DRN-4623585

The complaint

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

What happened

Mr G opened a credit card account with M&S in August 2019. One month later M&S agreed to increase his credit limit to £6,500. Then, in May 2020, it agreed a further increase to £8,500.

Mr G says that M&S shouldn't have granted him the card and then gone on to increase his credit limits.

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

Our investigator thought Mr G's complaint should be upheld. He thought that given Mr G's income and expenditure and level of credit already held elsewhere, it was likely that he didn't have the disposable income available to sustainably afford the credit he'd been given with the card and credit limit increases.

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

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. I've taken that into account when I have considered Mr G's complaint.

M&S needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it needed to carry out proportionate checks to make sure Mr G could afford to repay the credit facility he'd been given 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 G's income and expenditure.

In this complaint, I've seen that Mr G said he was earning an income of around £37,000 at the time of the account opening and first increase and this appears to have been around the same at the point of the May 2020 increase.

Before granting the account, M&S looked into Mr G's financial circumstances. It did this by relying on the information Mr G put in his application as well as carrying out credit checks. M&S's checks found that Mr G owed around £8,700 in credit debt at the time. His monthly net income received averaged out at around £1,800. M&S says it carried out its own affordability assessment, using statistical data to calculate what Mr G's typical living costs and spending might be. Based on this, M&S found that the credit was affordable and estimated that Mr G would be left with enough disposable income to afford the card repayments, at both the opening level of £4,000 and then when it agreed the limit increase to £6,500 a month later.

Given his level of monthly income and his existing level of borrowing, Mr G was taking on a significant level of credit, with a potential total indebtedness of £15,200 once his increased credit was added to his existing debt. I think that raises a real issue about whether Mr G would be able to sustainably repay the new credit and then the increased credit M&S was giving him. I think it follows that M&S needed to carry out better checks by taking further steps to understand more about Mr G's financial circumstances before giving him the opening credit and increase that followed. And I don't consider the fact that Mr G had apparently been managing his existing credit reasonably well necessarily shows he was in a financially secure enough position to take on new borrowing and sustainably repay it each month.

Another notable factor is that on the same day that Mr G made the request to increase his credit limit, he also applied to M&S for a loan of £7,500 which was later accepted. The loan appears to have been used mainly to pay off another existing loan shortly after Mr G received the loan funds. But it nevertheless does suggest that Mr G was looking for ways to deal with the high level of debt he was holding.

I therefore think that it would have been proportionate for M&S to have carried out better checks in order to gain a more thorough understanding of Mr G's financial circumstances before it granted him the credit.

It follows that I also think it would have been proportionate for M&S to have verified Mr G's financial circumstances, such as by requesting copies of his bank statements. I've reviewed three months of bank statements leading up to the lending decision and the first limit increase, as well as statements prior to the May 2020 limit increase.
The statements show that alongside his regular monthly outgoings, Mr G was paying back a loan to a relative who had helped him to finance a car by way of a monthly payment of £210. He was also paying £350 to his partner towards housing costs. So, adding this to the £470 that he was already paying towards other borrowing suggests that Mr G had monthly costs for committed expenditure of around £1,180. That means, were he to use the full credit on his card with the September 2019 increase he would be paying another £325, taking the total up to £1,500. Once Mr G's day to day other regular spending was added in – and I've seen that Mr G allowed £500 each month for this - it strongly suggests that Mr G didn't have enough disposable income to sustainably afford the additional borrowing, even were he to restrict his non-essential spending.

I would add that event though Mr G kept his bank account in credit, it seems likely that being given any further credit meant there was a real risk that his financial situation could deteriorate and he would be unable to sustainably manage all his credit and committed outgoings alongside each month.
My view doesn't change when looking at the credit limit increase M&S granted Mr G in May 2020, increasing his limit by another £2,000 up to £8,500. Given that his level of earnings and committed expenditure (both credit and non-credit) hadn't materially changed by this point, the additional credit meant that Mr G would potentially have to find another £100. Therefore, Mr G could be having to find £1,600 each month for credit and other essential expenditure. So by this point, Mr G would be likely to be left with negative level of disposable income whilst the credit would have become even less sustainable than it was before.

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 G's financial circumstances before granting him this credit. Had M&S done so it would have seen that the lending was unlikely to be affordable. As things stand, I don't think the checks were proportionate. It follows that I don't think M&S should have granted Mr G this credit.

Putting things right – what M&S needs to do

As I don't think M&S ought to have opened the account and then granted the additional credit, 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 G should pay back the amounts 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 G 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 G's credit file.
- Or, if after the rework there is still an outstanding balance, M&S should arrange an affordable repayment plan with Mr G for the remaining amount. Once Mr G 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 G 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 G's complaint and require Marks & Spencer Financial Services Plc to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 14 March 2024.
Michael Goldberg
Ombudsman