

## **The complaint**

X complains that Marks & Spencer Financial Services Plc (M&S) irresponsibly provided her with a credit card and limit increase and failed to support her as a vulnerable customer.

## **What happened**

M&S provided X with a credit card for £1,500 in November 2011. The limit was increased to £2,000 in July 2013. In summary, X thinks M&S provided her with credit irresponsibly, and checks would have revealed that she was already having trouble managing her existing debt.

X also says she was struggling with her mental health as well as a gambling addiction at the time. She says she was spending funds in a harmful way, which the bank ought to have been aware of. She says it was not only irresponsible to provide the credit card and increase, but it was irresponsible to allow her to use the card for regular gambling transactions. She also thinks M&S didn't intervene or offer forbearance.

M&S reviewed X's complaint. In summary, it said it had limited information due to the time that had passed since the lending decisions were made, but it had carried out appropriate checks in line with the requirements at the time. It noted times where X missed payments on the card but said that the account was always quickly brought back up to date. It acknowledged the gambling transactions on the account, however it said there were other retail transactions on the statements too. Overall, it didn't uphold X's complaint.

X remained unhappy and brought her complaint to this service. One of our Investigators reviewed matters and, in summary, thought appropriate checks would have revealed that X was having difficulties managing her existing credit commitments. So, she thought M&S shouldn't have provided the credit card, or the limit increase. She thought M&S should refund the interest and charges on the account and also pay X £500 compensation.

M&S responded and disagreed with our Investigator's view. In summary, it reiterated the checks carried out at the time showed the credit was affordable. It also said that any checks carried out would need to be in line with the relevant applicable lending criteria from the time it lent.

In summary, X was largely happy with the view, however she reiterated that she was gambling excessively at the time and provided lots of supporting information. Therefore, in addition to the recommended redress, she also asked for a refund of the gambling transactions on the account to put her in the position she would have been in, had the card not been provided.

As an agreement hasn't been reached, the case has come to me to decide.

## **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.

Having done so, I agree with our Investigator's findings and I'm upholding X's complaint for the same reasons. Before I set out these reasons, I want to first acknowledge that this has clearly been a very difficult time for X. I want to thank her for being so open about her circumstances, particularly as I appreciate going over some of the detail has been upsetting for her.

I also want to say that it's very clear to me just how important this matter is for X. She's set out her position in great detail and has provided lots of supporting information. I think it's important I explain that whilst I have read and considered all the information provided by both parties, I've outlined my findings in considerably less detail. I don't mean any discourtesy by this, rather this reflects the informal nature of our service.

Our general approach to complaints about unaffordable and irresponsible lending, including the relevant key rules and guidance and good industry practice, is set out on our website.

Here, M&S needed to take reasonable steps to make sure it didn't lend to X irresponsibly. It needed to carry out a proportionate assessment of whether she could afford to repay what she owed in a sustainable manner. These checks may have included considerations about how much was being lent, X's borrowing history and her circumstances.

The checks had to be 'borrower' focused. This means M&S had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for X. In other words, it wasn't enough for M&S to consider the likelihood of it getting the funds back – it had to consider the impact of any repayments on X.

M&S says that before lending, it would have carried out checks which included reviewing information provided on the application form, a review of internal information, and external information gathered from the credit bureau. However, it hasn't been able to provide much to evidence this.

X has provided some information about her circumstances around the time the card was lent to her. She hasn't been able to obtain a credit report relevant to the time of the lending but she has provided account statements for another card in the lead up to both when M&S provided the card and the credit limit increase. X has also provided some testimony about her circumstances at the time, including information about her income and expenditure, as well as some supporting evidence.

I appreciate M&S says it completed appropriate checks at the time into X's circumstances, and I don't think it's unreasonable that it isn't able to provide evidence showing this, given the time that has passed. However, I have to consider that X has been able to provide some information here. Therefore, in the absence of supporting evidence from M&S, I think it's reasonable to use the available information – mostly from X's submissions – to recreate what proportionate checks would have likely shown.

I think it's likely proportionate checks would have included asking X about her income. Having reviewed information to piece together what X likely would have declared, I think M&S would have concluded that the card would be affordable. However, I think it's likely that a proportionate check would have also involved a review of X's credit commitments at the time – indeed M&S says its checks would have included a review of external information gathered from the credit bureau. So, I've used the information X has provided to see what these checks would have likely revealed.

X says she was struggling to manage her existing debt around the time this card was lent. She has provided card statements with another lender showing that she was over the limit on a card in at least four consecutive months leading up to the opening of the M&S card. On balance, and in the absence of anything to the contrary from M&S, I think it's likely this would have been visible on credit checks it would have carried out before providing the card.

Therefore, I think M&S's checks would have likely revealed that X was having difficulties managing her existing credit commitments. With this in mind, I think it was irresponsible to provide her with a new line of credit at this time.

Given that I don't think the card should have been provided, it could certainly be argued that the limit increase that took place in July 2013 to £2,000 shouldn't have happened either. However, for completeness, I've reviewed the circumstances in the lead up to the limit increase. Having done so, I'm not persuaded that X's circumstances improved enough to warrant further lending. X exceeded her credit limit multiple times in the months leading up to the increase being provided. She's also provided evidence showing continued issues with her other credit commitments around the time the increase on the M&S card was provided. Therefore, I think it was irresponsible to increase the credit limit on the card.

I've considered that X told this service that she was struggling with a gambling addiction and spending in a compulsive and harmful way around the time she was given the card, and has provided supporting information to show this. X has said whilst her current account was with another bank, this bank was closely linked with M&S and therefore appropriate checks should have revealed this information to M&S. As I understand it, she has also said the other bank should have left appropriate notes on its systems which should have highlighted how she was spending, or should have blocked lending from other closely linked lenders. Overall, she says it should have been foreseeable to M&S that she would use the funds provided to gamble with.

I've thought carefully about what X has said here. However, it's important I explain that this decision focuses solely on M&S's actions in lending to her. It follows that I won't be commenting on the actions of other firms here.

In respect of M&S's responsibilities, it needed to carry out checks proportionate to the lending it was providing. Considering what it was lending to X, I think proportionate checks would have likely involved asking her for information about her circumstances – such as her income – and reviewing her external credit commitments. And, had it done so, I think it would have had enough information at that stage to make a decision not to lend to her. It follows that I don't think proportionate checks would have stretched to a detailed review of her current account statements in the circumstances, and therefore I don't think how X was spending on her current account would have been obvious to M&S before it lent to her. In any case, I've already decided that the card and limit increase shouldn't have been provided, and so I don't think this information changes the outcome I've reached.

I note X has also explained that M&S didn't offer her forbearance whilst she held the card. However, I've already decided that the card shouldn't have been provided at the outset. Therefore, I'm satisfied I don't need to consider this point as it doesn't change the outcome I've reached. I'll now move onto considering how M&S should put things right.

### **Fair compensation – what M&S should do to put things right**

In most cases where credit has been provided where it shouldn't have been, it would be fair and reasonable for the lender to refund any interest and charges paid by the borrower. And,

the borrower would usually be expected to repay any remaining amount of the money they had been lent. So, I'd expect X to pay back the money she was lent, but not the interest.

I understand X has asked for a refund of all the gambling transactions on the facility. To support this, she's provided evidence showing that she was gambling using her current account when the card was lent, so she says it was foreseeable that she was going to use the M&S card to gamble. She then subsequently did gamble using the M&S card. I also note that X has referenced other cases dealt with at this service in some of her submissions, where similar has been recommended as redress. However, I'll be reaching a decision based on the individual circumstances of this particular case.

I appreciate the efforts X has gone to, to outline why she thinks a refund of the gambling transactions would be fair compensation. However, as our Investigator explained, when considering cases involving unaffordable or irresponsible lending, this service's approach is to recommend a refund of interest, fees and charges on lending which shouldn't have been provided. That's because it wouldn't be appropriate for a lender to profit from lending which was irresponsibly given. However, it's usually reasonable for the capital funds to be repaid by the borrower. Having thought very carefully about all the circumstances of this particular case, I think that's fair here.

I've also considered that the majority of these transactions pre-dated the gambling commission's ban on merchants accepting credit card payments on gambling sites. I've not seen evidence that X was still gambling regularly using her credit card after April 2020 – when the gambling commission brought the ban into effect. However, even if this was the case, as outlined, this ban was brought in against regulated gambling retailers and not credit providers. With all of that in mind, I don't think it would be reasonable to ask M&S to refund the gambling transactions on the account in this instance.

However, I do think M&S's decision to lend to X caused her distress and I agree with our Investigator that a refund of interest and charges doesn't go far enough. X has provided, in my opinion, persuasive testimony about her circumstances at the time and the impact that further lending had on her. Having considered all the circumstances of this case carefully, I think the impact of the irresponsible lending decisions here was such that X experienced an even higher level of harm than someone else may have done if they were provided with the credit X was lent. And I think M&S's lending decisions compounded what was already a difficult time for her. So, I think it's right that M&S pay some compensation. Having thought carefully about matters, I think £500 is a fair and reasonable amount to reflect the impact caused to X.

With this in mind, M&S should put things right for X by doing the following:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied.
- As the rework results in a credit balance, this should be refunded to X 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 X's credit file.
- Pay X £500 compensation for the distress caused by the impact of the credit that was provided to her.

\*HM Revenue & Customs requires M&S to take off tax from this interest. M&S must give X's a certificate showing how much tax it has taken off is she asks for one.

I've considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for X in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

### **My final decision**

My final decision is that I uphold this complaint and direct Marks & Spencer Financial Services Plc to settle things in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 5 December 2024.

Hana Yousef  
**Ombudsman**