

## **The complaint**

Miss J complains that Marks & Spencer Financial Services Plc trading as M&S Bank was irresponsible in its lending to her. She wants an adjustment to her loan terms to ensure affordability and compensation for financial losses incurred due to the lending.

## **What happened**

Miss J was provided with a £14,500 fixed sum loan in September 2022. The loan term was 48 months and Miss J was required to make monthly repayments of around £323.

Miss J said that adequate checks weren't carried out before the lending was provided and that had these happened M&S Bank would have realised she had other loans outstanding at the time as well as credit cards on which she was only managing to make the minimum repayments. She said that this loan extended her total credit to an amount she couldn't afford to pay given her income and financial obligations. Miss J also said that she wasn't given clear and comprehensive information regarding the loan terms and that she felt pressured to accept the loan without being given adequate time to review the agreement.

M&S Bank said that detailed creditworthiness and affordability assessments are undertaken when processing applications for finance. It said that its credit checks showed that Miss J was low risk with no adverse data recorded on her credit file and no indicators of financial difficulty. It said Miss J declared an income of £32,000 which was validated against external data and a full affordability assessment was carried out using third party data to model essential monthly spending as well as taking Miss J's housing cost from her credit file as she had said she was a homeowner. It noted that Miss J had said she was living with a partner and so said it shared her expenses. Based on its assessment, M&S Bank said Miss J had net monthly disposable income of around £850 and so the repayments under the loan were affordable.

Our investigator thought that based on the amount being borrowed, the loan term and repayment amounts, further checks should have been carried out before the lending was provided. She reviewed the information M&S Bank received through its checks and found that the credit check didn't raise concerns about the lending. She looked through Miss J's bank statements and found she had an average monthly income of £2,060 and based on her outgoings, the loan appeared affordable. She also noted that the loan was intended to be used for debt consolidation and Miss J's statements showed she used the funds to clear a loan and to pay towards her credit card balances which she explained would have reduced her outgoings. Based on this, our investigator didn't uphold this complaint.

Miss J didn't agree with our investigator's view. She said she had a substantial amount of debt outstanding when she took the loan out and was continuously in her overdraft. She said her credit history showed she wasn't clearing her credit card balances and was going deeper into debt.

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

The rules don't set out any specific checks which must be completed to assess creditworthiness. But while it is down to the firm to decide what specific checks it wishes to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments, and the total cost of the credit.

Before providing the loan, M&S Bank gathered information about Miss J's employment and income, residential status and carried out a credit check. Miss J declared she was employed full time with an annual income of £32,000 and that she was a homeowner and co-habiting. She said her monthly mortgage payment was £350 and council tax £150. Miss J said the loan was for debt consolidation. While the credit check didn't raise concerns about how Miss J was managing her existing commitments, it did record that Miss J had other active accounts. As Miss J said the purpose of the loan was debt consolidation and noting the size and term of the M&S Bank loan and the repayments required, I think that more detailed checks should have been carried out before the lending was provided. While I note that Miss J's income was verified against external data and third-party data was used to assess Miss J's essential spending, I think in this case M&S Bank should have asked further questions to ensure it had a clear understanding of Miss J's actual income and expenses.

M&S Bank wasn't required to request copies of Miss J's bank statements but as I think further information should have been gathered, I have used the information in Miss J's statements to understand what would likely have been identified had further checks taken place.

Looking through Miss J's bank statement for the months leading up to the lending, these show she received an average income of just over £2,000 a month. Miss J declared in her application that her housing costs were £350 and her council tax £150. Additional to this her bank statements show her paying for existing credit commitments, utilities, communications contracts, car tax and gym membership as well as general living costs such as food and fuel. Taking these into account would still leave Miss J with disposable income, after the M&S Bank loan repayments, of around £400. Therefore, I do not find I can say that further checks would have shown the lending to be unaffordable.

Miss J has said that she had other debts outstanding at the time and was operating in her overdraft. I can see from Miss J's bank statements that she did make use of her overdraft but she was able to clear this on receipt of her monthly income. The payments to creditors shown in her statement have been included in the affordability assessment and I note that the loan was for debt consolidation and Miss J did repay outstanding debt using the loan proceeds. Taking everything into account, I do not find that had proportionate checks taken place that M&S Bank would have found this lending to be unaffordable.

I also note that Miss J complained about the lack of clear information provided at the time of the loan and not being given time to review the agreement. I have considered these comments but can see that the pre contract credit information provided to Miss J included the key terms of the loan including the amount of credit, term, interest rate, monthly repayment amounts and the total cost of the credit. The loan agreement also contained this information. So, I find that Miss J was given the information she needed to make an informed decision about whether to enter into the loan or not. Had she decided, after signing the agreement that she didn't wish to continue with the loan then she could have exercised her right to withdraw within the first 14 days. I further note that Miss J applied for further credit with M&S Bank after being provided with this loan, however her application was declined.

I've also considered whether M&S Bank acted unfairly or unreasonably in some other way given what Miss J has complained about, including whether its relationship with Miss J might have been unfair under Section 140A Consumer Credit Act 1974. However, for the reasons I've already given, I don't think M&S Bank lent irresponsibly to Miss J or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 24 December 2024.

Jane Archer  
**Ombudsman**