

The complaint

Mr F complains that Marks & Spencer Financial Services Plc ("M&S"), trading as M&S Bank, irresponsibly granted him a credit card agreement he couldn't afford to repay.

What happened

Mr F applied for and was accepted for a credit card in October 2019. He was granted a £2,000 credit limit but was not accepted for further increases when he applied for them.

Mr F got into difficulty with meeting his card repayments. In January 2022 he agreed a repayment plan after he'd sought debt advice.

Mr F says that M&S didn't complete adequate affordability checks. He says if it had it would have seen the agreement wasn't affordable as he was struggling to manage the credit he'd already taken out.

M&S didn't agree. It said that it carried out a thorough assessment which included using the information Mr F gave in his application as well as information provided by a credit reference agency.

Our investigator recommended the complaint be upheld. They thought M&S ought to have realised the agreement wasn't likely to be affordable for Mr F.

As M&S didn't agree, the complaint has been passed to me for a final 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.

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.

When Mr F applied for the card, he told M&S he was earning an annual gross salary of £37,000. Typically, this would work out to a net salary of around £2,400, although the bank statements he's given us suggest that after deductions he was receiving net pay of around £1,900-£2,000 per month. M&S said it carried out checks to make sure the card would be affordable for Mr F. It did this by relying on information in Mr F's application and also by checking information held by credit reference agencies. Unfortunately it no longer has the actual credit check from the time, but instead provided us with the underwriter's notes that were prepared after the application was referred for further checks. The notes show that Mr F had had a previous credit default in 2017 which had been satisfied. The notes also said that Mr F owed around £25,000 in credit from a loan he'd taken out in July 2019, for which he was repaying £378 each month. He was also making mortgage payments. The notes also show M&S knew that Mr F had two credit cards with balances totalling around £8,200

I think the extent of these existing credit commitments should have prompted M&S to carry out further checks to ensure that it was acting proportionately in order to gain a more thorough understanding of Mr F's financial circumstances before lending to him.

Mr F sent us his credit report. As our investigator noted, the report shows that Mr F was heavily reliant on successive borrowing. As M&S had seen, in July 2019 he'd taken a loan requiring 77 monthly payments of £378, but also in June another loan which would require monthly repayments of £86 for 84 months. It can be seen that Mr F was reliant on a regular pattern of loans from 2017 onwards.

Given Mr F's level of existing credit, including his loan repayments of £378 and £86, his monthly payments (based on sustainable 5% monthly repayments on his credit cards) would be taking around £900 from his monthly income. He was also meeting the cost of monthly mortgage repayments of £731 – I've not seen evidence to show or suggest this was being paid jointly. So it seems likely that Mr F was having to find around £1,600 each month to meet his debt commitments. This is before allowing for the extra £100 Mr F would have to find if he was to use his new card to fund other debt. And it doesn't take into account other committed expenditure and daily living costs. So I think on that basis M&S ought to have been prompted by its checks to gain a better idea of Mr F's financial situation by asking him for more information about his ongoing expenditure. As things stand, it seems likely that Mr F would only be left with a sum of around £2-300 in order to meet household costs and daily expenses each month, with little likelihood of having any disposable income. This situation may have been slightly eased by help from Mr F's partner but this isn't something M&S included in its calculations when assessing his ability to repay the loan.

From the information I've seen that would have been available to M&S at the time, I think it would have been proportionate for M&S to have found out more about Mr F's committed expenditure, such as his household costs and daily expenses. Mr F sent us three months of bank statements leading up to the lending decision. These show that Mr F was making regular use of his overdraft facility on one of his two current accounts and was transferring funds to himself from a separate account. This again suggest that his monthly outgoings, once he'd met his credit commitments, weren't enough to support his other non-credit committed expenditure and was unlikely to have left him with any disposable income. So I think all this demonstrates that he didn't have enough disposable income to sustainably afford the additional borrowing.

I therefore think there's a strong likelihood that at the time of applying for the card, Mr F's financial welfare was already deteriorating. And so I think that taking on further debt at this point raised the real possibility that he would be accelerating his debt unsustainably. I therefore think M&S ought to have done more to look into Mr F's financial situation before granting it. And so I think on balance M&S didn't act fairly by approving the card.

I've seen that M&S has queried the appropriate way to apply redress in this complaint. I think our standard redress for this type of complaint – as set out below – can be properly applied without difficulty. Once the balance has been cleared, M&S can then remove any adverse information from the credit file relating to the account. In the meantime, it remains open to Mr F to put forward any further settlement offers with a view to clearing, or expediting the clearance of his outstanding balance.

I am therefore setting out below the redress that's in line with our approach and which our investigator set out in the uphold view letter.

Putting things right – what M&S needs to do

As I don't think M&S ought to have opened the account, 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 F should pay back the amount he 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. F 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 F's credit file.
- Or, if after the rework there is still an outstanding balance, M&S should arrange an affordable repayment plan with Mr F for the remaining amount, if it has not done so already. Once Mr F 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 F 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 this complaint and direct Marks and Spencer Financial Services Plc, trading as M&S Bank, to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 8 December 2023.

Michael Goldberg
Ombudsman