

The complaint

Ms S complains that Marks and Spencer Financial Services Plc trading as M&S Bank lent to her irresponsibly.

What happened

Ms S applied for a loan with M&S in May 2021. M&S approved the application and gave Ms S a loan for £13,000 over a term of 60 months with monthly repayments of £255.51.

Ms S complained that M&S had lent to her irresponsibly. She said the loan was unaffordable because she was on benefits.

M&S didn't uphold the complaint. It said it had carried out the correct affordability checks.

Ms S remained unhappy and brought her complaint to this service.

Our investigator upheld the complaint. He said that M&S should've carried out additional checks to make sure the loan was affordable for Ms S.

M&S didn't agree. It said it thought Ms S's financial circumstances had changed after the loan was approved and that it wouldn't have been able to foresee this.

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.

Our approach to complaints about irresponsible and unaffordable lending is set out on our website. I've had this approach in mind when considering Ms S's complaint.

Before agreeing to lend, the rules say that M&S had to complete reasonable and proportionate checks to ensure that Ms S could afford to repay the debt in a sustainable way. These affordability checks needed to be focussed on the borrowers' circumstances. The nature of what's considered reasonable and proportionate will vary, depending on various factors including the amount of credit, the amount of repayments, the cost of credit and the consumers individual circumstances.

There's no set list of checks a lender must complete. But lenders are required to consider the factors I've mentioned above when deciding what's reasonable and proportionate.

M&S Bank obtained information about Ms S's income and attempted to verify this using a consumer credit tool. M&S has said it wasn't able to verify Ms S's income in this way, so it asked to speak to her about her income. M&S said that Ms S declared an income of £21,000 all of which was derived from benefits, and credit repayments of £460 per month. M&S said that Ms S told them she intended to consolidate her existing credit commitments with the loan, so that her credit repayments would reduce.

The credit information obtained by M&S showed that Ms S had existing consumer credit

liabilities of around £9000. Around £3000 of this had come about as a result of loans Ms S had taken out in 2020.

I've thought about whether the checks carried out by M&S were reasonable and proportionate. On balance, I don't think they were. I say this for the following reasons:

Although M&S spoke to Ms S to obtain information about her income, based on what I've seen, it didn't obtain detailed information about her expenditure. Given the size of the loan and the length of the term, I would've expected M&S to obtain more detailed information about Ms S's income and expenditure.

I also think that the recent loans taken out by Ms S in 2020 should've given M&S cause for concern and prompted it to obtain further information about Ms S's reliance on credit. I appreciate that Ms S said that she intended to consolidate her existing debt, but there was no guarantee that she would do this and if she didn't, her monthly credit repayments would've exceeded 25% of her monthly income. It's generally the case that consumers who are using more than 25% of their monthly income to repay debt are more likely to struggle to repay debt in the future.

The fact that Ms S told M&S that she intended to consolidate her existing borrowing should've given cause for concern, as it suggests that affordability of existing consumer debt was a factor in Ms S's overall financial circumstances.

Taking everything into consideration, I don't think M&S carried out reasonable and proportionate checks. More detailed checks were needed to make sure the loan was affordable for Ms S. Had these been carried out, I think M&S would've concluded that Ms S was unlikely to be able to sustainably repay the loan.

Putting things right

To put things right, M&S should refund all the interest and charges Ms S has paid on the loan. It should also remove any negative information recorded on Ms S's credit file. Therefore, M&S should:

Add up the total amount of money Ms S received as a result of having been given her loan. The repayments Ms S made should be deducted from this amount.

If this results in Ms S having paid more than they received, any overpayments should be refunded along with 8% simple interest calculated from the date the overpayments were made until the date of settlement.

If any capital balance remains outstanding, M&S should arrange an affordable payment plan with Ms S

Remove any negative information recorded on Ms S's credit file relating to the loan

HMRC requires M&S to deduct tax from the interest. M&S must give Ms S a certificate showing how much tax has been deducted if she asks for one.

My final decision

My final decision is that I uphold the complaint. Marks and Spencer Financial Services Plc trading as M&S Bank must take the steps I've set out above,

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or

reject my decision before 19 June 2023.

Emma Davy
Ombudsman