

Complaint

Miss H has complained that Marks & Spencer Financial Services Plc (trading as “M&S Bank”) irresponsibly provided a credit card and limit increase to her. She says that the credit card was unaffordable and created ongoing difficulty.

Background

In July 2017, M&S Bank provided Miss H with a credit card with a credit limit of £4,000.00. In March 2019, M&S Bank accepted Miss H’s request for a limit increase to £5,000.00.

In August 2024, Miss H complained saying that the credit card and limit increase were unaffordable and created ongoing difficulty.

M&S Bank didn’t uphold Miss H’s complaint as it believed that it didn’t do anything wrong either when providing the credit card or in the period Miss H had it. Miss H remained dissatisfied after M&S Bank’s response and referred her complaint to our service.

One of our investigators reviewed what Miss H and M&S Bank had told us. He wasn’t persuaded that M&S Bank failed to act fairly and reasonably either when initially providing Miss H with her credit card, or allowing her to use it in the way that she did. This meant that the investigator didn’t recommend that Miss H’s complaint be upheld.

Miss H disagreed with the investigator’s conclusions and asked for an ombudsman to look at her complaint.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. M&S Bank has argued that Miss H’s complaint was made too late because she complained more than six years after the decisions to provide the credit card and the credit limit increases; as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the relationship between her and M&S Bank was unfair to her as described in s140A of the Consumer Credit Act 1974 (“CCA”). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I’ve decided not to uphold Miss H’s complaint. Given the reasons for this, I’m satisfied that whether Miss H’s complaint about the specific lending decisions was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Miss H's complaint should be considered more broadly than just those lending decisions. I consider this to be the case as Miss H has not only complained about the respective decisions to lend but has also alleged that the repayments unfairly caused her continued financial difficulty as she struggled to make her payments which affected her going forward.

I'm therefore satisfied that Miss H's complaint can therefore reasonably be interpreted as a complaint about the fairness of her relationship with M&S Bank. I acknowledge M&S Bank may still disagree that we can look at Miss H's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters. This includes responding to Miss H's arguments regarding her complaint having been made in time.

In deciding what is fair and reasonable in all the circumstances of Miss H's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss H's complaint can be reasonably interpreted as being about the fairness of her relationship with M&S Bank, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (M&S Bank) and the debtor (Miss H), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Miss H's complaint, I therefore need to think about whether M&S Bank's decision to lend to Miss H, or its later actions resulted in the lending relationship between Miss H and M&S Bank being unfair to Miss H, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Miss H's relationship with M&S Bank is therefore likely to be unfair if it didn't carry out reasonable enquiries into Miss H's ability to repay in circumstances where doing so would have revealed the credit card to be irresponsible or unaffordable. And if this was the case, M&S Bank didn't then remove the unfairness this created somehow.

Were the decisions to provide the credit card and subsequent credit limit increases unfair?

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Miss H's complaint.

Bearing in mind Miss H's response to our investigator, I think that it would be helpful for me to set out that we consider what a firm did to check whether any repayments to credit were affordable (asking it to evidence what it did) and then determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion. Indeed, the requirements have not and still do not mandate a list of checks that a lender should use. Any rules, guidance and good industry practice in place over the years has simply set out the types of things that a lender could do when considering whether to lend to a prospective borrower.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was fair to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments that a prospective borrower might have to make were affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

M&S Bank's decisions to provide Miss H with a credit card which had a credit limit of £4,000.00 in July 2017 and then increase the limit to £5,000.00 in March 2019

M&S Bank says it will have agreed to Miss H's application and the limit increase after it obtained information on her income, some information on her expenditure and carried out a credit search. And the information obtained will have indicated that Miss H would be able to make the monthly repayments that could be due for this credit card and the limit increase.

On the other hand, Miss H says that the credit card was unaffordable and this created ongoing difficulty. I've considered what the parties have said.

What's important to note is that Miss H was provided with a revolving credit facility rather than a loan. This means that to start with M&S Bank was required to understand whether Miss H could repay £4,000.00 and then £5,000.00 within a reasonable period of time. So I don't think that Miss H's income in itself means that she shouldn't have been lent to in the way that she has argued.

I understand that M&S Bank is likely to have carried out a credit search but given the length of time since Miss H's application it no longer has a record of this. In any event, I haven't seen anything to indicate that Miss H had any significant adverse information - such as defaulted accounts or county court judgments recorded against her.

Miss H says that she shouldn't have been lent to because of her existing debts. However, I note that this credit card had a 0% interest rate offers. And Miss H had the option of transferring some of her existing credit card debt, to a much lower interest rate, on to this account.

Indeed, I think that Miss H applied for this credit card and then the limit increase in order to transfer existing balances on to this account at 0% interest. Equally, what M&S Bank would have seen and be expected to know is that Miss H did transfer interest accruing balances onto this credit card. I'm therefore satisfied that Miss H was always likely to pay less interest than she would have done had her existing balances stayed where they were and she was therefore able to make larger inroads into her balance.

Nonetheless, I think that given the amount being lent here (£4,000.00 and then £5,000.00) there is a reasonable argument for saying that it would have been reasonable and proportionate for M&S Bank to find out a bit more about Miss H's regular living costs before offering this credit card and the limit increase.

However, I don't think that proportionate checks would have extended into obtaining bank statements. I say this particularly as there is no requirement for a lender to obtain statements from a customer. Nonetheless, having considered the evidence Miss H has provided, I don't think that M&S Bank obtaining further information on Miss H's committed regular living expenses at the time and supplementing what it knew about her credit commitments, is likely to have led it to conclude that she did not have the funds to sustainably make the repayments due.

I say this because the information that Miss H has been able to provide doesn't clearly show me that her living expenses were at a level that rendered the credit card and the limit increase unaffordable. As this is the case, I'm satisfied that it wasn't unfair for M&S Bank to offer Miss H a credit card with a limit of £4,000.00 in July 2017 or agree to her request for a credit limit increase to £5,000.00 in March 2019.

Did M&S Bank allow Miss H to use her card in a way that was unsustainable or otherwise harmful for her?

Miss H has also said that M&S Bank acted unfairly towards her as it continued to allow her to use this credit card even after it ought to have carried out annual reviews. In the first instance, I think that it would be helpful for me to explain that the type of annual review that Miss H has referred to is mainly concerned with an overdraft.

A credit card isn't designed to be operated with a credit balance in the same that a current account is. So having a balance on a credit card isn't necessarily a problem, in the same way that being continually overdrawn might be.

That said, the regulator, the Financial Conduct Authority ("FCA") did introduce new rules regarding persistent debt on credit cards in 2018. The final stage of these rules came into operation in 2020¹. This permitted credit card providers to close a credit card to new spending where customers were not taking sufficient steps to reduce balances that were in persistent debt. The lender would then set up an affordable pay down plan for the balance owed, even if a customer was making their minimum payment in accordance with the terms and conditions of the account.

Given Miss H's reference to her failing to clear the balance on the card and only making minimum payments, I've considered whether M&S Bank had sufficient regard to these rules.

¹ The persistent debt rules actually came into force in 2018. This is when the first PD18 letters will have gone out. As the paydown plan phase starts at 36 months, it wasn't until 2020 where the first accounts will officially have been in persistent debt for the required time. It is only where this criteria was met that a lender was permitted to impose solutions aimed at helping reduce a customer's debt, without adverse credit information being recorded, irrespective of whether the customer was maintaining the account in line with the terms and conditions.

In the first instance, it's worth noting that that it doesn't automatically follow that an individual who has had a balance towards the upper end of their credit limit will be in persistent debt. I say it because the definition of persistent debt is based on how much of the customer's payments go towards interest and how much goes towards repaying the capital borrowed. As this is the case, it is perfectly possible for someone to remain at the upper end of their credit limit for the relevant period without ending up in persistent debt. For example, because they have a promotional interest rate.

From what I've seen, Miss H had a promotional rate on her credit card which meant that she paid no interest until August 2019. This meant that prior to August 2019, Miss H would never be in a position where more of her monthly payment would go to interest, fees and charges, rather than to the capital that was owed.

It's also worth noting that the earliest credit card statements I've seen, from 2019, show that Miss H actually had a £0 balance on the credit card. Miss H's statements also appear to show that she was given a further promotional 0% interest rate for balance transfers at the time her limit increase application was accepted.

In my view, there is an argument for saying the additional promotional rate was in itself M&S Bank exercising forbearance as it wasn't charging any interest on the transferred debt. This is also supported by the fact that Miss H repaid the transferred balances in full and by the middle of 2020 she actually had a credit balance on this card.

The information provided shows that Miss H's balance started increasing from the middle of 2022 onwards. However, this was because Miss H was making purchases on her card, rather than it being solely because he was now being charged interest. Furthermore, I can see that by the time M&S Bank provided its business file on this complaint, Miss H had a balance of around £3,600.00.

I appreciate that Miss H may feel that she will have owed less had she not had to pay interest. However, as this was an interest-bearing credit card and there isn't anything to indicate that Miss H was mismanaging the account, I don't think that M&S Bank should have taken unilateral corrective action.

In these circumstances, I'm satisfied that reminding Miss H of the interest she was paying and setting out an additional voluntary payment, which would have resulted in her clearing the balance quicker was fair and reasonable. Indeed, this did lead to Miss H's balance reducing by the time her complaint was considered by us.

Overall, and based on the available evidence I don't find that Miss H's relationship with M&S Bank was unfair. I've not been persuaded that M&S Bank created unfairness in its relationship with Miss H by irresponsibly lending to her whether when initially agreeing to provide her with a credit card, or in respect of the limit increase. I don't find M&S Bank treated Miss H unfairly in any other way either based on what I've seen.

Having considered everything, while I can understand Miss H's sentiments, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Miss H – especially as its clear she feels strongly about this complaint. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Miss H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 12 January 2026.

Jeshen Narayanan
Ombudsman