

The complaint

Ms P is unhappy that Marks & Spencer Financial Service Plc (“M&S”) approved her for a credit account and later increases the credit limit on that account, as she feels that all provisions of credit were unaffordable for her at those times.

What happened

In November 2017, Ms P applied for an M&S credit account. Her application was approved, and M&S issued Ms P with a credit account with a £4,000 credit limit.

In January 2018, Ms P asked M&S to increase her credit limit to £6,000, and in August 2018, Ms P asked M&S to further increase her credit limit, this time to £8,000. Both of Ms P’s requests were agreed by M&S and the credit limit on the account was increased accordingly.

In 2021, Ms P raised a complaint with M&S on the basis that she felt that she hadn’t been able to afford the credit account that M&S had approved her for in 2017, and that this should have been apparent to M&S, had they undertaken checks into her financial position before approving her for that credit amount.

M&S looked at Ms P’s complaint. They noted that they had undertaken checks into Ms P’s financial position before approving her credit account application and her requests for further credit, and they felt there’d been nothing resulting from those checks that M&S felt should have given them cause to consider that the credit being offered to Ms P wouldn’t be affordable for her at those times. So, they didn’t uphold Ms P’s complaint.

Ms P wasn’t satisfied with M&S’s response, so she referred her complaint to this service. One of our investigators looked at this complaint. They felt that the information about Ms P’s financial position in 2017 was such that it should have been the case that M&S should have concluded that Ms P wouldn’t be able to afford the credit being offered to her, such that it shouldn’t have been offered. Our investigator therefore recommended that this complaint be upheld in Ms P’s favour on that basis.

M&S didn’t agree with the view of this complaint put forwards by our investigator, so the matter was escalated to an ombudsman for a final decision.

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.

I issued a provisional decision on this complaint on 10 March 2022 as follows:

It’s for a business to decide whether it will offer credit to a customer, and if so, how much and on what terms. What this service would expect would be, that before approving a customer for a new line of credit, the business would undertake reasonable and proportionate checks to ensure that any credit being offered to a customer is in all likelihood affordable for that customer at that time.

When Ms P applied for the credit account, M&S took information from her about her income and expenditure to assess whether Ms P would be able to afford the monthly payments that might have become due on the account. M&S also obtained information about Ms P from a credit reference agency to get a better understanding of Ms P's wider financial position at that time. And M&S contend that there was nothing resulting from these checks into Ms P's financial circumstances that they feel should have given them cause to consider that Ms P might not be able to afford the credit account that she was applying for.

Ms P applied for the credit account online, and M&S have been able to provide this service with the information provided to them by Ms P at the point of application as well as the information that they obtained from a credit reference agency as part of the application approval process.

I'm aware that there's some contention over whether M&S assessed the correct amount of annual income for Ms P at that point of application. This is because M&S have record of Ms P's annual income at that time as being £28,000, while Ms P maintains that it was only some months later that her income increased to this amount and that at the time of the application her actual income was significantly lower.

However, it's notable from the information that M&S have provided that they assessed the net income amount available to Ms P at the point of application as being £1,790 per month, which corroborates with the actual monthly income amounts received by Ms P at that time as per her provided current account statements, which show that for the two months surrounding the point of application her net monthly income was £1,830 and £1,780 per month respectively. As such, I'm satisfied that M&S did base their assessment at the point of the account application on a fair and reasonable net monthly income amount for Ms P.

M&S have confirmed that they used a model of monthly expenditure derived from the information they obtained about Ms P from a credit reference agency, and it must be noted that using such a model didn't contravene the affordability assessment standards that were in place at that time. M&S's assessment included that Ms P had total outgoings of £1,314, including modelled amounts for rent, critical spending (such as food, etc) and existing credit commitments. This meant that as per M&S's assessment, Ms P had a disposable monthly income of approximately £475, which in turn led M&S to conclude that Ms P would in all likelihood be able to afford a new line of credit with a credit limit of £4,000.

Ms P has explained that her current account statements for that time show that her actual spending was greater than the monthly amounts M&S modelled based on the credit file information they received, and that had M&S assessed those statements then they would have used the more accurate information to arrive a different conclusion than they ultimately did.

I can appreciate Ms P's position here, but at the time of the credit account application in 2017, M&S weren't required or obliged to undertake any additional checks into Ms P's financial position beyond those that they did. And while it could be the case that a credit provider should have assessed an applicant's bank statements, this would only be usually expected where the amount of credit being applied for was considerably larger than the credit amount of £4,000 under consideration in this instance.

It's also notable that when Ms P did later speak with M&S, she provided figures

which gave a total monthly expenditure amount approximately £155 higher than that modelled by M&S. And, given that M&S considered that Ms P had £475 of disposable income, I feel that even if that amount were reduced by £155, so that Ms P was considered to have a disposable monthly income of £320, it would still be reasonable for M&S to consider that Ms P would most likely be able to afford the credit account that they ultimately provided to her.

I also feel that it's important to note that it was explained to M&S by Ms P at the point of application that she intended to use the new credit account for balance transfers. The account statements confirm that Ms P did make such balance transfers from her other existing credit commitments. This means that Ms P's total amount of existing credit didn't increase by £4,000 following the approval of the account, because Ms P moved some of her existing credit commitments to the new M&S account, where those balances benefitted from a period of 0% interest available to her on the new M&S account.

Finally, the benefit of hindsight allows the assessment of how Ms P managed the account in the months following the account opening, and it's notable that Ms P maintained the balance of the account within the agreed credit limit and didn't incur any over-limit fees.

All of which means that I find it very difficult to conclude that M&S did act unfairly or unreasonably by approving Ms P for the new credit account with a credit limit of £4,000 that they did in November 2017, and it follows from this that my provisional decision here is that I won't be upholding this complaint or instructing M&S to take any further action.

In that provisional decision letter, I gave both Ms P and M&S the opportunity to provide any comments or new information they might wish me to consider before I moved to a final decision. Ms P did provide some comments for my consideration, while M&S did not respond.

Ms P drew my attention to a car finance agreement that she started in October 2017, the month before her credit account application was approved, and which she feels wasn't taken into consideration by M&S.

M&S have confirmed that this car finance agreement wasn't taken into consideration by them at the point of application, because it wasn't present on Ms P's credit file at that time. It's notable from Ms P's credit file that the car finance agreement began on 9 October 2017, which was approximately three weeks before Ms P applied for the credit account with M&S. Given that credit files aren't updated immediately by credit providers, including car finance providers, but rather are generally only updated on a monthly basis, M&S's explanation here seems reasonable to me.

I also note that M&S have provided a detailed account of the information they obtained from the credit reference agency when assessing Ms P's credit account application, and that this doesn't include any reference to the car finance agreement. I'm therefore satisfied that the car finance agreement wasn't yet present on Ms P's credit file when M&S assessed it.

M&S could only conduct their assessment using the information provided to them by the credit reference agency, and so I don't feel that M&S can be considered as to have acted unfairly towards Ms P by not including the car finance agreement in their initial account affordability assessment.

Ms P has also provided further comments regarding the amount of her personal income

used by M&S in the initial affordability assessment. However, I feel that I covered this point at length in my provisional decision letter, including that I feel that it would have been reasonable for M&S to have considered the initial provision of credit to have been affordable for Ms P even had the lower personal income amount for Ms P been used in the affordability assessment.

Ms P has also stated that she feels that the fact that she initially used the credit account to transfer existing credit balances to benefit from the promotional 0% interest rate doesn't mean that she benefited financially from having that account and that it remains the case that her credit facility was increased by £4,000, which she couldn't afford.

I accept that Ms P's total credit facility did increase by £4,000 here by way of the new line of credit provided to her by M&S. But I continue to feel that it was reasonable for M&S to consider that this further line of credit was affordable for Ms P based on the affordability assessment that they reasonably undertook, as explained previously. And while Ms P is correct that the 0% interest offer didn't last forever, it was available to Ms P for several months, and I remain satisfied that Ms P did benefit financially by transferring balances from other credit accounts that were incurring interest to this new account where those balances temporarily didn't incur interest.

Finally, Ms P has referenced a letter from M&S that included the account number of a different M&S customer. While I can appreciate how Ms P might feel this adds further credence to her complaint, I consider this issue to be outside the scope of this complaint, which is focussed on the provision of credit by M&S to Ms P, and so I haven't considered this point further.

To summarise then, while I can appreciate Ms P's strength of feeling on this matter, it remains my opinion that it was fair and reasonable for M&S to approve Ms P's initial application of credit on the basis of the affordability assessment that they undertook and to then have provided Ms P with a credit account with an initial credit limit of £4,000. It follows therefore that it remains that I won't be provisionally upholding this aspect of Ms P's complaint.

However, in that provisional decision letter only considered the initial provision of credit that took place in November 2017. But it was evident that Ms P was also wanting to refer to is service her continuing complaint about the increases to the credit limit on her account that took place in January and August 2018, from £4,000 to £6,000 and from £6,000 to £8,000 respectively.

As such, I apologised to both Ms P and M&S for not considering these points in my original provisional decision letter, and went on to issue a second provisional decision on 10 June 2022 as follows:

Credit limit increase from £4,000 to £6,000 in January 2018

In January 2018, Ms P contacted M&S and asked for the credit limit on her account to be increased from £4,000 to £6,000. M&S have confirmed that they conducted an assessment of Ms P's income and expenditure at that time, but unfortunately M&S haven't been able to locate this assessment.

M&S did however locate details of a later discussion that took place with Ms P in June 2019 where Ms P confirmed her income as being £2,400 per month. The equates to about £29,000 per annum, which is comparable to the annual income amount of £28,000 that M&S used when assessing Ms P's creditworthiness for the original provision of credit in November 2017. As such, I'm satisfied that Ms P's

income hadn't changed significantly from the time of the initial account application to the point where she requested further credit from M&S.

M&S were able to provide this service with details of the amount of existing unsecured and revolving debt that they assessed Ms P as already holding held at the time of her request to increase the credit limit £6,000, and M&S record these figures as £25,700 and £3,850 respectively. This means that at that time, M&S assessed Ms P as having combined existing debt totalling approximately £29,500.

This is a significant amount of existing debt and is comparable to Ms P's annual income amount. And while it may have been the case that the majority of this debt related to a car finance agreement that Ms P had entered into, I feel that this level of debt to income ratio is close to where the provision of further credit could be considered as being irresponsible. As such, I'm not convinced it was reasonable for M&S to have provided any further credit to Ms P without first having undertaken more detailed checks into her financial position.

However, had M&S undertaken more detailed checks into Ms P's financial position, which I feel in all likelihood should have included a review of Ms P's current account, I'm satisfied that it would have been reasonable for M&S to have then provided the credit limit increase to Ms P that they did.

I say this because having reviewed Ms P's current account statements for the months leading up to the credit limit increase, it's evident that Ms P has net monthly income from her employer of approximately £1,800, while paying monthly housing rent of £580 as well as payments to other credit commitments totalling £478. This leaves a significant amount of Ms P's net monthly income unaccounted for, and as such, I feel that it would have been reasonable for M&S to have assessed Ms P as having had sufficient disposable monthly income available to her to have been able to afford the credit limit increase.

And while it was the case that Ms P was generally maintaining the balance of her current account in an overdrawn position, it's also the case that in the months leading up to the credit limit increase she didn't incur any charges from her bank for exceeding the agreed overdraft limit on her account. Additionally, Ms P's current account statements also demonstrate a notable amount of retail and leisure spending during that time, which I feel supports the position that Ms P did have a reasonable amount of disposable income available to her.

Finally, it's also notable that the spending that Ms P undertook on the M&S credit account in the months leading up to the credit limit increase also included a significant amount of retail and leisure spending, and didn't include any transactions which I feel should have given M&S cause to suspect that Ms P might not be able to afford additional credit at that time.

As such, I don't feel that it was unreasonable for M&S to have increased Ms P's credit limit to £6,000 upon her request to do so, and it follows that I won't be provisionally upholding this aspect of Ms P's complaint.

Credit limit increase from £6,000 to £8,000 in August 2018

When Ms P contacted M&S in August 2018 and requested a further credit limit increase, from £6,000 to £8,000 on her account, it appears that Ms P's financial position was similar in some respects as when she requested the earlier credit limit increase. I say this because, as explained earlier, I'm satisfied that Ms P's income

remained broadly consistent during that time, and that she was paying monthly rent in the same manner that she had been paying previously.

However, it's notable from the information provided to this service by M&S that Ms P's total amount of existing debt had increased in the months since the last credit limit increase in January 2018, from £29,500 up to a combined total of approximately £34,500.

This is a significant increase in a relatively short period of time and meant that Ms P's total existing debt was at that point considerably more than her declared annual income. As such, I don't feel that it was reasonable or responsible for M&S to have provided Ms P with any further credit at that time, and I feel that the provision of the credit limit increase to £8,000 potentially increased Ms P's level of what I feel was already an unsustainable amount of debt.

It follows then that I'll be provisionally upholding this complaint in Ms P's favour on the basis that the second credit limit increase, from £6,000 to £8,000, shouldn't have taken place.

Once again, in my provisional decision letter, I gave both Ms P and M&S the opportunity to provide any comments or new information they might wish me to consider before I moved to a final decision letter. M&S confirmed that they were happy to accept my updated provisional decision, whereas Ms P did provide some further comments for my consideration.

Ms P explained that she felt that M&S's administration of her credit file following the final credit limit increase to £8,000, which included the defaulting of the account by M&S for non-payment, had caused her a significant degree of upset and inconvenience, including that she had been rejected for a loan application which Ms P felt was solely because of the default on her account. Ms P therefore requested that I consider amending my decision to instruct M&S to pay compensation to her for the trouble and upset that she'd incurred.

I can appreciate Ms P's position here, and it's evident from the credit account statements that Ms P fell into repayment difficulties not long after M&S agreed to Ms P's request to increase the credit limit to £8,000. However, it's also evident from the credit account statements that in the period between the credit limit being increased to £8,000 and Ms P falling into arrears on the account, that Ms P continued to use the account for leisure and retail spending.

As such, while I feel that M&S shouldn't have provided the credit limit increase to £8,000 that they did, for the reasons explained previously, I also feel that Ms P must bear some responsibility for the balance that accrued, given that in the months immediately before Ms P entered into a repayment arrangement with M&S a large portion of the spending on the account was non-essential spending. And it follows from this that I don't feel that it would be fair to instruct M&S to make any payment for distress or inconvenience as Ms P would like in this instance.

All of which means that my final decision here is that I will be upholding this complaint in Ms P's favour on the basis as outlined in my second provisional decision letter. And I can confirm that I do uphold this complaint on that basis accordingly.

Putting things right

M&S must reimburse to Ms P's account any fees and charges incurred on the account following the credit limit increase to £8,000.

M&S must also reimburse to Ms P's account any interest incurred on the account on any portion of the balance above £6,000 from the point of the credit limit increase to £8,000 onwards.

If these reimbursements result in the account holding a balance in Ms P's favour, M&S must pay this balance to Ms P along with 8% simple interest calculated to the date of payment.

If these reimbursements result in the account still holding a balance to be paid by Ms P, M&S must arrange a suitable repayment plan with Ms P, ensuring that no interest is charged on any portion of the account balance that might remain above £6,000.

M&S must also remove all adverse credit reporting relating to this account from the point of the credit limit increase to £8,000 onwards, on the following conditions:

- If the account remains active, so long as the balance isn't above the credit limit of £6,000 – which the account credit limit must be reduced to.
- If the account is closed, so long as there is no balance remaining on the account for Ms P to pay.

If the account is closed and Ms P has a balance outstanding to pay, M&S must make the credit file adjustments referenced above when Ms P pays that balance and reduces the outstanding amount to zero. The same condition applies if the account remains active and if Ms P brings the account balance back under the credit limit of £6,000.

My final decision

My final decision is that I uphold this complaint against Marks & Spencer Financial Service Plc on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 20 July 2022.

Paul Cooper
Ombudsman