

The complaint

Mrs R complains that Marks & Spencer Financial Services Plc (trading as M&S Bank) was irresponsible to lend to her.

What happened

Mrs R had two loans from M&S Bank in December 2020 and May 2021 as outlined in the table below:

<u>Loan</u>	<u>Date</u>	<u>Amount</u>	<u>Term</u>	<u>Monthly Repayment</u>	<u>Due</u>	<u>Repaid</u>
1	9 Dec 2020	£5,000	24m	£217.82	4 Dec 2022	Defaulted 23 Aug 2022
2	18 May 2021	£20,000	60m	£363.33	12 May 2026	Defaulted 24 Nov 2022

Mrs R says that she was furloughed from work with a 20% pay cut when she applied for the first M&S Bank loan. She says she'd missed payments on two credit cards as a result so applied for the loan due to the high interest on the cards. Mrs R says she then decided to carry out some home improvements and says M&S Bank approved her for the second loan, even though the combined repayments were a large proportion of her income. She adds that when she became pregnant in August 2021, she had to take time off work due to poor mental health and her husband took out a further loan to cover the repayments.

Mrs R says she contacted M&S Bank in May 2022 to advise that she was on reduced maternity pay and it agreed to reduce payments for six months. However, Mrs R says a default was registered on her credit file for loan 1 and then her mortgage payments almost doubled. She says that when she complained to M&S Bank about irresponsible lending, it did not uphold her complaint but put her account on hold for six months. Mrs R says she can't remortgage as she now has two defaults on her account so her financial situation is unlikely to change in six months. She adds that this has led to further mental health issues, and she would like the loans written off and the defaults removed.

M&S Bank says it used the information on Mrs R's application form, alongside data from her credit file, before it approved the loans. It says it also reviewed her management of loan 1 before approving loan 2. M&S Bank says it used the income figure Mrs R provided and found no adverse information on her credit file. It says there was no evidence to suggest the lending was irresponsible.

Our investigator recommended the complaint should be upheld in part. He was satisfied that M&S Bank had carried out proportionate checks for loan 1 and that there was no information

to indicate the lending was unsustainable. However, he considered M&S Bank should have carried out better checks for loan 2 and he found that, had it done so, it was likely to have found loan 2 was unaffordable. Our investigator recommended that Mrs R should only pay back what she borrowed for that loan and that adverse information about it should be removed from her credit file.

M&S Bank responded to say, in summary, that it agreed with the outcome but queried the settlement.

Our investigator clarified that interest should be refunded and that adverse information about loan 2 should be removed from Mrs R's credit file once the account is settled.

Mrs R responded to say, in summary, that she wanted both defaults removed as she would never have defaulted on loan 1 if M&S Bank hadn't approved loan 2. She says her health has been impacted and her circumstances are unlikely to change to enable her to afford to repay loan 2.

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 need to take into account the relevant rules, guidance and good industry practice.

Bearing this in mind, in coming to a decision on Mrs R's case, I have considered the following questions:

- Did M&S Bank complete reasonable and proportionate checks when assessing Mrs R's loan applications to satisfy itself that she would be able to repay the loans in a sustainable way?
 - If not, what would reasonable and proportionate checks have shown?
- Did M&S Bank make a fair lending decision?
- Did M&S Bank act unfairly or unreasonably in some other way?

Loan 1

When Mrs R applied for the loan, I've seen evidence that shows M&S Bank checked her credit file and asked about the purpose of the loan, her income and expenditure. These checks showed:

- Mrs R said the purpose of the loan was consolidation;
- She declared her income to be £26,000 per year which was verified by M&S Bank;
- Mrs R's credit record had no missed payments, arrears, defaults or County Court Judgements;
- M&S Bank calculated her monthly expenditure was around £1,000, which left her with about £650 of disposable income with which to pay the £217.82 loan repayment.

Given that Mrs R said the loan was for consolidation purposes, I can't see there was anything in the available information that should have indicated to M&S Bank that the loan was unaffordable. Indeed, I've seen evidence to show that Mrs R used over £3,000 of the loan to repay more expensive credit card and loan commitments.

So, I'm satisfied that M&S Bank carried out reasonable checks and it made a fair lending decision for loan 1.

Loan 2

As M&S Bank has accepted the investigator's view that loan 2 was lent irresponsibly, I won't consider this aspect of the complaint any further here. The settlement has now been clarified as detailed below.

Finally, I have considered what Mrs R says about the default on loan 1 being a direct result of loan 2 being approved. In order to find that was the case I need to be satisfied that Mrs R would have continued to make her contractual repayments on loan 1 had she not been approved for loan 2. Based on all the evidence I have seen, I cannot conclude that was likely to have been the case. I say that because:

- Mrs R said that she first started to struggle to make payments in August 2021 due to taking time off work for ill-health and that her husband took out a further loan to cover repayments at that point;
- When Mrs R called M&S Bank in April 2022, she said the repayments had become unaffordable due to going on maternity leave;
- When M&S Bank agreed a payment arrangement with Mrs R, it calculated that she could afford to repay £84 per month (on both loans combined) – significantly less than the repayments on loan 1.

So, whilst I understand why Mrs R feels that both defaults should be removed, I find that there were other significant contributory factors in loan 1 becoming unaffordable – namely a change in circumstances and other additional credit commitments. Therefore, I find it would not be reasonable to say that the default on loan 1 was wholly attributable to the approval of loan 2.

Finally, it would not be appropriate for the loan 2 default to be removed before the account is settled as doing so would mean the account would become liable to default again. Given Mrs R says it's unlikely her circumstances would change sufficiently to enable her to return to contractual repayments on the loan, this would lead to the default being re-applied at a later date. This would be detrimental to Mrs R as a default stays on a credit file for six years.

In summary, I find that M&S Bank did not make a fair lending decision for loan 2, but I haven't seen any evidence to show it acted unfairly or unreasonably in any other way.

My final decision

My decision is that I uphold this complaint in part. Marks & Spencer Financial Services Plc (trading as M&S Bank) should:

- Add up the total amount of money Mrs R received as a result of having been given loan 2. The repayments Mrs R made should be deducted from this amount;
 - If this results in Mrs R having paid more than she 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 loan from Mrs R's credit files;
 - If any capital balance remains outstanding, then M&S Bank should attempt to arrange an affordable and suitable repayment plan with Mrs R. Once Mrs R has cleared the balance, any adverse information in relation to the loan should be removed from her credit file.

*HM Revenue & Customs requires M&S Bank to deduct tax from this interest. M&S Bank should give Mrs R a certificate showing how much tax it's deducted if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 18 January 2024.

Amanda Williams
Ombudsman