DRN-5963209

The complaint

Mrs V complains that Marks & Spencer Financial Services trading as M&S Bank lent irresponsibly when it approved her loan application.

What happened

Mrs V applied for an M&S Bank loan for £20,000 in July 2022. In her application, Mrs V gave an annual income of £36,000 that M&S Bank says left her with £2,167 a month net. A credit search found Mrs V had a mortgage and M&S Bank used a monthly payment of £343 in its lending assessment. The credit search also found Mrs V had existing unsecured debts totalling £15,851 and was making monthly repayments of £760. No adverse credit was noted on Mrs V's credit file but one of her existing debts was one payment in arrears at the point of application.

M&S Bank completed an affordability assessment using Mrs V's income, mortgage payment, an estimate of £419 a month for her general living expenses and £760 for her existing debt. M&S Bank says Mrs V had a disposable income of £640 a month after covering her existing outgoings and which was sufficient to sustainably afford the new loan repayments of £419.80 a month. The application was approved and loan funds issued to Mrs V.

More recently, Mrs V complained that M&S Bank lent irresponsibly and it issued a final response. M&S Bank said it had carried out the relevant lending checks before approving Mrs V's application and didn't agree it lent irresponsibly.

An investigator at this service looked at Mrs V's complaint and upheld it. They thought the current arrears showing on Mrs V's credit file should've led M&S Bank to consider a more detailed set of lending checks to ensure repayments were sustainable. When the investigator reviewed Mrs V's bank statements for the months before her application they thought they showed a lack of sufficient disposable income available to manage the new loan payments. The investigator asked M&S Bank to refund all interest, fees and charges applied to Mrs V's loan.

M&S Bank asked to appeal and said it had used modelled data when considering the credit risk and affordability of the loan. M&S Bank provided additional comment on the way it assesses loan applications. M&S Bank also said that a current missed payment on a customer's credit file is within its risk appetite. As M&S Bank didn't agree with the investigator's view of Mrs V's complaint her case has been passed to me to make a 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.

Before agreeing to lend, the rules say M&S Bank had to complete reasonable and proportionate checks to ensure Mrs V could afford to repay the debt in a sustainable way. These affordability checks needed to be focused on the borrower's circumstances. The nature of what's considered reasonable and proportionate will vary depending on various factors like:

- The amount of credit;
- The total sum repayable and the size of regular repayments;
- The duration of the agreement;
- The costs of the credit; and
- The consumer's individual circumstances.

That means there's no set list of checks a lender must complete. But lenders are required to consider the above points when deciding what's reasonable and proportionate. Lenders may choose to verify a borrower's income or obtain a more detailed picture of their circumstances by reviewing bank statements for example. More information about how we consider irresponsible lending complaints can be found on our website.

I've set out the information that M&S Bank used when considering Mrs V's loan application above. I can see M&S Bank has explained its lending criteria and approach to affordability assessments in some detail. M&S Bank also says the a current missed payment on Mrs V's credit file wasn't a barrier to the loan application being approved. Whilst I understand M&S Bank is free to set its lending criteria in line with its commercial discretion, I haven't been persuaded the level and nature of checks completed were reasonable or proportionate to the new loan of £20,000 (£25,188 with interest) that Mrs V was applying for.

Mrs V already had a reasonably high level of unsecured debt when compared to her income at around £15,851. By approving a new loan for £25,188, M&S Bank was more than doubling the amount Mrs V owed and substantially increasing her monthly outgoings. I think the fact Mrs V was in arrears on one of her existing commitments shows she was already having some difficulties maintaining a lower level of credit. I also think it's reasonable to say M&S Bank's calculations left Mrs V with a fairly low level of disposable income once her mew loan payment was taken into account. So I think M&S Bank needed to be very sure Mrs V had capacity to sustainably afford the new loan repayments of £419.80 a month before approving her application. In my view, M&S Bank should've considered a more detailed set of lending checks before approving Mrs V's application. There were a range of options available to M&S Bank, one of which would've been to look at Mrs V's bank statements for the preceding months to get a clearer picture of her circumstances. That's the approach I've taken.

Mrs V's bank statements show her income was broadly in line with the figures used by M&S Bank in its affordability assessment. I found Mrs V had an average income of around £2,300. Mrs V's bank statements show a mortgage payment of £762 a month was being collected from her account. I didn't see any evidence that Mrs V was receiving contributions from a third party. I've taken Mrs V's regular outgoings for items like her existing debts, mortgage, utilities, insurance, supermarket shopping, communications and bank charges into account. I found Mrs V's outgoings averaged around £2,600 a month. Even if I were to reduce the mortgage figure to £343 a month, in line with the figure M&S Bank used, that would mean an average outgoings figure of £2,181 a month. I also think it's reasonable to say Mrs V's current account was almost always overdrawn, incurring daily charges over up to £2. In my view, Mrs V's reliance on her overdraft adds the claim she was reliant on credit to make ends meet each month.

Taking Mrs V's average income of £2,300 and average outgoings of £2,181 into account, that would've left around £119 as a disposable income. But the new loan payments were £419.80 which is more than Mrs V's disposable income. On that basis, I'm satisfied Mrs V's bank statements show she was already at or over capacity in terms of her existing outgoings and unlikely to be able to sustainably afford the new M&S Bank loan in July 2022. As a result, I'm upholding Mrs V's complaint and directing M&S Bank to settle by refunding all interest, fees and charges applied to the loan from the date of approval.

I've considered whether the business 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 have directed below results in fair compensation for Mrs V 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.

My final decision

My decision is that I uphold Mrs V's complaint and direct Marks & Spencer Financial Services trading as M&S Bank to settle as follows:

- Add up the total amount of money Mrs V received as a result of having been given the loan. The repayments Mrs V made should be deducted from this amount.
- If this results in Mrs V having paid more than she received, any overpayments should be refunded along with 8% simple interest per year* (calculated from the date the overpayments were made until the date of settlement). M&S Bank should also remove all adverse information regarding these loans from Mrs V's credit file.
- Or, if any capital balance remains outstanding, then M&S Bank should attempt to arrange an affordable and suitable repayment plan with Mrs V. Once Mrs V has cleared the balance, any adverse information in relation to these loans should be removed from her credit file.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs V to accept or reject my decision before 2 February 2026.

Marco Manente
Ombudsman