

The complaint

Mr R's complaint is that Marks & Spencer Financial Services Plc (M&S Bank) acted irresponsibly by provided him with a credit card which was unaffordable for him.

What happened

M&S Bank approved Mr R with a credit card with a limit of £5,000 in April 2024.

Mr R complained to M&S Bank in June 2024 saying it had acted irresponsibly when processing a balance transfer request within days of the credit card being provided. He considered M&S Bank ought to have conducted better checks before providing him with this lending and approving his balance transfer request, and that had it done so it would have identified he was gambling and wouldn't have lent to him.

M&S Bank reviewed Mr R's complaint and issued a final response in which it didn't uphold his complaint. It said it had no way of reasonably knowing Mr R would use the balance transfer to gamble, as it doesn't assess what balance transfer requests relate to.

Unhappy with M&S Bank's response Mr R referred his complaint to our service for review.

Our investigator didn't uphold Mr R's complaint concluding M&S Bank had made a fair lending decision when providing him with this credit card account, and when processing his balance transfer request. Mr R asked for an ombudsman's review, so the complaint was passed to me to decide.

I recently issued a provisional decision where I set out, with reasons, my initial thoughts on this case and what I was intending to decide.

The below is an extract from my provisional decision:

"We've set out our approach to complaints about irresponsible and unaffordable lending as well as the key rules, regulations and what we consider to be good industry practice on our website; and I've seen our investigator made Mr R and M&S Bank aware of this approach within their view.

Essentially M&S Bank needed to take reasonable steps to ensure the lending it provided Mr R was responsibly lent. The relevant rules, regulations, and guidance in place during M&S Bank's lending event required it to carry out proportionate checks. These checks needed to assess Mr R's ability to afford the credit limit being provided and repay it sustainably, without causing him financial difficulties or harm.

There isn't a set list of checks a lender needs to carry out, but they should be proportionate, considering things like the type, amount, duration, and total cost of the credit, as well as the borrower's individual circumstances. And it isn't sufficient for M&S Bank to just complete proportionate checks – it must also consider the information it obtained from these checks to go on and make a fair lending decision when providing this agreement. This includes not

lending to someone in financial hardship; and ensuring repayments can be made sustainably without the need to borrow further.

I've followed this approach when considering Mr R's complaint and I've set out my current findings below under separate headings.

M&S Bank's lending decision

M&S Bank obtained Mr R's declared income and says it used an online credit tool check to validate the information. It has also said it used statistical data to calculate Mr R's non-discretionary expenditure, as well as completing a credit check to understand his existing credit commitments and management of credit.

M&S Bank says it completed proportionate checks and calculated Mr R would be left with around £725 disposable income each month, which it concluded was a reasonable amount to afford repayments to this new credit. It's therefore satisfied it made a fair lending decision.

I've carefully considered the information available to me; and having done so I'm not persuaded M&S Bank's checks were proportionate, or that it went on to make fair lending decision in this instance.

I say this because the check M&S Bank completed on Mr R's declared income suggested there was some variance in turnover. But I acknowledge it reported the declared income was the same or lower than the income reported through the check, which I think would reasonably have provided M&S Bank with some level of confidence. However, I've seen from the credit check it completed that Mr R had a significant level of existing debt being reported of around £36,500, which was a debt to income ratio of around 73%. All of this credit was reporting as being on a revolving basis, meaning there were no structured repayment terms, and I consider this should have caused M&S Bank some concerns.

I acknowledge this credit card was taken with the purpose of using the available credit for a balance transfer, so M&S Bank may reasonably have assumed Mr R's total outstanding debt wouldn't be increasing with this lending. But M&S Bank was providing Mr R with new lending, and its checks needed to ensure Mr R could sustainably afford the credit being provided, regardless of its intended purpose.

Given the relatively sizeable initial limit M&S Bank was providing Mr R, and the significant level of existing revolving debt; I consider proportionate checks should have led M&S Bank to have verified Mr R's actual income and expenditure, rather than relying on reports and statistical data and industry averages. I consider its checks needed to be at this level of detail so it could fully satisfy itself that this new lending would be sustainably affordable for Mr R, and not cause him financial difficulties or harm.

M&S Bank could have looked to verify this information in a number of ways, as the rules aren't prescriptive in terms of what evidence it should consider. Mr R has provided our service with bank statements for his primary account covering a period of three months before this lending was approved. In the absence of any other conflicting information, I consider these statements allow me to reasonably understand what M&S Bank would likely have identified about Mr R's financial circumstances through more detailed checks.

The bank statements show Mr R's income through a salary and benefit payments totals around £4,400 per month. Mr R also appears to regularly receive credits from an individual across the months, although these are on an ad-hoc basis and for varying amounts, so I've not included these.

Mr R's committed non-discretionary expenditure is also evidenced. There's the usual payments you'd expect to see such as to a mortgage, utilities, insurances, subscriptions and existing credit commitments. These payments average around £3,200. So, on a strictly pounds and pence basis this new lending appears affordable for Mr R.

However, the statements also show a significant number of transactions to an online gambling company, with a significant total value. Across the three months Mr R makes around 150 transactions to this online gambling company, with as many as 12 transactions on one single day. In total Mr R's transactions to this online gambling company total over £2,500 across these three months.

I consider proportionate checks would more likely than not have led to M&S Bank identifying Mr R's gambling; and I consider it should have concluded that providing Mr R with this lending, no matter its intended purpose, wasn't sustainable and would more likely cause him financial difficulties or harm.

So, it therefore follows I don't consider M&S Bank made a fair lending decision when providing Mr R with this credit card.

The balance transfer

Mr R has said M&S Bank shouldn't have processed his balance transfer request as had it completed checks before doing so it would have identified he was gambling; and he says it should therefore have reasonably concluded the balance transfer funds would be used to further his gambling. Mr R has said that the balance transfer fee of around £165 should be refunded to him.

Given I'm currently minded to uphold Mr R's complaint because of irresponsible lending, this part of Mr R's complaint falls away. However, for completeness I've considered Mr R's arguments about the balance transfer; having done so I'm not persuaded by them.

I say this because I don't consider M&S Bank did, or indeed need to have, looked to assess or understand Mr R's intentions for the use of the balance transfer funds before it was processed.

Ultimately M&S Bank had provided Mr R with an available credit limit (reasonably so or not) and it wasn't for them to dictate how Mr R could use that available credit as long as it was within the terms and conditions of the agreement.

So, I don't consider M&S Bank acted unreasonably by processing his balance transfer request on the terms it did."

Mr R didn't respond to my provisional decision within the time limit I provided. M&S Bank responded and didn't agree, providing further information for my consideration.

In summary, it clarified the results of the income validation check it conducted, and it maintained its position that based on the purpose of the lending being provided, and the checks it completed, it was satisfied it made a fair lending 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.

Having done so, I've not been provided with any new information or evidence which leads me to conclude I should depart from the findings I reached within my recent provisional.

M&S Bank has clarified the results that it obtained from its income validation check, which it says returned a positive response. In my provisional decision I'd set out that although the information may have appeared contradictory, I considered that in any event M&S would have taken comfort from the results as it reported a higher income. So, its clarification doesn't change my findings here.

In relation to Mr R's existing debt to income ratio, M&S has pointed to taking a holistic review of a customer's overall creditworthiness, and that taking into account isolated pieces of information can have unintended consequences, potentially prohibiting lending to individuals who it considers are unlikely to suffer future financial difficulties. It's also said as Mr R's declared purpose was to use this credit card to complete a balance transfer, that it considers it was beneficial to Mr R.

I've carefully thought about M&S Bank's points here. In relation to the first part, within my provisional decision I set out that I considered Mr R's existing high level of debt to income warranted more detailed checks. I said this because M&S Bank has a responsibility to ensure any lending it provides is affordable for its customer's. And, I considered based on the information it obtained through its checks, it ought to have had some concerns. It would then be through these more detailed checks that M&S Bank could reasonably assess Mr R's actual financial circumstances, and satisfy itself whether this credit was sustainably affordable for Mr R.

So, I'm not suggesting as a blanket approach that M&S Bank shouldn't lend to individuals based on initial information it obtains through its checks; but that it needs to ensure it satisfies itself through proportionate checks that credit is sustainably affordable on an individual basis.

As I set out within my provisional decision, I acknowledge Mr R had taken this line of credit with the intention of completing a balance transfer; and therefore, that his total level of existing debt may not have increased. However, as I've set out above regardless of the intended purpose, when providing Mr R with this credit M&S Bank had a responsibility to ensure it was sustainably affordable.

I consider proportionate checks in this instance should have led to M&S Bank conducting more detailed checks, to fully understand Mr R's financial circumstances; and I consider had it undertaken proportionate checks it would more likely than not have concluded this lending wasn't sustainably affordable for Mr R.

So, for the reasons set out above and within my recent provisional decision, I'm satisfied M&S Bank didn't make a fair lending decision when providing Mr R with this credit, and it needs to take action to fairly resolve this complaint.

Has M&S Bank acted unfairly or unreasonably in any other way?

I've considered whether M&S Bank has acted unfairly or unreasonably in any other way, including whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974.

However, I'm satisfied the redress I'm directing in this case, as set out below, results in fair compensation for Mr R in the circumstances of the complaint. I'm therefore satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

As I don't consider M&S Bank made a fair lending decision when providing Mr R with this credit card, it follows I don't think it's fair for it to apply any interest, fees or charges. However, Mr R has had the use of the money he spent on the account, so I think it's fair he should pay this back.

M&S Bank has confirmed the credit card account was closed in September 2024 with the balance being repaid in full, as evidenced within the credit card statements.

So, I direct M&S Bank to take the following action to fairly resolve this complaint:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to the account.
- As Mr R's account was closed in 2024 this rework should produce a credit balance which should be refunded to Mr R along with 8% simple interest per year*, calculated from the date of overpayment to the date of settlement.
- M&S Bank should remove any adverse information it has reported to Mr R's credit file in relation to this account.

*HM Revenue & Customs requires M&S Bank to deduct tax from any award of interest. It must give Mr R a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

I'm upholding Mr R's complaint about Marks & Spencer Financial Services Plc and I direct it to settle the complaint as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 18 August 2025.

Richard Turner
Ombudsman