

The complaint

Mrs W has complained through a representative that Marks & Spencer Financial Services Plc ("M&S") gave her loans without carrying out proportionate affordability checks. Had better checks been made than M&S would've discovered the loans weren't affordable.

What happened

M&S advanced two loans to Mrs W and a summary of her borrowing can be found below.

loan	loan amount	total to repay	APR	agreement date	number of monthly instalments	highest repayment per loan
1	£10,000	£11,793	6.9%	30/12/2021	60	£196.55
2	£5,000	£5,667.12	4.3%	18/08/2022	72	£78.71

Both of these loans are outstanding.

Loan 2 ran concurrently with loan 1, meaning that Mrs W had total monthly repayments to M&S of £275.26. Mrs W has had problems repaying her loans, and she entered a breathing space scheme in February 2023 and is currently making reduced monthly repayments towards these debts. Both loans have outstanding balances.

Following Mrs W's complaint M&S explained why it hadn't made an error by providing the loans. Mrs W's representative then referred the complaint to the Financial Ombudsman.

The complaint was considered by an investigator, who upheld the complaint about both loans because in her view Mrs W already had a significant amount of outstanding debt. This ought to have led to further checks where M&S would've likely discovered she couldn't afford the repayments.

M&S didn't agree with the investigator's assessment. As no agreement could be reached the complaint was passed to me to decide.

I then issued a provisional decision explaining the reasons why I was intending to uphold Mrs W's complaint in part and about loan 2 only. Both parties were asked to provide any further submissions as soon as possible, but in any event, no later than 24 January 2025.

M&S didn't provide a response to the provisional decision but Mrs W, through her representative did and she said;

- Her credit card expenditure should've been included in her outgoings.
- Loan 1 represented 50% of her annual salary.
- Mrs W says she has received notification that after the decision is issued M&S will default the accounts.

A copy of the provisional findings follows this in small font and forms part of this final decision.

What I said in my provisional decision:

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

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. And I've used this approach to help me decide Mrs W's complaint. Having carefully considered everything I've decided to partly uphold Mrs W's complaint. I'll explain why in a little more detail.

M&S needed to make sure it didn't lend irresponsibly. In practice, what this means is it needed to carry out proportionate checks to be able to understand whether Mrs W could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for checks to be less thorough – in terms of how much information is gathered and what is done to verify it – in the early stages of a lending relationship.

But we might think more needed to be done if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So, we'd expect a firm to be able to show that it didn't continue to facilitate a customer's loans irresponsibly.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mrs W's complaint. Having looked at everything I have decided to partly uphold Mrs W's complaint and I've explained why below.

Loan 1

Mrs W declared an annual income of £22,000. M&S said this income was checked using statistical data which takes account of the employment type and Mrs W's demographic. Having done so M&S says for the purposes of the affordability assessment used a monthly income figure of £1,400 after accounting for tax.

For a first loan I think it was reasonable for M&S to have relied on the statistical data and what Mrs W declared about her income without having to verify the income further than it did.

M&S also conducted an affordability assessment that used data from various models as well as splitting the rent payment that Mrs W said she had. Overall, taking account of her share of the living costs and rent M&S calculated these costs came to £685 per month.

It then carried out a creditworthiness assessment which included running a credit search. A summary of the results has been provided, and these showed M&S that Mrs W already had existing debt of £11,850 across nine active accounts. The results indicated that these accounts had been managed well because there were no defaults, missed payments, County Court Judgments or other types of insolvencies.

From the credit search results, M&S calculated existing monthly credit commitments of around £489 and based on what I've seen in the results that seems to be about right. So, I do think M&S took account of the information that it received from the credit reference agency.

I've also thought about what the investigator said about the amount of existing debt Mrs W had and that this ought to have led to further checks. But I don't agree. M&S was told, as part of the application process that Mrs W would use this loan to consolidate her existing

debts and I think it was reasonable for M&S to assume that is what Mrs W would do.

It wasn't a case that M&S was increasing Mrs W's indebtedness by a further £10,000 – what was actually happening was a series of other debts would be repaid but the amount of indebtedness wouldn't increase.

Indeed, just Mrs W's existing creditors (excluding credit cards) was costing her £469 per month and M&S had advanced a sufficient amount of money to in effect clear the majority of this debt. So, Mrs W was due to replace a series of monthly payments costing her £469 a month with a single payment of £196. Which would've reduced Mrs W's total monthly outgoings.

In the circumstances of this case, taking account of the checks M&S carried out which I consider to be proportionate, as well as being reasonably entitled to believe Mrs W would use the loan for its intended purpose the I don't think M&S was wrong to have granted it. I am therefore intending to not uphold Mrs W's complaint about this loan.

Loan 2

Nearly eight months after approving loan 1, Mrs W approached M&S again for another loan. This time she borrowed £5,000 and she once again said the loan was intended to be for debt consolidation. I think again, this ought to have been of a concern to M&S because she was returning for another consolidation loan around 8 months after her previous loan.

Mrs W once again declared the same annual income - £22,000. M&S validated this and for its affordability assessment it has told the Financial Ombudsman that it used a monthly income figure of £1,400.

It also carried out the same sort of checks into Mrs W's living costs (excluding credit commitments) for this loan as it had done so for loan 1. M&S calculated these came to around £761 per month. I've not seen anything within the application details that makes me think M&S wasn't entitled to rely on the statistical data to calculate Mrs W's living costs.

A credit search was also carried out by M&S – it was once again told that of the active accounts there was no adverse payment information such as delinquent accounts or defaults. But this time it knew that Mrs W's total outstanding balance across 9 accounts was £16,851 which was costing her around £527 per month. Of course, around £196 of this amount was the cost of loan 1.

But still, it knew that Mrs W's overall indebtedness had increased by around £5,000 since loan 1 – just 8 months before - and she still had the same number of active credit accounts. Even though that first loan was taken by Mrs W to consolidate her debts. Given this, I think this does pose some concerns for M&S that despite consolidating her overall balance had in fact grown in a relatively short period of time.

Mrs W also wasn't a new borrower and I would reasonably have expected it to factor this into its assessment of affordability. Furthermore, M&S was aware that once loan 2 was approved, Mrs W's commitment to M&S each month would be around £275.

I've also looked at the repayment history of loan 1 up to the point this loan was granted to see whether there were any indicators that ought to have M&S to conclude that Mrs W had problems repaying the first loan and so ought to not be advanced any further funds. However, the repayment history provided by M&S for loan 1 shows no obvious problems, indeed the payments appear to have been made on time and as expected.

Given the apparent growth in Mrs W's indebtedness and the reasons why she was returning for a further loan in a relatively short period of time, I do think M&S ought to have taken a closer look at her finances. It could've done this a number of ways, it could've asked for her bank statements, copy of any bills or even asked more direct questions about her living costs and or which debts she was going to repay with this loan.

I can see from the bank statements provided by Mrs W that she did indeed receive an income including benefits of around £1,400 per month. This was the same figure used by M&S. So had further checks been carried out than M&S would've been confident the information it had about her income was accurate.

At the time the loan was approved, Mrs W's total repayments to other creditors for things like credit cards and other loans (including loan 1) came to £477.68 so broadly in line with what M&S calculated from the credit report. Other costs paid by direct debit including for mobile phones, utilities, insurances and catalogue shopping comes to £362 per month.

On top of this there are three other regular payments for £500 made to another party each month – I can see these in the statements in the months leading up to the loan so I do think that these should be counted as they are regular commitments Mrs W had.

Just the payments that Mrs W had to other creditors and her other regular payments came to £1,340 per month, without the commitment to M&S for loan 2. In those circumstances, I think the loan would've been unaffordable considering there are other costs that I can see that I've not factored in such as petrol and food payments.

M&S may argue that her monthly creditors would reduce, because this loan was to be used for debt consolidation. But that didn't appear to have happened after loan 1 was granted, and given the amount she was being advanced, I'm not persuaded that any reduction in her other credit commitments would offset or provide sufficient headroom to make the loan affordable.

So, I don't think Mrs W had sufficient disposable income to afford the repayment for the second loan.

It therefore follows that Mrs W was expected to pay interest, fees and charges on a loan she shouldn't have had. So, I'm satisfied that Mrs W has lost out and M&S should put things right for her as set out below.

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.

I've thought about the comments Mrs W has made in relation to loan 1, and having thought about these, and for the reasons provided in the provisional decision, I'm not persuaded to change my mind about the outcome for the loan. I still think M&S made a reasonable decision to lend.

As I said in the provisional decision, I do think it was fair and reasonable of M&S to rely on what Mrs W declared as well as the statistical data that it used. After all there wasn't anything it what M&S received that called into question the accuracy of the data Mrs W had provided and so there was no reason to carry out further checks.

I've thought about the fact the loan value represented around 50% of Mrs W's annual salary. Mrs W already had existing creditors where she owed marginally more than the amount borrowed from M&S. And I don't think the loan representing 50% of someone's salary is enough to say it ought to automatically be declined or lead to further checks. After all her existing creditors appeared to have been paid without any obvious difficulties and the checks carried out by M&S which demonstrated Mrs W would be able to afford the repayments.

It also wasn't the case that M&S was adding a further £10,000 to her existing debt – the loan was to be used for consolidation purposes, and so M&S could reasonably believe that Mrs W's debt wouldn't significantly increase.

I've also thought about what Mrs W says about the credit commitments she already had, but whether I included all of them – including her credit card doesn't make any difference to the outcome I've reached – there was still sufficient headroom for the loan to be affordable based on the credit commitments and the living costs used by M&S.

Secondly, as I've said above, this loan was due to be used for debt consolidation purposes, and so I think it was reasonable for M&S to conclude that her existing debt payments would reduce and be replaced with this loan repayment – which would've likely freed up some further income.

Finally, I understand from Mrs W that M&S maybe looking to default these account(s) and in addition to this Mrs W has provided some information about her current health. I'm sorry to read of this, but if she hasn't already done so, she may wish to discuss this with M&S to see whether there is any extra help and support it can offer.

As I said in the provisional decision, M&S has a regulatory obligation to treat Mrs W fairly and with forbearance and this will include taking account of Mrs W's individual circumstances.

I also can't make a finding in this decision as to whether a default will or won't be the right course of action because it hasn't happened yet. But M&S will need to pay due regard to Mrs W's circumstances and what has already been agreed as part of her payment plan. I appreciate this will be disappointing to Mrs W but moving forward if she feels that M&S hasn't treated her fairly and with forbearance she is free to make those concerns known to it.

Neither Mrs W nor M&S has provided any further comments about loan 2, so I see no reason to depart from my findings that were made in the provisional decision and which are set out above. I still think Mrs W's complaint about loan 2 should be upheld and I've set out below what M&S needs to do in order to put things right for her.

Finally, I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Mrs W in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

Having thought about everything, M&S shouldn't have provided loan 2 and so to put things right for Mrs W it should;

- remove all interest, fees and charges applied to Mrs W's second loan from the outset. The payments Mrs W made, whether to M&S or any third-party debt purchaser, should be deducted from the balance – the £5,000 originally lent. If Mrs W has already paid M&S more than £5,000 then it should treat any extra as overpayments. And any overpayments should be refunded to Mrs W;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mrs W to the date of settlement†
- if an outstanding balance remains due then M&S should continue to work with Mrs W to repay what is owed treating her fairly and with forbearance
- if no outstanding balance remains after all adjustments have been made, all adverse information M&S recorded about loan 2 should be removed from Mrs W's credit file.

† HM Revenue & Customs requires M&S to take off tax from this interest. M&S must give

Mrs W a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Mrs W's complaint in part.

Marks & Spencer Financial Services Plc should put things right for Mrs W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 28 February 2025.

Robert Walker
Ombudsman