

## The complaint

Miss T complains that Marks & Spencer Financial Services Plc (M&S) lent to her irresponsibly and didn't support her in financial difficulty.

## What happened

Miss T had a credit card from M&S since 2013. The limit was originally £1,500. Limit increases were applied as follows:

Date	Limit
October 2015	£2,500
August 2016	£3,500
December 2018	£4,500
June 2019	£5,500

In February 2022, Miss T fell into financial difficulty. She was signed off from her job and couldn't work after that. She contacted M&S and they agreed a two month 'breathing space'. No interest or fees were applied. M&S were advised that Miss T was seeking help from a debt advice agency – with a view to getting an IVA or debt relief order. But she then cancelled her relationship with the agency.

In August 2022, Miss T called M&S. She said she had set her situation out in a letter dated 1 August 2022. On the call, she said she had no income (other than benefits). An affordability check was completed and she had monthly income of £1,407 and expenses (before debt repayments) of £1,408. She said she had debts of £66,000. M&S agreed a 'no affordability' hold on the account with no payments, and zero interest and fees – for six months.

A Notice of Default had been issued in June 2022 with the balance £5,500 and arrears of £346.88. Formal demand was made on 24 August 2022 – the balance was then £5,499 and arrears £758.38. A default was registered on 13 September 2022.

Miss T complained. She said the increases in limit couldn't have been properly checked – as she had many other debts at the time. She could never have afforded the borrowing. She said she had set out her situation in a letter to M&S dated 1 August 2022 but had no response. She offered £1 per month, but hadn't had a reply. All she received was arrears notices and default letters. She remains out of work, and says she's suffered mental health issues due to her debt problems with M&S. She says M&S should refund interest and fees, remove the default, and pay compensation.

M&S said they hadn't received the letter dated 1 August 2022 from Miss T. When she called M&S on 26 August 2022, it was clear she couldn't afford to pay anything – and a 'no

affordability' hold was placed on her account for six months – until March 2023. Her account defaulted on 13 September 2022. When the last increase (to £5,500) was made in June 2019 – M&S said they completed their credit checks, based on how she had operated her account. Miss T was offered the chance to opt out of the increase but didn't.

Miss T brought her complaint to us. Our investigator said M&S had completed their credit checks and these appeared to be sufficient – although she hadn't seen them. Miss T had maintained her account satisfactorily and made the monthly payments, sometimes paying more than the minimum. So – the limit increases looked OK. She could also see that M&S had supported Miss T when she fell into financial difficulty. She didn't uphold Miss T's complaint.

Miss T didn't agree. She set out that she had other debts of over £42,000 at the time of the last increase in June 2019. M&S couldn't have taken account of that. And she sent in medical evidence which said she was suffering from stress and anxiety, due to feeling overwhelmed by her financial situation. She said she was still unable to work due to the debt problems she encountered – and the harm to her physical and mental health.

Miss T asked that an ombudsman look at her complaint, and so it has come to me to do that.

*I made a provisional decision which said:*

There are two aspects to Miss T's complaint:

- The increases in limits – and were these responsible.
- Whether M&S supported her when she fell into financial difficulty.

*Limit increases:*

All lenders have an obligation to lend money responsibly. We must check whether M&S acted in line within the Financial Conduct Authority (FCA) rules on creditworthiness assessment as set out in its handbook, (CONC) section 5.2. These say that a firm must undertake a reasonable assessment of creditworthiness, considering both the risk to it of the customer not making the repayments, as well as the risk to the customer of not being able to make repayments. We look at:

- Whether the lender completed reasonable and proportionate checks to satisfy itself that the borrower would be able to repay any credit in a sustainable way?
- If reasonable and proportionate checks were completed, did the lender make a fair lending decision bearing in mind the information gathered and what the lender knew about the borrower's circumstances?
- And a reasonable and proportionate check would usually need to be *more* thorough:
  - the lower a customer's income, and the higher amount to be repaid.
  - the greater the number of loans and frequency of loans.
  - the longer the term of the loans

It's important to note that the checks must be proportionate to the amount being lent – so the higher the amount, the greater the checks must be, and the lower the amount, then fewer checks can be made.

Miss T complained to us in January 2023. Under our rules, we cannot investigate anything that occurred more than six years before that – so I cannot look at the limit increases in July 2016 and before – I can see that Miss T accepts that.

*Limit increase – December 2018: £4,500 (from £3,500):*

M&S say Miss T was making the necessary payments to her account – and I can see that was the case. M&S have set out that Miss T made monthly payments of an average of £876 over the previous five months - i.e. 19.5% of the new limit. This was considered to be satisfactory to offer the increase.

We asked M&S for more details about the checks they did at the time, particularly concerning Miss T's debts elsewhere. M&S did say they would send more details, but nothing has been submitted.

Miss T has sent to us her credit file covering this period. It shows she had other unsecured debts of around £24,000 at the time of the increase – in addition to the M&S credit card – i.e. total debts of £28,500. Her income and expenditure form shows she earned around £15,000 (gross) per annum and was a tenant.

While I can see that Miss T was making the necessary payments to those debts - I think for a customer to have total unsecured debts of approximately twice their annual gross income – is a lot. So – it seems to me that if M&S had done some checks about her overall situation, they would've asked to see a full affordability check and debt profile - and, on the balance of probability, not offered the increase.

*Limit increase – June 2019: £5,500 (from £4,500):*

M&S told us that Miss T was making the necessary payments to her account – and had paid 22% of her new limit each month. M&S said this was satisfactory for them to agree to offer the increase.

Similarly, we asked M&S for more details about the checks they did at the time, particularly concerning Miss T's debts elsewhere. M&S did say they would send more details, but nothing has been submitted to us. So, I must assume M&S didn't carry out that check.

Miss T's credit file shows she had other unsecured debts of around £42,000 at the time of this increase – in addition to the M&S credit card – i.e. total debts of £47,500. This had therefore increased significantly from only six months previously.

I can see that Miss T was making the necessary payments to those other debts – but I think for a customer to have total (short term) unsecured debts of approximately three times their annual gross income – is a lot. So – it seems to me that if M&S had done some checks about her overall situation, they would've asked to see a full affordability check and, on the balance of probability, not offered the increase.

Therefore, I consider that M&S should refund the interest and fees paid on Miss T's M&S debt on balances over £3,500 from December 2018 to the date of settlement.

*Whether M&S supported her when she fell into financial difficulty:*

Businesses have an obligation to treat customers in financial difficulty sympathetically and the Financial Conduct Authority (FCA) says that businesses like M&S should treat customers in difficulties with forbearance and due consideration. For example, a business might suspend or waive interest, accept lower payments or defer them, and allow customers more time to repay their debt.

After Miss T fell into financial difficulty, I can see that M&S:

- Placed a hold on Miss T's account in February 2022 for two months, and no interest or fees were charged. As part of that, no letters or calls were sent or made. Regulatory letters were sent - as they had to be.
- When Miss T spoke to M&S on 26 August 2022 – they completed an income & expenditure form – this showed Miss T had no spare income to make any debt payments. I listened to the call – which was professional, empathetic and clear. M&S' call handler did say there was no point in setting a payment of £1 per month – as if really wouldn't make a difference, and Miss T couldn't afford it anyway.

A 'no affordability' standstill was agreed for six months – again, without any interest or fees being charged. The call handler explained that a Notice of Default would be sent, and then a full default registered. She said Miss T's credit file would be marked with the default. So I'm satisfied that was made clear. I heard Miss T say she accepted that outcome. And – as the arrears by that time were £758.38, I don't think M&S had any alternative other than to apply the default.

- Miss T says she had been upset and stressed because she had set out her situation in a letter dated 1 August 2022. We asked M&S about that and they told us they hadn't received it. I think we must accept that – and in any case, I think Miss T's situation was fully dealt with in the call on 26 August 2022.

Therefore, I'm satisfied that M&S supported Miss T when she fell into financial difficulty.

Miss T has argued that the default should be removed – on the basis that M&S shouldn't have increased her limit in the way they did. But – Miss T's income and expenditure form dated August 2022 shows she had no capacity to make any payments to her M&S debt. I think it's reasonable to say that would've been the case even if M&S hadn't increased her limit after December 2018 – i.e. she couldn't have made the payments to the pre-existing, lower limit of £3,500 anyway. I say that because the minimum contractual payment was around £85-90 per month in 2018 (before the increase to £4,500), which she couldn't have afforded after she fell into difficulty.

In summary, my provisional decision is that:

- M&S should've made further checks when increasing Miss T's limits in December 2018 and June 2019. If they had, they would've seen Miss T's total debt situation and not increased her limit. And therefore M&S should refund all interest and fees from December 2018 to the date of settlement – on balances over £3,500.
- Miss T has clearly suffered a great deal of stress and anxiety over her debt situation. She has submitted evidence in support of that. Equally, I think it is also fair to say that this can't be solely the responsibility of M&S – given Miss T's other debts. But on balance I think it's fair that M&S pay compensation of £200.

The default should not be removed – because I consider it would've taken place anyway, based on Miss T's prior limits with M&S and in the light of the unfortunate circumstances she found herself in.

#### Responses to the provisional decision:

M&S made the point that they did carry out income/expenditure assessment at the point of each increase and sent those to us.

Miss T agreed, and asked:

- if the compensation could be paid to her directly.
- that M&S provide a breakdown of the refund of interest and charges.
- If M&S would provide interest-free borrowing for the life of the debt.

I now need to consider these responses and make 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 looked at the assessments done by M&S at each increase. But in all honesty, they only confirm what I said in the provisional decision. They show that M&S could see that at the time of the first increase, Miss T had unsecured debts of £36,700, increasing to £47,200 by the last increase. For a customer earning £15,000 per annum (gross), this was clearly a significant amount and it would've been reasonable to expect M&S to ask questions of Miss T before increasing her limits in the way they did.

On Miss T's questions:

- We agree that the compensation can be paid to her directly.
- We agree that M&S should provide a breakdown of the refunds
- It is for M&S to decide whether Miss T's request is viable or not, and for a discussion to take place – this is out of scope of this decision.

Therefore, my final decision is in line with the provisional decision. **(continued)**

### **My final decision**

I uphold this complaint. Marks & Spencer Financial Services Plc must:

- refund all interest and fees from December 2018 on balances over £3,500 to the date of settlement. And advise Miss T of the breakdown of the refund.
- Pay compensation of £200 for distress and inconvenience. This should be paid direct to Miss T.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 14 September 2023.

Martin Lord  
**Ombudsman**