

The complaint

Mrs J complains that Marks & Spencer Financial Services Plc (“MSFS”) irresponsibly gave her a credit card and subsequent credit limit increases that she couldn’t afford.

What happened

In January 2007, Mrs J applied for a credit card with MSFS. She was given an initial credit limit of £7,000. There were two credit limit increases on the account, the first to £8,500 in September 2007 and the second, to £11,000 in April 2008.

In 2021, Mrs J complained to MSFS to say that the credit card and subsequent increases had been unaffordable from the outset and that they shouldn’t have been granted to her. She also said that MSFS had failed to identify and assist her financial difficulties at an earlier point.

MSFS didn’t agree it had acted unfairly and initially didn’t consent to our service considering events that occurred prior to 2015. However, our investigator felt that we could consider all aspects of Mrs J’s complaint dating back to 2007 and MSFS agreed with that conclusion.

Our investigator then recommended the complaint be upheld. She said that Mrs J had provided evidence to demonstrate that she was significantly over-indebted at the time of applying for the credit card. She said that proportionate affordability checks at the time ought to have revealed that the initial credit card and subsequent limit increases would be unaffordable to Mrs J.

MSFS didn’t agree, so the complaint has been passed to me 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.

As the lending was taken out in 2007 and 2008, I’ve had in mind various rules and guidance and good industry practice from the relevant time, including (but not limited to) the Banking Code to which MSFS was a subscriber.

Prior to granting credit (or increasing the credit limit), MSFS needed to ensure the borrowing was likely to be affordable for Mrs J. To do so, it was required to consider things such as her income and financial commitments.

MSFS hasn’t been able to provide us with much detail about the checks it completed when it opened the credit card, nor when it increased Mrs J’s limit. However, I’m satisfied that reasonable affordability checks at the time ought to have at least included getting some understanding of Mrs J’s income and her existing credit commitments.

I can’t be sure exactly what MSFS found out at the time of granting credit to Mrs J. However, in the absence of anything from MSFS, I’ve relied on the evidence Mrs J has been able to provide. This includes details of her other borrowing at the time (loan and credit card

statements), proof of her income and her current account statements.

I'm not suggesting that MSFS needed to obtain any of the specific documents Mrs J has now provided, but I think these give a good indication of at least what basic information MSFS likely found out (or ought to have found out) about her income and existing credit commitments. We've provided this evidence to MSFS for comment, but it hasn't sought to challenge it or provide any evidence of its own in response.

The information and evidence Mrs J provided shows that at the time of applying for the credit card she was significantly indebted elsewhere. I find it likely this would have been visible in any credit check MSFS might have completed. Mrs J was self-employed and has shown her annual income was around £16,000. Her unsecured debts (including joint and/or household borrowing) appear to have amounted to over £50,000. While, her partner was also undoubtedly contributing towards some or all of these credit commitments and their essential living costs, I've seen that their joint bank account was consistently in excess of £4,000 overdrawn.

The sheer size of the unsecured credit Mrs J was already responsible (or partly responsible) for ought to have caused MSFS to question her ability to take on more credit, especially a relatively significant sum such as £7,000. I think that at the very least any basic affordability checks ought to have prompted more thorough enquiry of Mrs J's financial circumstances before MSFS agreed to lend. Had it done more, which I consider it ought to have here, I fail to see how it could possibly have concluded anything other than the new credit being unaffordable and unsustainable. Mrs J was clearly already in financial difficulty and over-indebted and appropriate checks would likely have revealed this to MSFS. I think it therefore acted unfairly in opening the account.

As I don't think MSFS should ever have opened the credit card for Mrs J, it follows that it should never have been in a position to offer her credit limit increases either. However, for completeness, I've seen nothing to suggest her circumstances had significantly improved by the time MSFS increased her limits. I therefore think MSFS acted unfairly in giving Mrs J the initial increase and subsequent limit increases.

As I think MSFS acted unfairly, I've thought about a fair way to put things right. It isn't possible to undo the lending decisions and as Mrs J has spent the money she borrowed, I consider it reasonable for her to pay that back. However, as she should never have had to pay it back in the first place, it's fair that MSFS removes all interest, fees, charges and insurances (if any) that were applied to the account.

It should therefore re-work the credit card as if Mrs J was only required to repay the capital she borrowed. I think it is also fair for any adverse information relating to this account to be removed from her credit file once she has repaid the capital balance she borrowed.

My final decision

For the reasons given above, I uphold this complaint and direct Marks & Spencer Financial Services Plc to:

- Re-work the credit card removing all interest, fees, charges and insurances (not already refunded).
- If the re-work results in a credit balance this should be refunded to Mrs J alongside 8% simple interest per year, calculated from the date the account would have first gone into a credit balance to the date of settlement. MSFS should also remove any adverse information it might have recorded on Mrs J's credit file in relation to this

account.

Or;

- If the re-work results in there still being an outstanding capital balance, MSFS should arrange a suitable and affordable repayment plan with Mrs J for the remaining amount. Once the capital has been repaid MSFS should then remove any adverse information it might have recorded on Mrs J's credit file in relation to this account.

If MSFS considers tax should be deducted from the interest element of my award, it should provide Mrs J with a certificate showing how much tax it has taken off so that she can reclaim that amount, if she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 16 June 2023.

Tero Hiltunen
Ombudsman