

The complaint

Mr S complains that Marks & Spencer Financial Services Plc trading as M&S Bank was irresponsible in its lending to him.

Mr S is being represented by a third party but for ease of reference I have referred to Mr S throughout this decision.

What happened

Mr S was provided with a credit card with an initial credit limit of £5,000 in January 2007. M&S Bank has provided information showing the following credit limit increases applied to Mr S's account statements:

- August 2007 – limit increased to £7,000
- February 2008 - limit increased to £8,200
- September 2011 – limit increased to £9,850
- November 2012 – limit increased to £11,800

Mr S says he only became aware that M&S Bank hadn't acted appropriately when he contacted a debt advice service. He says adequate checks weren't carried out before the lending was provided and he isn't now able to repay his debts.

M&S Bank issued a final response letter dated 29 July 2022. It said that when processing applications for credit it conducted detailed creditworthiness and affordability assessments using data provided by the applicant, internal data if held and information from the credit reference agencies. It said based on these checks Mr S's application was accepted and his account opened in January 2007. It said Mr S made regular payments to his account until he informed it of his financial difficulties in August 2021. Regarding the limit increases it said there were no County Court Judgments recorded or bankruptcies, no missed payments in the previous 12 months and other factors fell within its credit policy. The last credit limit increase was in October 2012 and the highest balance on Mr S's account was £8,042 in 2010.

Mr S referred his complaint to this service. Our investigator partially upheld the complaint. She didn't think that the credit limit increases that took place in 2011 and 2012 were responsible. Based on this she thought Mr S's account should be reworked to reflect lending shouldn't have been increased beyond the £8,200 credit limit.

M&S Bank responded to our investigator's view to reiterate that Mr S's highest balance was £8,042 and as this was below the £8,200 credit limit no further action would be required.

Mr S didn't agree with our investigator's view. He said the lending should never have been provided and he has been put into financial difficulties due to this lending 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.

Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website. I've had this approach in mind when considering what's fair and reasonable in the circumstances of this complaint.

Before providing credit, lenders need to assess the ability of the consumer to be able to make the repayments in an affordable way over the loan term. There aren't specific checks that need to be carried out, but the regulations say these need to be reasonable and proportionate to the type and amount of credit being provided, the length of the credit being provided, the frequency of its use, the repayments and the total cost of the credit.

There is limited information available in regard to the checks undertaken by M&S Bank when the initial lending decision and subsequent credit limit increases were applied. I do not find this surprising given when these decisions were made. I have therefore looked through the evidence that has been provided to see what I think reasonable checks would have shown at the time to assess whether this supports the lending decisions being reasonable.

Mr S was provided with a M&S Credit card in 2007. The initial credit limit was £5,000. Mr S has provided copies of his bank account (joint account statements have been provided). The bank statements show income and benefit payments into the account averaging around £1,520 in the three months leading up to the application. The statements then show payments for other credit commitments, utilities, housing and for general living expenses averaging around £1,080. Based on this information, I do not find I can say that M&S Bank should have considered the account with a £5,000 credit limit to be unaffordable.

I have looked at Mr S's use of his credit card in the months leading up to the first credit limit increase. This shows that Mr S carried out a series of balance transfers in February 2007 which brought his account up to its limit (slightly over when interest was included). Mr S then paid slightly above the minimum repayment amount in the following months reducing his balance to around £4,200 at the time of the first credit limit increase. I do not find that this account management showed signs of financial difficulty and so I do not find this alone meant a credit limit increase shouldn't have been applied. I have therefore looked at Mr S's bank statements from the time. As had been the situation at the time of Mr S's application, his statements showed income and benefit payment receipts. His average monthly income in the months leading up to the credit limit increase was around £1,500 and his expenses around £1,000. Based on this I do not find that I have enough evidence to say the additional lending should have been considered unaffordable.

In February 2008, Mr S's credit limit was increased to £8,200. Mr S's credit card statements show that he hadn't spent beyond the previous credit limit and his balance had reduced from around £4,200 in August 2007 to around £3,700 in February 2008. In this case, I cannot say that Mr S's account management suggested he was struggling financially rather it showed he was managing his account well. I have therefore looked at this income at the time and his expenses. The bank statements provided show income of around £1,600 and expenses of around £1,000. While including the interest that would be due on the full credit balance would have left Mr S with limited disposable income, I do not find I have enough to say the increase should have been considered unaffordable.

Two further credit limit increases took place in 2011 and 2012. These increased Mr S's credit limit to £9,850 and then to £11,800. At the time of the 2011 credit limit increase, Mr S's main income was from his benefit payments and while there were some cash deposits into his

account as well, his total income averaged around £870. In the three months leading up to the 2012 credit limit increase Mr S's banks statements show only benefit receipts and these gave a monthly income of around £740. Based on Mr S's income I do not find that these last two credit limit increases should have been considered sustainably affordable.

However, as M&S Bank has confirmed that Mr S's account didn't go above the £8,200 credit limit that was applied in August 2008, I cannot say that these later credit limit increases have had an adverse effect on Mr S. I say this because while the credit was available to him, he didn't make use of this.

Putting things right

While I do not find that M&S Bank should have provided the credit limit increases in 2011 and 2012, as Mr S didn't make use of the funds available through these limit increases, I do not find there is any action needed as a result of my decision.

That said, I note Mr S's comments that he is only able to make token repayments on his debts and given his circumstances we would expect M&S Bank to treat him sympathetically and positively in regard to his outstanding balance.

My final decision

My final decision is that I uphold this complaint. M&S Bank shouldn't have considered the credit limit increases applied to Mr S's account in 2011 and 2012 as sustainably affordable. But as Mr S didn't take advantage of these, it isn't required to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 July 2023.

Jane Archer
Ombudsman