

## **The complaint**

Mr D has complained that M&S Financial Services Plc ("M&S") trading as M&S Bank, irresponsibly lent to him when it granted him a credit card.

## **What happened**

Mr D opened a credit card account with M&S in October 2018. His credit limit was initially £2,000. In January 2021 it was increased to £2,500.

I understand the account went into default in June 2023.

Mr D says that M&S shouldn't have granted him the card or gone on to increase his credit limit.

M&S says it didn't lend irresponsibly to Mr D and that it did all the necessary checks before agreeing to lend.

Our adjudicator thought that Mr D's complaint should be upheld. He thought that given Mr D's income and expenditure and level of available credit it was likely that he didn't have the disposable income available to sustainably afford the card.

Because M&S disagrees the complaint has been passed to me to make a decision.

## **What I've decided – and why**

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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 Mr D's complaint.

M&S 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 Mr D could afford to repay what he 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 Mr D'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.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender like M&S to be able to show that it didn't make the decision to lend or continue to lend to a customer irresponsibly.

Before granting the account, M&S looked into Mr D's financial circumstances. It did this by relying on the information Mr D put in his application as well as carrying out credit checks. Mr S said he was earning an annual income of £16,000 which works out at around £1,300 net per month. M&S says it carried out its own affordability assessment, based on which it found that the credit was affordable. It also checked Mr D's credit history and found that he owed around £7,500 in existing credit which was about 50% of his available credit. Based on its affordability assessment, M&S said that after paying towards essential spending and housing costs plus his existing credit commitments, he'd be left with £171 to pay his card.

I've also seen that Mr D requested to make balance transfers at the time of the account opening that totalled around £1,950, leaving him with very little credit left on the card. I understand that these balance transfers were taking advantage of a 0% interest offer. I can see that this would go some way to reducing his total credit debt, but it still left open the possibility that he would go on to increase his total credit commitments, using up the additional £15,000 of available credit. Based on a 5% monthly repayment and also including the £2,000 of new credit granted would mean a total repayment of £850 per month. This far exceeds the total repayment of £380 M&S allowed for Mr D's existing credit plus the addition £100 per month for the new credit. So there was real risk that Mr D would get to the point where he'd be unable to make sustainable monthly repayments. I therefore think M&S ought to have carried out a better search in order to gain a more thorough understanding of Mr D's financial circumstances before it granted him the credit.

Our adjudicator upheld this complaint from the opening of the account because he didn't think the new credit could be sustainably maintained alongside what Mr D already owed on credit elsewhere plus his regular committed living expenditure each month. As part of his review, our investigator relied on the bank statements that Mr D provided. I've looked at these statements and agree that given the average level of spending against his monthly income, Mr D's outgoings were exceeding his income to the extent that his overall financial situation was likely to be deteriorating, with the real possibility that Mr D would go on to borrow more using the existing credit he had available. So I agree that Mr D would very likely be left with minimal, if any, disposable income each month were he to make use of all the credit already available to him at that time.

It follows that I agree that, taking into account his existing credit and significant level of financial commitments, it would have been proportionate for M&S to have gained a more thorough and accurate understanding of Mr D's financial circumstances before granting him the credit. It follows that I don't think M&S should have granted Mr D this credit.

I've seen that M&S has queried the appropriate way to apply redress in this complaint. I think our standard redress for this type of complaint – as set out below – can be properly applied without difficulty. Once the balance has been cleared, M&S can then remove any adverse information from the credit file relating to the account. In the meantime, it remains open to Mr D to put forward any further settlement offers with a view to clearing, or expediting the clearance of his outstanding balance.

I am therefore setting out redress below that's in line with what our investigator set out in his uphold view letter.

### **Putting things right – what M&S needs to do**

As I don't think M&S ought to have opened the account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I think Mr D should pay back the amounts he has borrowed. Therefore, M&S should:

- Rework the account removing all interest and charges that have been applied.

- If the rework results in a credit balance, this should be refunded to Mr D along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement. M&S should also remove all adverse information regarding this account from Mr D's credit file.
- Or, if after the rework there is still an outstanding balance, M&S should arrange an affordable repayment plan with Mr D for the remaining amount. Once Mr D has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

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

### **My final decision**

I uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 16 November 2023.

Michael Goldberg  
**Ombudsman**