

The complaint

Mr K complains that Marks and Spencer Financial Services PLC trading as M&S Bank (M&S Bank) lent to him irresponsibly by granting a loan he couldn't afford.

What happened

Mr K applied for and was granted the following loan by M&S Bank:

Date	Amount of credit	APR	Loan term	Monthly repayment
July 2025	£7,760	13.9%	12 months	£693.59

In summary, Mr K says that M&S Bank lent irresponsibly when making a loan without making adequate affordability checks into his financial situation at the time. He says he was struggling with gambling at the time of his application which proper checks would have shown. Mr K says this loan has had a significant contributory impact on his worsening mental health and caused him further financial difficulties.

Mr K complained to M&S Bank in September 2025 who considered his concerns, but didn't uphold his complaint. In their Final Response Letter of September 2025, M&S Bank say that appropriate affordability checks were made at the point of application. M&S Bank say this showed Mr K had sufficient disposable income to be able to sustainably repay the lending. Mr K disagreed and brought the matter to this service in September 2025.

An investigator assessed the available evidence and considered the merits of the case. His view was that M&S Bank made insufficient affordability checks and should not have discounted Mr K's mortgage costs by 50% in calculating his outgoings. He said had they made sufficient checks, there was enough known to say that further lending was likely unaffordable and the lending should not have been made.

M&S Bank disagreed with this view giving their account of their discounted mortgage costs. They also pointed out that lending was for consolidation purposes, so overall disposable income should have increased. They noted the Mr K made no mention of financial difficulties at the time of his application.

Given there is no agreement, the matter has come to me for a final 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.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law.

In short, lenders must ensure that any credit that is approved is affordable and sustainable for the borrower. I've followed our approach when deciding Mr K's complaint.

Having considered all the evidence available to me, I am minded to agree with the investigator's view on affordability. I am also upholding Mr K's complaint. I will explain my reasons for reaching this conclusion.

When Mr K applied for the loan in July 2025 he declared he was in full time employment with an annual gross income of £72,850. He said the loan was to consolidate existing debt. Mr K also said he was married and a homeowner.

M&S Bank verified the income via account turnover data via a third party reference agency. They reduced the monthly income down slightly to an average of £4,036.73 based on his bureau data.

Mr K's credit file was broadly positive with no County Court Judgments (CCJs), Individual Voluntary Arrangements or bankruptcies recorded. It showed no defaults or late payments within the last 12 months.

Mr K suggests that he was in arrears with his mortgage at the time of his application. For reasons I will detail later, I am willing to accept this was probably the case. However, it is clear from the credit file data that M&S Bank wouldn't have been able to identify this from their credit report at the time of the application.

M&S Bank then used their own modelling data, Credit Reference Agency data and Mr K's application to estimate his monthly expenditure. Having done this, M&S Bank say there was sufficient disposable income each month of around £598.78 to indicate the lending was affordable and could be sustainably repaid.

As part of this complaint process, Mr K became aware of M&S Bank's calculations and disputed his housing costs. He says M&S Bank had halved his monthly mortgage payment from £891.73 to £486.40. This reduction is not disputed by M&S Bank.

Mr K says if his full mortgage payments are considered, his monthly disposable income would reduce to a level where it was likely unaffordable and the lending should not have been made. The investigator's view was that the full housing figure should have been used to estimate expenses and once this was done, the lending was likely unaffordable.

In their response to his view, M&S Bank say "Our internal analysis indicates that a significant proportion of married customers with mortgages hold them in joint names. Accordingly, when a customer indicates they are married, in a civil partnership, or cohabiting, we apply 50% of the calculated mortgage payment; otherwise, we use the full value. This methodology is consistent with our obligations under CONC." (5.2A.18)

In considering whether sufficient and appropriate checks were made by M&S Bank in this case, I must also consider whether it was reasonable for M&S Bank to have reduced Mr K's housing costs by 50%.

Was M&S Bank's reduction of housing costs by 50% reasonable in this case?

M&S Bank rely on CONC 5.2A.18 (1) to consider mortgage costs as joint in this case. This states:

- (1) *Non-discretionary expenditure referred to in CONC 5.2A.17R includes payments needed to meet priority debts and other essential living expenses and other expenditure which it is hard to reduce to give a basic quality of life. It also includes payments the customer has a contractual or statutory obligation to make, such as*

payment obligations arising under a credit agreement or a mortgage contract. Where there is a reasonable expectation that the customer will have responsibility to pay only a share or a part of a payment required pursuant to a contractual or statutory obligation then the firm may, in appropriate cases, take this into account.

I can't comment on M&S Bank's general approach, but I have thought about whether they were fair to apply this clause in Mr K's case.

I note Mr K stated he paid £891.73, that is the full mortgage amount, in his application. Mr K has provided evidence that the account from which the payments were made was his personal account and the mortgage was held solely in his name. This evidence would've been available to M&S Bank at the time.

In the absence of further investigations by M&S Bank and given the facts of this particular case, I do not believe it was reasonable to reduce Mr K's housing costs by half without having known more.

It follows from what I have said that I don't believe the checks made by M&S Bank were sufficient or proportionate in this case.

What would reasonable and proportionate checks have discovered

Having said that appropriate and proportionate checks were not made in this case, I must consider what would have been revealed had such checks been made.

In addition to the checks about joint costs mentioned above, I think it would've been proportionate for M&S to have checked Mr K's financial circumstances by verifying his expenditure in more detail before lending.

It's important to note that I'm not saying that M&S needed to review Mr K's bank statements in the same way as the investigator did. There are other ways that they could reasonably have sought to verify his actual outgoings.

I have also performed my own assessment of the current account statements from the time provided by Mr K. What I've found broadly aligns with the Investigator.

Had M&S Bank conducted appropriate checks focused on Mr K's actual expenditure at the time of application, they would have established a very challenging financial situation.

Mr K's average monthly income at this time (including child support income) was £4,246.13. Full housing costs and essential living costs accounted for just over half of this amount. In addition to his existing lending, in the two months leading up to the lending decision Mr K took out two additional loans with secondary market lenders. His borrowing had increased consistently in the three months leading up to the loan being granted.

It is also clear that only partial mortgage payments had been made across those three months, which is a strong suggestion that Mr K was already in mortgage arrears at the time the loan was made.

Having reviewed the investigator's calculations and performing my own, I agree that Mr K's housing costs, new and existing credit and essential living costs were already taking him into negative disposable income. I agree with the investigator's figures of more than -£240 average negative disposable income over those three months.

I share the investigator's confidence that given this, Mr K was not able to sustainably repay the new lending. I have considered M&S Bank's view that as the loan was for consolidation total lending would reduce. However, even allowing for this reduction, there was insufficient disposable income to reliably and sustainably repay the lending.

It follows from what I say that I do not believe this was a fair lending decision and the lending should not have been offered.

I have also considered the impact reported on Mr K's declining mental health over this period. Though I do not believe it to be the only cause of his mental health difficulties, I've no doubt that his financial predicament and further lending contributed to how he was feeling at the time. But, I'm satisfied that what I direct M&S Bank to do below puts Mr K back in the position he would've been in had M&S Bank not lent to him.

In reaching my conclusions, I've also considered whether the lending relationship between Mr K and M&S Bank might have been unfair to Mr K under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct M&S Bank to do in the section below results in fair compensation for Mr K given the overall circumstances of his complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Putting things right

As I don't think M&S Bank ought to have offered the loan, I don't think it's fair for them to be able to charge any interest or charges under the credit agreement. But I think Mr K should pay back the amount he borrowed.

Therefore, M&S Bank should:

Add up the total repayments Mr K has made and deduct these from the total amount of money Mr K received.

a) If this results in Mr K having paid more than they received, any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement). † M&S Bank should also remove all adverse information regarding this account from Mr K's credit file.

b) If any capital balance remains outstanding, then M&S Bank should arrange an affordable and suitable payment plan with Mr K. Once Mr K has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

† HM Revenue & Customs requires M&S to take off tax from this interest. M&S must give Mr K a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold Mr K's complaint against Marks and Spencer Financial Services PLC trading as M&S Bank.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 19 March 2026.

Richard Bellamy
Ombudsman