

The complaint

Mr W says Marks & Spencer Financial Services Plc trading as M&S Bank irresponsibly lent to him.

What happened

Mr W took out a loan for £15,000 over 60 months from M&S Bank on 11 November 2021. The monthly repayments were £281.65 and the total repayable was £16,899.

Mr W says M&S Bank failed to conduct proportionate checks and should have done more prior to lending.

M&S Bank says it carried out adequate checks that showed the loan would be affordable.

Our investigator did not uphold Mr W's complaint. He found the checks were proportionate and it was fair for M&S Bank to conclude the loan was affordable based on the results.

Mr W disagreed and asked for an ombudsman's review.

He said, in summary, M&S Bank had access to six months bank statements that showed financial instability, it should have considered this time period not just the previous three months. There were frequent transfers to another account he used for online gambling. M&S Bank ought to have requested statements for this second account. It would have shown he was struggling financially and so it was irresponsible to lend without better checks.

The loan was for debt consolidation but M&S Bank did not directly settle his debts with the other lenders – this ought to have been a condition of the loan. He didn't repay the debts as intended and so this loan has been detrimental to his financial position.

Mr W re-iterated he wants all interest paid to be refunded, the balance of the loan to be written-off, all adverse data to be removed from his credit file and compensation for the distress the loan caused him. He says M&S Bank needs to review its lending practices particularly how it assesses potential gambling transactions and financial vulnerability.

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 have carefully reviewed all the comments Mr W has made throughout the course of this investigation. In keeping with our role as an informal dispute resolution service – and as our rules allow – I will focus here on the issues I find to be material to the outcome of Mr W's complaint.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website including the key relevant rules, guidance and good industry practice. I've had this approach in mind when considering Mr W's complaint.

M&S Bank needed to take reasonable and proportionate steps to ensure that it didn't lend to Mr W irresponsibly. This means it should've carried out reasonable and proportionate checks to satisfy itself that Mr W could repay the loan in a sustainable way. These checks could take into account a number of things such as the loan amount, the repayment amount and Mr W's income and expenditure.

This means to decide this complaint I need to consider if M&S Bank's checks were proportionate; if so, did it make a fair lending decision; if not, what would proportionate checks most likely have shown; and finally, did M&S Bank act unfairly towards Mr W in some other way.

I've looked at the checks M&S Bank carried out. It asked Mr W for his income, housing costs and council tax. It reviewed the bank statements for his primary account for the three months prior to his application. It carried out a credit check to understand his existing commitments and his repayment history. It asked about the purpose of the loan which was debt consolidation. Based on the results of these checks combined it concluded that Mr W could sustainably afford to take on this loan.

These checks were proportionate given the term and value of the loan, the monthly repayment relative to Mr W's verified income and the loan purpose. And I think M&S Bank made a fair lending decision based on the results it gathered. I'll explain why.

Mr W declared an income of £39,270. This was accurate and M&S Bank was able to verify from his statements an average net monthly income of £2,508. And these showed his committed non-discretionary outgoings were around £2,000 a month. The credit check showed he had unsecured debt of just under £11,000. His credit card utilisation was low at 34%. M&S says the check showed Mr W typically made above the minimum payment on his cards, there were no recent missed payments and no cash advances on credit. There were no CCJs or IVAs recorded against Mr W. So I cannot see there were any signs of financial distress at the time.

Mr W says he was also responsible for other debts that were not in his name. But it's fair for M&S Bank to base its assessment of his creditworthiness on the result of its credit check which would only show the debts he was contractually liable for.

Mr W argues that M&S Bank should have asked about the multiple transfers to another account and had it done so it would have learned about his problematic gambling and financial instability. But given the results of its initial checks I don't agree that a more detailed financial review was needed. I don't doubt his testimony that he was struggling, but I don't think the level of checks needed to discover this would have been proportionate in this case. Similarly, I find a three-month statement review was reasonable in the circumstances.

As he says, Mr W was using an overdraft before the loan. But he intended to clear this down with this loan, as well as all his other unsecured debt. M&S Bank did not have to settle these debts directly. It was up to Mr W to contact his bank to arrange for the overdraft to be reduced or removed once he received the proceeds of this loan in addition to settling his other debts. Mr W suggests this ought to have been a condition of the loan but that is a broader issue (as is its lending policy in general) and it is not our role to consider business-wide issues. This is the role of the regulator, the Financial Conduct Authority.

As this was Mr W's first loan with M&S Bank, I'm satisfied that it was reasonably entitled to believe that it wouldn't be increasing Mr W's existing indebtedness in a way that was unsustainable or otherwise harmful.

I accept that Mr W says he has experienced difficulty making the repayments for this loan. But I suspect the reason is because Mr W did not use the loan as he said he would. M&S Bank could only make a reasonable decision based on the information it had available at the time. All M&S Bank could do was take reasonable steps to ensure the payments would be affordable for Mr W. And as Mr W didn't have a history of applying for loans with M&S Bank for debt consolidation purposes and then returning for further funds after having failed to consolidate as he said he would, I think M&S Bank was reasonably entitled to believe the funds would be used for the stated purpose.

As this is the case, I don't think that M&S Bank did anything wrong when deciding to lend to Mr W – it carried out proportionate checks and from what I can see reasonably relied on what it found out which suggested the repayments were affordable.

I am sorry Mr W has struggled with his finances and gambling. I hope he now has the support he needs. If not, he could contact Step Change on 0800 138 1111 or National Debtline on 0808 808 4000 for advice about financial difficulties. And if gambling is still problematic for him he could contact GamCare on 0808 802 0133.

As Mr W still has an outstanding balance on his loan, I would urge him to contact M&S Bank to discuss an affordable repayment plan. I would remind M&S Bank of its obligation to treat Mr W fairly, and with forbearance.

Finally, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Sainsbury's Bank lent irresponsibly to Mr W or otherwise treated him 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

I am not upholding Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 June 2025.

Rebecca Connelley
Ombudsman