DRN-4319473

The complaint

Mr F complains that Marks & Spencer Financial Services Plc (“M&S”), trading as M&S Bank, irresponsibly granted him a personal loan agreement he couldn’t afford to repay.

What happened

In February 2020, Mr F took out a personal loan with M&S, to be used in part to pay off some existing borrowing. Under the terms of the loan agreement, Mr F was borrowing £13,000 and paying it back by way of 35 monthly payments of £413. The total repayable under the agreement was £14,785.56.

The loan was fully repaid in September 2021.

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 already struggling with debt, including existing credit.

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 sustainable 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 loan, he told M&S he was earning an annual gross salary of £28,500, which works out to a net salary of around £1,800. M&S said it carried out checks to make sure the loan 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. This showed that Mr F owed around £14,500 in existing credit but there were no signs of him having difficulty making payments to his credit. M&S found that he still had enough disposable income – around £500 - to be able to afford the loan.

From the available details it looks like M&S also took steps to verify Mr F’s monthly income and identify his monthly living costs using statistical information. I think on balance it gathered a reasonable amount of evidence and information from Mr F and credit reference sources, so to that extent the checks were proportionate. But it doesn’t automatically mean that because M&S carried out proportionate checks it then went on to make a fair lending decision. So, I've thought about what the evidence and information available at the time was likely to have actually showed.

Given Mr F's level of existing credit, sustainable monthly payments would be taking around £650 of his income – although M&S estimated the monthly figure to be around £580. Once the loan cost was added this would mean he would be paying over £1,000 out of his £1,800 monthly income towards credit, before allowing for 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. I say this especially given that, based on M&S's calculations, Mr F would only be left with around £100 in disposable income after paying his existing credit plus his new M&S loan. Also, since Mr F had said he wanted the loan for consolidation purposes, which on the face of it could reduce the total cost of his borrowing, the overall level of indebtedness on credit, plus the availability of another £1,000 credit available to him from his existing credit cards, raised the prospect that the total borrowing could easily become unsustainable.

Mr F has also sent us his credit report. M&S says it doesn't usually review a customer's credit report, relying instead on the credit reference bureau information. I can see that Mr F didn't have any adverse markings on his credit file, such as arrears, and there was no recent history of other adverse events such as having a county court judgment registered against him. But, as our investigator noted, the report shows that Mr F was heavily reliant on short term borrowing. I can see that in the two years prior to taking this loan he took out at least seven other loans. I think it's reasonable that this ought to have prompted further enquiry by M&S about Mr F's spending, which I understand included a substantial amount of gambling. Mr F also had at least four credit cards. One of his ongoing loans and one of the credit card balances appears to have been settled by way of using some of the loan funds – but it was open to Mr F to use the remaining funds as he chose to, notwithstanding that this meant he could be in breach of the M&S's loan conditions, especially if the loan funds were used for to support further gambling. And the possibility of building up further debt by using the available credit limit on his cards remained open to Mr F. Additional checks, such as requesting copies of Mr F's bank statements, would likely have shown evidence of gambling and given a fuller picture of what were likely to be stretched financial circumstances.

I therefore think there's a strong likelihood at the point of applying for the loan, Mr F's financial welfare was already deteriorating, not least caused by his heavy gambling. And so I think that taking on further debt at this point raised the real possibility that he would be accelerating his debt unsustainably.

Putting together all the information I've seen – including the comments M&S has made in response to our investigator's findings - I think it's very likely that Mr F was already financially stretched at the time he applied for the loan and that the situation was likely to become worse if he took on further borrowing. So I think all this demonstrates that Mr F was not in a position to sustainably repay the loan. I therefore think M&S ought to have done more to look into Mr F's financial situation before granting it. And so M&S didn't act fairly by approving the loan.

Putting things right – what M&S needs to do

As I don't think M&S ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or add charges under the loan agreement. Mr F should therefore only have to pay the original loan amount, being £13,000. Anything Mr F has paid in excess of that amount should be refunded as an overpayment.

To settle Mr F's complaint M&S should therefore do the following:

- Refund any payments Mr F has made in excess of £13,000. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.

- Remove any adverse information recorded on Mr F's credit file regarding the agreement.

*HM Revenue & Customs requires M&S to take off tax from this interest. M&S must give Mr F a certificate showing how much tax it's taken off if he asks for one.

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 30 November 2023.
Michael Goldberg
Ombudsman