

The complaint

Ms D complains that Marks & Spencer Financial Services Plc trading as M&S Bank was irresponsible in its lending to her

What happened

Ms D applied for a M&S Bank credit card in 2005. In June 2005 her account was opened with a credit limit of £7,000. Ms D's credit limit was increased to £8,000 in December 2006. Ms D says that she was unemployed when the credit card was provided, and limit increase applied. She says she had been receiving benefits since 2004 and was using the new lending to pay off other debts.

M&S Bank said that given the time that had passed it didn't still have the details of the checks undertaken before the credit card was provided and limit increase applied. It said that when the account was opened Ms D used it in line with expectations and regular repayments were received until September 2009. From August 2009 to September Ms D made a large number of transactions which took the account over its credit limit following which the account went into arrears. M&S Bank said Ms D contacted it in January 2010 about her financial difficulties and a payment plan was set up. Ms D's account was defaulted in July 2010 and transferred to a debt collection company in January 2021.

M&S Bank explained that it refunded Ms D over £1,600 of interest and charges that were applied to her account after she had informed it of her financial difficulties.

Ms D wasn't satisfied that M&S Bank had done enough in response to her complaint and she referred it to the Financial Ombudsman Service.

Our investigator partially upheld this complaint. She accepted that given the time that had passed since the account was provided and credit limit increased that M&S Bank no longer held details of the search results from the time. However, she said based on other information provided by Ms D from around the time of the credit limit increase she didn't think that this should have been considered affordable. Therefore, she upheld this complaint in regard to the December 2006 credit limit increase.

M&S Bank didn't agree with our investigator's view. It said that the Office of Fair Trading's irresponsible lending guidance did not exist at the time. That said it confirmed that when Ms D applied for the credit card an affordability assessment was undertaken which included considering Ms D's income and undertaking a credit reference agency check. It said Ms D's application was reviewed by its underwriters which assessed this based on the rules relevant at the time. It said that in relation to removing any adverse data, Ms D's default expired in July 2016.

My provisional conclusions

I issued a provisional decision on this complaint. My findings are set out below.

Ms D applied for a credit card in 2005. I note Ms D's comments that she wasn't employed at the time and was receiving benefits, but this isn't a reason on its own to say the lending shouldn't have been provided. Depending on the nature of the benefits, these can be considered as part of a customer's income when assessing affordability.

Given the time that has passed I do not find it unreasonable that M&S Bank isn't able to provide the details of the checks it undertook when Ms D applied for the credit card account. It has said that it considered Ms D's income at the time and that a credit check was undertaken. I also note that the application was referred to M&S Bank's underwriters for consideration. I find these checks reasonable. But without seeing the outcome of these checks I cannot say whether M&S Bank acted reasonably by considering the credit card with a credit limit of £7,000 as affordable. That said, I also haven't seen anything to show that the lending wasn't affordable to Ms D and noting that Ms D didn't start to use the credit card account until May 2006, I do not find this suggests she was reliant on the credit at the time it was provided or that she needed this credit to repay other debts.

Therefore, on balance, based on the information provided I do not find I can say that M&S Bank acted irresponsibly by providing Ms D with a credit card account with a £7,000 credit limit in June 2005.

In December 2006, Ms D's credit limit was increased by £1,000 to £8,000. M&S Bank hasn't been able to confirm whether this was requested by Ms D or was automatically applied to her account. Ms D has said she didn't request this increase and I find it reasonable to accept this.

M&S Bank hasn't provided any details of the checks it undertook before the credit limit was increased and given the time that has passed, I do not find this surprising or unreasonable. I note its comment about the OFT regulations not being in place at the time, and I have had this in mind in my decision. That said, I think it would still have been reasonable for M&S Bank to have checked that Ms D wasn't struggling financially before any further lending was provided and that it could reasonably expect the new lending to be affordable for her.

Given when the credit limit happened, I cannot say that M&S Bank was required to undertake a credit check. But I would expect it to have considered the information available to it to understand whether it was reasonable for the limit to be increased. Ms D had opened her account over a year before the credit limit increase and so M&S Bank had data available to it about how Ms D was managing her account. M&S Bank has said that Ms D didn't start to use the account until she requested a balance transfer in May 2006. She then maintained her repayments until September 2009. The account balance was within the credit limit and Ms D had been reducing the balance from the date of the balance transfer until the credit limit increase such that her balance just prior to the limit increase was around £2,780. Ms D wasn't using the credit card at this time for retail spending. Therefore, having considered Ms D's management of the account I do not find this should have raised any concerns that she might be struggling financially.

While I can't say that a credit check had to be undertaken, I have considered whether, if this had happened it would raise any serious concerns about how Ms D was managing her finances. I have looked at the statements and other information Ms D has provided and can see that Ms D had an overdraft limit of £2,000 on her current account and another credit card with a £6,000 credit limit. In the months immediately following the credit limit increase her bank statements show she was also making payments towards another credit card provider and also another financial institution.

While Ms D did have other debts, based on the statements I have seen it seems that Ms D was maintaining her accounts within their limits, and I have nothing to suggest that she

wasn't maintaining her payments at the time. Therefore, it is likely that a credit check wouldn't have identified any serious concerns and I have nothing to show it would have revealed any adverse information being recorded about Ms D's commitments. Given this, along with Ms D's account management, I do not find I have enough evidence to say that M&S Bank should have identified that the credit limit increase of £1,000 was irresponsible.

While I understand that this isn't the outcome Ms D wants, I have considered the information available to M&S Bank at the time of the credit limit increase and what it would have been reasonable to have checked and the likely outcome of this and I do not find I have enough to uphold this complaint.

Ms D didn't agree with my provisional decision. She said that she was in a lot of debt at the time and that M&S Bank hadn't provided any evidence of the affordability checks it undertook. She said her debts were more than she was receiving in benefits.

M&S Bank confirmed it had nothing further to add.

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 has been explained, 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.

I can understand why Ms D was disappointed with my provisional decision but as I have explained given the time that has passed it isn't surprising or unreasonable that M&S Bank no longer has details of the checks it carried out when Ms D applied for a credit card. While I note the comment it made in regard to the application being referred to its underwriting team and that Ms D's income was considered and a credit check carried out without the outcome, I cannot say whether it was reasonable that M&S Bank considered a credit limit of £7,000 to be affordable. That said, as I have nothing to show the lending wasn't affordable and noting when Ms D started to use the credit card, I do not find I have enough to say that the lending was irresponsible.

Ms D's credit limit was increased in December 2006. Again, given the time that this happened I do not find it surprising or unreasonable that M&S Bank no longer has the details of the checks it carried out. But as I set out in my provisional decision, having looked at the information that was available to M&S Bank – being the account management - I do not find that this raised that she might be struggling financially. While Ms D did have other debts, she appeared to be managing these and so I cannot say that a credit check at that time would have raised concerns.

While I understand Ms D's disappointment with my decision, based on what I have seen I do not find I have enough to uphold this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 2 November 2023.

Jane Archer
Ombudsman