Financial Ombudsman Service

The complaint

Miss P complains Marks and Spencer Financial Services Plc trading as M&S Bank (MSFS) acted irresponsibly in agreeing to lend to her as she said the lending wasn't affordable for her.

What happened

In August 2023 Miss P entered into a Fixed Sum loan agreement with MSFS for £12,400. After interest and charges were applied the total amount Miss P needed to repay was £18,129.40. This was to be repaid over 72 months at £251.80 a month. Miss P complained to MSFS as she said she was already heavily indebted and spiralling in debt which MSFS should have seen if they'd properly checked her financial situation.

MSFS said their checks had been proportionate and in accordance with those set by the financial services regulator. They said they'd validated Miss P's income, checked her credit history and used statistical data to assess her outgoings. Based on these checks they said their lending decision was fair.

Miss P wasn't happy with MSFS' response and referred her complaint to us.

Our investigator said given the amount and time the loan was for MSFS should have done more and verified Miss P's income. But said further checks would have shown the lending decision they'd made was fair.

Miss P didn't agree she questioned MSFS' credit check as she'd more debt than they had shown. She asked for her complaint to be decided by an ombudsman.

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 appreciate Miss P will be disappointed by my decision and understand her frustration but having done so I'm not upholding her complaint. I'll explain why.

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

In considering what is fair and reasonable I have taken into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and what I consider having been good industry practice at the time. The rules that apply to credit agreements are set out in the consumer credit sourcebook (CONC) of the Financial Conduct Authority's handbook. Section 5.2A of CONC is relevant guidance as it covers the need for businesses like MSFS to complete reasonable and proportionate creditworthiness assessments before agreeing to lend. The rules say that MSFS had to complete reasonable and proportionate checks to ensure that Miss P could afford to repay the debt in a sustainable way. These affordability checks needed to be focused 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. Checks must be proportionate considering the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty. I've considered the checks MSFS said they did.

MSFS said they'd used Miss P's application data, a credit check and statistical data to assess the affordability of the loan. I can see Miss P declared she'd an annual income of £36,000; she was a homeowner and employed full time. She declared monthly costs for her mortgage £450, council tax £60 and insurance £40. And said the loan was for home improvement.

MSFS' credit check showed Miss P had nine active accounts, unsecured debt of £7,351, and her debt-to-income ratio was 20.4%. The credit check showed Miss P didn't have any adverse information and there weren't any indicators of financial difficulty. MSFS also said they'd validated Miss P's income against a threshold based on her age, employment and location.

MSFS in their credit assessment used statistical data, which CONC allows them to do, to model Miss P's essential spending based on council tax, food, clothing, internet, TV, home essentials, fuel, transport, insurance and wellbeing. They used data from a credit reference agency (CRA) check for Miss P's property payment. From these checks MSFS determined Miss P's monthly income to be £2,200, her mortgage £555, credit commitments £270 and other non-discretionary spending £357, in total her monthly outgoings were assessed to be £1,183 meaning Miss P should have had a disposable income of £1,018 before the new lending of £251.80 was factored in.

CONC says a lender should take reasonable steps to determine a borrower's income and expenditure. And expenditure can be assessed using statistical data. When determining a borrower's income a lender shouldn't solely rely on the amount declared by the borrower but should get independent verification from a CRA or a third party. While I'm satisfied MSFS checks gave them a good understanding of Miss P's outgoings. I think they should have done more to verify Miss P's income given the amount borrowed and the length of time Miss P would be indebted for. So, I don't think MSFS checks went far enough.

Miss P has provided us with her bank statements for both her sole and joint accounts for the three months prior to the lending. I'm not saying MSFS should have asked for these specific documents as I think they only needed to verify Miss Ps income which they could have verified through a payslip or bank statements that showed Miss P's salary being paid in, which in this case is Miss P's joint bank account. And I can see Miss P's joint account shows her monthly income was around £2,177 and reflects the information MSFS acquired.

Miss P has shown she was more indebted than MSFS was aware of and that the loan was to be used for debt consolidation rather than home improvements. I don't know for certain why these loans didn't show on the credit check MSFS did, but it can take time (up to as much as 90 days) for such information to update with a CRA. And I can see one of the loan amounts Miss P has referred to was paid into her sole account in June 2023. So, her credit file mightn't have been updated by the time MSFS checked.

So, in fairness I've considered Miss P's non- discretionary spending from the joint account statement as this is the account that MSFS most likely would have seen had Miss P been asked to verify her income. I can also see its from this account that there is evidence of day-to-day essential spending and credit commitments along with discretionary spending being paid. But they don't show any monthly repayments being made towards the loans Miss P has told us about. So, I can't say MSFS would have been aware of the loans if they'd done further checks to verify her income unless Miss P herself told them about them. I say this as I can see the loan monies being paid in and the monthly repayments being taken from Miss P's sole account which is an account I wouldn't expect MSFS to ask for when seeking verification of her income. I can't know what Miss P would have told MSFS if they'd asked her about any other non-discretionary spending she might have as on her application she didn't tell MSFS the loan was for debt consolidation which she's said she intended the new loan to be for.

Miss P's joint bank account statements show she was able to make her non-discretionary payments without any signs of financial duress, there's no evidence of unpaid direct debits or overdraft use. And each month shows there is sufficient disposable income to sustain the £251.80 repayment for this loan. So had MSFS done further checks I think they would have still agreed to lend to Miss P as on the evidence they ought to have seen if they'd asked, I haven't seen any evidence to show the lending was unaffordable or that Miss P was financially vulnerable.

Miss P has shown that she used the new loan to settle existing debt. I can see one of the loan repayments was for around £178, I haven't seen any evidence of the repayment for the other loan, but it was for a similar amount, so Miss P would I think have been repaying around £350 in total a month for the loan repayments if she hadn't settled the outstanding balances. As the new lending would mean a lower monthly commitment, I can't say by agreeing to lend to Miss P MSFS had added to her financial burden. So, I'm satisfied MSFS made a fair lending decision.

I've also considered whether MSFS acted unfairly or unreasonably in some other way given what Miss P has complained about, including whether their relationship with her might have been viewed as unfair by a court under Section 140A Consumer Credit Act 1974. But for the reasons I've already given, i don't think MSFS lent irresponsibly to Miss P or otherwise treated her unfairly. I haven't seen anything to suggest that s.140A or anything else, given the facts of this complaint, lead to a different outcome here.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman **Service**, I’m required to ask Miss P to accept or reject my decision before 15 July 2025.

Anne Scarr
Ombudsman