paid for distress and inconvenience.

M&S didn't agree and asked that an ombudsman look at Mrs B's complaint.

## **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.

Mrs B says she was in financial difficulty when she applied for the card from M&S. She had several other debts with other borrowers. So – she shouldn't have been given the card. I can see that she quickly fell into arrears shortly after taking the card. Various payment plans have been agreed, and largely these have failed – I won't go into these as the crux of Mrs B's complaint is that M&S shouldn't have given her the card in the first place – so that's what I will concentrate on.

All lenders have an obligation to lend money responsibly. We have to check whether M&S acted in line within the Financial Conduct's (FCA) rules on creditworthiness assessment as set out in its handbook, (CONC) section 5.2. These say that a firm must undertake a reasonable assessment of creditworthiness, considering both the risk to it of the customer

not making the repayments, as well as the risk to the customer of not being able to make repayments. We look at:

- Whether the lender completed reasonable and proportionate checks to satisfy itself that the borrower would be able to repay any credit in a sustainable way?
- If reasonable and proportionate checks were completed, did the lender make a fair lending decision made bearing in mind the information gathered and what the lender knew about the borrower's circumstances?

M&S said that they'd completed their credit checks, and these were all OK. But they haven't told us what these were, nor shown us any CRA searches they carried out. They haven't shown us Mrs B's application form – as this was done online and hasn't been retained with the passage of time. So – M&S can't show whether it lent responsibly and in line with FCA guidance, or not.

We looked at Mrs B's credit file. As at the date of Mrs B's application to M&S, these show three entries to debt management companies – one of these was in default. We must presume M&S also saw these. And – there were several months' arrears with a utility company – which must have suggested there were problems. All of this would suggest that M&S should've carried out further checks to ensure the lending was OK – but they didn't.

I can see that Mrs B completed an income and expenditure form for M&S in April 2020. This shows debts (other than M&S) of £11650 and disposable income of only £26 per month. So – it's possible that some of these debts were in place at the time of Mrs B's application to M&S. But I place no great reliance on this as it's dated two years after the card was issued.

So – I agree that based on what we've seen, M&S didn't carry out sufficient checks to ensure the lending to Mrs B was provided responsibly. And therefore, I'm upholding her complaint.

### **Putting things right**

It's not appropriate that we ask M&S to write off any of the lending – as Mrs B has had the use of the money. But they should refund all interest and fees debited to the account since the card was issued to the date of this decision. If this results in a credit balance, then 8% per annum simple interest should be added to this from the date where overpayment resulted in a credit balance. And, if a debt still remains, M&S should agree a mutually agreeable repayment plan for its repayment. And delete any adverse entries at CRAs. And – as this has clearly caused Mrs B a good degree of worry, they should pay £50 for distress and inconvenience.

### **My final decision**

I uphold this complaint. Marks & Spencer Financial Services Plc trading as M&S Bank must:

- Refund all interest and charges on the card from its issue to the date of this decision.
- If this results in a credit balance, add 8% per annum simple to this from the date of overpayment.
- Agree a mutually agreeable repayment plan for the remaining debt – if there is one after the refunds.
- Delete any adverse entries from Mrs B's credit file.

- Pay compensation of £50 to Mrs B for distress and inconvenience. Mrs B should advise how this should be paid – to which bank account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 26 July 2021.

Martin Lord  
**Ombudsman**