

The complaint

Miss B complains that Marks & Spencer Financial Services Plc trading as M&S Bank ('M&S') irresponsibly gave her a credit card account she couldn't afford.

What happened

In September 2019 Miss B applied for and was granted a credit card account with M&S with a credit limit of £4,000. There were no credit limit increases after that.

Miss B immediately used the new account for two balance transfers at a promotional rate.

In August 2021 Miss B contacted M&S to say she was getting into difficulty with her account, having sought help from a debt charity. This led to M&S agreeing to set up a payment arrangement. M&S issued a default notice for the account in February 2022 and the account was put into default in April 2022.

Miss B says M&S didn't complete adequate affordability checks when it opened the account. She says if it had, it would have seen that it wasn't affordable for her.

M&S says it carried out the proper credit checks before granting her the credit, including checking her credit file and putting together a full affordability assessment.

Our adjudicator at first thought that M&S hadn't done anything wrong by granting the credit. But having been provided with further information about Miss B's financial situation, she decided to uphold the complaint.

In my provisional decision dated 7 September 2023 I explained why I wasn't intending to uphold this complaint. Essentially, I found that whilst M&S could have carried out better proportionate checks before granting the card, even if it had done so it was still likely that Miss B was able to afford the card. I set out an extract below:

"Did M&S complete reasonable and proportionate checks to satisfy itself that Miss B would be able to repay the credit in a sustainable way?"

Miss B's complaint is that M&S provided her with a level of credit that was unaffordable. M&S has explained it carried out a credit check using the information Miss B provided on her application as well as information obtained from a credit reference agency. It was then able to work out what credit it would be able to offer Miss B.

The checks M&S carried out included looking into her financial situation and the way she was managing her existing credit. I've seen that Miss B told M&S she had a monthly income from her work of £30,000, which worked out at a net monthly income of around £2,000. She also said she was a private tenant. M&S then used statistical information to work out what her monthly outgoings were likely to be and how much disposable income she'd have left. From the credit check it carried out, M&S calculated Miss B had ongoing credit commitments

of around £19,000, with around £5,400 by way of credit card debt. M&S therefore decided on the credit having worked out she would have around £160 in disposable income available each month to fund her payments to the card.

I am also aware from another unaffordable lending complaint that Miss B has made to us that she had taken out at least one other credit card at around this time. But I wouldn't necessarily expect this information to have yet been available to M&S when it was carrying out its checks before granting this card.

I agree with our adjudicator that M&S could have carried out better checks before granting the credit and that, given the relatively generous opening credit limit, one way to do this would have been to verify Miss B's income and expenditure so as to ensure that she'd be able to make monthly sustainable repayments. I think sustainability is particularly relevant given that Miss B went on to use most of her available credit for balance transfers soon after taking out the card for the purposes of paying off other credit she owed. From what I've seen I think better and more proportionate checks would have enabled M&S to gain a more thorough understanding of Miss B's financial circumstances before agreeing to open the account.

What would proportionate checks have shown?

I see our adjudicator asked Miss B for some further details and evidence about her financial circumstances at the relevant time. Miss B then sent in some bank statements from two accounts she was using that covered the three months before the account was opened. Broadly speaking the statements supported the level of income Miss B was receiving and her monthly outgoings. I've also noted that Miss B was making regular use of online gambling sites and that her spend on these was notably higher in August 2019. This is a concern that may have affected M&S's decision to grant the credit, especially if it had concerns that the new credit would be used to fund additional gambling. But overall Miss B appeared to have been managing her credit accounts reasonably well. I can't see that the gambling was part of an overall picture of a deteriorating financial situation that would have necessarily led to M&S deciding that the new credit was likely to be unaffordable for her.

I think all this demonstrates that at the time Miss B appears to have had enough disposable income available each month to make regular, sustainable repayments towards her new credit facility, leaving her with enough to meet other essential costs and still be left with disposable income for other and incidental expenses. Had M&S therefore completed proportionate checks before granting the credit, I think it's likely it would have discovered this too. It therefore didn't act unfairly by opening the account for Miss B with the level of credit it granted her.

It follows that, having looked carefully at all the available evidence and information, I don't currently think I've seen enough to show or suggest that Miss B's card agreement with M&S was unaffordable."

Miss B is unhappy with my provisional decision. She set out details of her financial commitments at the time. However, M&S didn't respond.

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.

M&S will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

Although I've carefully considered everything Miss B has said in response to my decision, I will not be changing my non-uphold finding. I am grateful to Miss B for setting out details of her financial commitments at the time. This confirms, but doesn't add to the totality of the information I had to hand when I issued my provisional decision.

In making my decision I have looked very carefully at whether the account was affordable and also whether or not Miss B would be able to sustainably make repayments to her card, taking into account the level of disposable income she'd have available to her each month. In doing so, I have also thought about the evidence and information that M&S had access to, or could have found out about at the time had it carried out better and more proportionate enquiries.

Having done so, I am still unable to make a finding that granting the account was irresponsible or that the credit was likely to be unsustainable for her to repay. I say this having seen Miss B's spending in the period leading up to her being accepted for the account. The includes her use of gambling sites – although from what I've seen this wasn't to the point that it was having a substantially worsening impact on her overall financial situation at the time.

It follows that I am still unable to say that, had M&S carried out better checks it would have seen her financial situation as deteriorating, or likely to deteriorate, to the extent that granting her the credit would have been unfair or unreasonable.

I know that Miss B will be disappointed with my decision. But I would like to reassure her that I have looked into all the submissions made in this case. Having done so, I have not found sufficient evidence to uphold this complaint.

My final decision

For the reasons I've given above, I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 25 October 2023.

Michael Goldberg
Ombudsman