DRN-3559657

The complaint

Ms A has complained that Marks & Spencer Financial Services Plc irresponsibly lent to her by increasing her credit limit on a credit card.

What happened

Ms A opened a credit card account with Marks & Spencer in February 2020. Her credit limit was initially £1,000. In March 2021 her credit limit was increased to £2,000.

Ms A says that Marks & Spencer shouldn't have increased her limit in March 2021. She says she was struggling to meet her repayments on all her credit. She says if Marks & Spencer had done adequate checks on her situation it would have seen that she wouldn't be able to repay her balance in a reasonable length of time.

Marks & Spencer says it didn't lend irresponsibly to Ms A and that it did all the necessary checks before it lent to Ms A – and when it increased her credit limit.

Our adjudicator thought that Ms A's complaint about the credit limit increase in March 2021 should be upheld. They thought that given Ms A's income and expenditure it was likely that she didn't have the disposable income available to sustainably afford the additional borrowing.

Our adjudicator said that Marks & Spencer should not have allowed Ms A further credit and thought that any interest and charges applied over her original £1,000 limit should be removed and her account re-worked.

Marks & Spencer disagreed. It said it had done sufficient checks and there were no indications of any financial strain.

As Marks & Spencer disagreed the case has been passed to me to make a 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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I've taken that into account when I have considered Ms A's complaint.

Marks & Spencer needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Ms A could afford to repay what she was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Ms A's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate. And Ms A hasn't complained about the initial lending decision.

Certain factors might point to the fact that Marks & Spencer should fairly and reasonably have done more to establish that any lending was sustainable for Ms A. These factors include things like understanding Ms A's income, the total amount Ms A borrowed, and the length of time Ms A had been indebted.

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that that the lending was unsustainable.

When Ms A requested an increase in her credit limit Marks & Spencer told us that it conducted a credit check. Marks & Spencer told us there were no signs of financial difficulties based on the checks it did but hasn't been able to provide a copy of those checks.

Ms A has been able to provide a copy of her credit report from that time and it shows she had significant credit commitments. Our adjudicator thought that it showed she owed a minimum of £893 to other creditors. I think it's likely it was much higher than that because I can see from other records that she was making significant repayments to lenders on a monthly basis and she owed Marks and Spencer £700 alone. I think it's likely this information would have appeared on the credit check Marks and Spencer says it did and so I think it would have been proportionate for it to have got a more thorough understanding of Ms A's financial circumstances before increasing her limit. I think it would have been reasonable and proportionate to establish her income and committed expenditure.

Ms A has supplied this service with bank statements to assist with understanding what Marks & Spencer might have seen at the time. In March 2021 bank statements that Ms A supplied show that her repayments on loans were in the region of £760 a month. This was without taking into account other essential outgoings. Those same bank statements show that her income was around £1,000 per month net, taking into account wages and child benefit. Debt repayments took up a significant proportion of her income. Our adjudicator noted that Ms A's average committed expenditure was in excess of her income. I think this demonstrates that Ms A didn't have enough disposable income to sustainably afford the additional borrowing.

I think Ms A lost out as a result of Marks & Spencer's decision. I don't think Marks & Spencer should have increased her credit limit.

Putting things right

As I don't think Marks & Spencer should have increased Ms A's credit limit from £1,000, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit. However, Ms A has had the benefit of all the money she spent on the account so I think she should pay this back. Therefore, Marks & Spencer should:

- Rework the account removing all interest and charges that have been applied to balances above £1,000.

- If the rework results in a credit balance, this should be refunded to Ms A along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. Marks & Spencer should also remove all adverse information recorded after 22 March 2021 regarding this account from Ms A's credit file.

- Or, if after the rework the outstanding balance still exceeds £1,000, Marks & Spencer should arrange an affordable repayment plan with Ms A for the remaining amount.

Once Ms A has cleared the outstanding balance, any adverse information recorded after 22 March 2021 in relation to the account should be removed from her credit file.

- If Marks & Spencer has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

*****HM Revenue & Customs requires Marks & Spencer to deduct tax from any award of interest. It must give Ms A a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting tax.

My final decision

I uphold Ms A's complaint about her credit limit increase and direct Marks & Spencer Financial Services Plc to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 29 July 2022.

Sally Allbeury
Ombudsman