

The complaint

Ms M complains Marks & Spencer Financial Services Plc trading as M&S Bank (M&S) gave her a credit card despite not being able to afford it.

What happened

Ms M opened a credit card with M&S in June 2006 and was given a credit limit of £6,000. M&S increased Ms M's credit limit to £8,000 around February 2007.

In May 2007 Ms M told M&S she was experiencing financial difficulties. Ms M entered a debt management plan at the end of 2010.

Ms M made a complaint to M&S in August 2020, saying she felt M&S shouldn't have agreed the credit card. Ms M said her yearly part time wages were less than the credit limit she was given and this wasn't affordable.

M&S said it checked Ms M's credit file and the information Ms M told it when it agreed the credit card and the subsequent limit increase. M&S didn't think it had done anything wrong by agreeing the credit card or increasing the limit.

Unhappy with this answer, Ms M brought her complaint to this service. An investigator looked into things and thought Ms M's complaint should be upheld in part.

The investigator thought M&S should have checked Ms M's credit card statements prior to agreeing the credit limit increase. And if M&S had checked the statements it would have seen a lot of money being spent on gambling transactions.

The investigator thought M&S shouldn't have increased Ms M's credit limit. To resolve things the investigator thought M&S should refund all charges and interest from February 2007, the likely date of the credit limit increase.

Ms M agreed with the investigator's assessment. M&S didn't and asked for an ombudsman to decide things.

I disagreed with the investigator and issued a provisional decision, I thought M&S had carried out enough checks before agreeing to increase Ms M's credit limit.

My provisional decision

In my provisional decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The events Ms M's complaining about are some considerable time ago, and there isn't much information available. Where information is incomplete or isn't available, I have to decide things on the balance of probabilities – what I think is more likely in the

circumstances.

M&S doesn't have statements for Ms M's credit card. Ms M has some statements, but they only cover a couple of months, around the time of the credit limit increase.

The statement for January 2007's spending shows Ms M was using her credit card to gamble. Ms M has said she had a gambling addiction at the time. The investigator thought, on balance, it was likely Ms M had used her credit card to gamble from the day it was open.

And because M&S should have seen this spending, increasing the credit card limit wasn't the fair thing to do.

I also think it's more likely than not Ms M used her credit card to gamble, and spend a considerable amount each month. But I don't believe M&S should, necessarily, have been aware of this.

There's now lots of rules, guidance and best practice around credit card lending and increases in credit limits. But all this guidance came into force several years after February 2007 and wasn't retrospective, so I can't consider it.

From what I can see, the only guidance around increases in credit limits, in February 2007, comes from the Banking Code. The Banking Code says M&S should carry out two of four checks when considering a credit limit increase.

The four checks are:

- The customer's income and financial commitments.
- How they have handled their finances in the past.
- Information from credit reference agencies and, with the customer's permission, others such as lenders, the customer's employer and landlord.
- Credit assessment techniques, such as credit scoring.

M&S says it checked Ms M's credit file when it increased her credit limit. M&S says it also checked internal data. I think these two checks are in line with what the Banking Code required at the time.

Ms M hasn't said her credit file had adverse information at the time, this came later when she began to experience financial difficulties. And it looks like Ms M was keeping within her credit limit and making minimum payments to her credit card.

I can only see this for a couple of statements, the ones Ms M provided. I think, on balance, these statements are reflective of how Ms M maintained her credit card. So I think Ms M kept within the limit and made minimum payments from the date she opened her credit card.

This means Ms M's internal data – how she handled her M&S credit card, and therefore her finances – showed she was running her credit card well. I also think it's likely Ms M's credit file didn't show any adverse information, in the run up to the limit increase.

M&S carried out the required two checks and the information it found is unlikely to have caused it concern. Because of this I don't think M&S needed to carry out further checks.

Because I don't think further checks were needed, M&S wouldn't have needed to look in detail at how Ms M was using her credit card. And because of this, I don't think M&S would have seen the considerable amounts Ms M was spending on gambling transactions.

Ms M has said her yearly income was less than the increased credit limit. Had M&S carried out an income and expenditure check this may have become relevant. But M&S had no obligation to do this – it was one of the options available to M&S but wasn't required at the time because another two checks had been completed.

I have no doubt Ms M was gambling heavily and spending more than she wanted. Ms M's testimony around her addiction is, I think, very truthful and open and it must have been a very difficult time for Ms M.

I'm very sympathetic to Ms M's circumstances at the time. But I have to impartially decide whether M&S carried out the required checks before increasing Ms M's credit limit. I think it did, and so it follows M&S made a reasonable decision to increase Ms M's credit limit."

The responses to my provisional decision

M&S didn't respond to my provisional decision. But M&S had already told the investigator it disagreed with the assessment.

Ms M disagreed with my provisional decision. I haven't quoted Ms M's response, but her main points were:

- M&S never asked for proof of income
- can we be sure M&S carried out the required credit file checks – is there proof of this
- between the credit card being agreed and the credit limit increase Ms M applied and was accepted for further lending from other businesses. If M&S had checked it should have seen this and flagged a problem
- thinking back, it may have been Ms M that asked for her M&S credit limit to be increased and this should have prompted more questions and investigation
- M&S has said it doesn't have statements but this is untrue as it sent these to Ms M as part of a subject access request (SAR). If M&S hasn't been truthful here can we trust is about everything else it's said

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.

Ms M says M&S never asked for proof of income, and this is possible. As I said in my provisional decision the only obligation on M&S, at the time, was to carry out two of the four checks.

Proof of income is one of those four checks, but I think it's more likely another two checks were carried out. I don't believe M&S not asking for proof of income when it increased Ms M's credit limit means it did the wrong thing.

I can't be sure M&S carried out the checks it did. These checks were carried out in 2007, I wouldn't expect M&S to still have proof of these checks.

Where I can't be sure I'll consider things on the balance of probabilities. And, having done this, I'm still persuaded M&S carried out credit checks, it was standard practice for businesses at the time, and it relates to the third point Ms M raises.

Ms M says further lending was agreed for her, and this should have prompted some questions for M&S. But I imagine these other lenders also looked on Ms M's credit file. It appears nothing prompted these other lenders to decide Ms M was a poor credit risk.

It seems Ms M had a good credit rating, she'd agreed relatively large limits with M&S and other lenders and it doesn't seem she was missing payments. This would indicate she could handle the lending she had and was handling her other finances well.

Ms M says she thinks it was her that asked for the credit limit increase. Consumers are allowed to request credit limit increases and I'd expect M&S to carry out the same checks whether it was Ms M or M&S raising the limit.

I don't think Ms M asking for the limit increase should have meant M&S declined it. I think M&S would consider the increase in line with the checks it had to carry out at the time. And I'm persuaded M&S carried those checks out.

Ms M says it's not true M&S doesn't have statements, she has copies of them as part of the SAR she requested. Ms M has sent in the statements for the credit card from when it was opened to when the credit limit was increased.

I've looked at these statements and it shows Ms M kept within her credit limit and made the required minimum payments to her card. I can see Ms M was using the credit card for gambling from the point the card was opened.

But, as I said in my provisional decision, I wouldn't expect M&S to look closely at Ms M's spending if it had completed two of the four checks. And I believe M&S did complete these other checks.

And since Ms M ran her credit card well, within the limit and making at least the minimum payment each month, I think M&S would be comfortable with how she handled her finances.

It's unfortunate M&S didn't supply this service with the same statements it sent Ms M. But I don't think shows a wider problem with other information from M&S I've considered.

And lots of what I've considered is what Ms M has said or sent in, along with the rules around credit limit increases in place at the time.

Looking at these rules – M&S had to carry out two of four checks – I'm persuaded, at the time, Ms M would have passed these checks. Ms M had, I think, a credit file that showed other lending, but other lending that had been maintained well.

And Ms M ran her M&S credit card well from the point she opened it to the credit limit increase. Ms M kept the card within her agreed borrowing limit and didn't miss any payments back to the card.

Since I think Ms M would have passed two of the four checks I don't think M&S made a mistake, at the time, in increasing Ms M's credit limit.

My final decision

For the reasons explained above I don't uphold Ms M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 19 January 2022.

Chris Russ

Ombudsman