

## **The complaint**

Mr D complains that Marks & Spencer Financial Services plc (M & S Bank) lost his personal data.

## **What happened**

Mr D had a credit card account with M & S Bank.

He raised a dispute about a purchase he'd made. He'd paid a deposit using his credit card, but he says the merchant didn't provide him with a secure or suitable means to pay the balance. So, he wanted M & S Bank to refund the deposit to him.

Mr D completed a "Disputed card transaction" form in relation to the payment that'd been debited from his account. He submitted the form online, on 9 April 2020, together with documentation evidencing the disputed transaction. He received a receipt from M & S Bank confirming it had received the form.

Mr D didn't get any response from M & S Bank. He contacted it again in July 2020, but it said it hadn't received the form or the supporting evidence. And it said it wasn't aware there'd been any systems issues at the time that would've prevented it from having received the form. When he provided the receipt to it, M & S Bank said there had been a system error at the time. It didn't give him any explanation about what had happened.

He complained to M & S Bank. He also complained about delays when he'd tried to phone M & S Bank in July.

M & S Bank investigated his complaint. It initially said it hadn't received the disputed card transaction form. After Mr D provided the receipt, M & S Bank acknowledged there'd been a system error at the time. It said the problem that had arisen meant that although the form had been received by M & S Bank the data on the form hadn't been transmitted to its dispute team. But it said there'd not been any data breach because no third party would've been able to access the data.

M & S Bank accepted there'd been delays answering the telephone when Mr D had contacted it in July. It paid him £50 by way of compensation for this. It also credited his account with an additional £75. It said this was compensation for the fact that Mr D had submitted the documentation and, as it turned out, there had been an issue when it was received by M & S Bank.

Mr D didn't agree. He also said he was happy for M & S Bank to take back all compensation – which he'd never asked for. M & S Bank said it wouldn't do that.

Mr D complained to our service. Our investigator looked into his complaint. She said she was satisfied M & S Bank had received the disputed card transaction form in April but there'd been a problem with its systems. She said the data hadn't been lost or mislaid by M & S Bank and it hadn't gone outside of its systems.

Our investigator said the data that was on the form wasn't sensitive personal data. And, although she accepted it would've been frustrating for Mr D she didn't think he'd experienced any significant impact as a result. She said M & S Bank had paid him £125 in total which she thought was fair and reasonable compensation.

Mr D didn't accept what our investigator said. So, the complaint has been passed to me to decide.

### **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.

Mr D's complaint relates to what he's told us about a data breach. He says he's spoken to the Information Commissioner's Office (ICO) in the area where he lives. He's entitled to discuss his concerns with the ICO where he thinks M & S Bank may have breached data protection regulations and it's entirely proper for him to decide whether he wants the ICO to consider the concerns he's raised. This isn't a matter for me to decide. But, I have taken into account the relevant law and regulations when deciding whether M & S Bank has acted fairly and reasonably in this case.

It is now accepted by M & S Bank that Mr D did complete a disputed card transaction form and that he sent this to it in April 2020. I can understand why Mr D was dissatisfied when M & S Bank suggested he hadn't raised any dispute. And, it was only after he provided the receipt that it accepted what he'd told it.

It is the case that Mr D resubmitted the form and the supporting documentation in July and he did subsequently receive the refund he'd requested. He has raised issues about how his claim was handled after July but I'm not dealing with those issues here. I'm only looking at the complaint he's raised about what happened to the personal data he sent to M & S Bank in April 2020. Other issues he's raised will need to be dealt with separately.

#### *What happened to the data sent to M & S Bank in April 2020?*

I've looked at the information that appeared on the documentation sent to M & S Bank. It does contain personal data such as Mr D's name, address and signature.

M & S Bank has an obligation to keep Mr D's personal data secure. I've looked at its Privacy Statement. This states that it uses a range of measures to keep information safe and secure, including encryption and other forms of security.

Mr D says this didn't happen. He says M & S Bank lost his data and hasn't told him where it is. He says this has caused him stress and he's worried it might be the reason why there was some fraudulent activity on his account in May 2020.

M & S Bank says that, after Mr D provided it with the receipt, it was able to investigate what had happened. It says his data was received by it. So, it didn't go to any third party. The problem that arose was when its systems tried to submit the data internally to the Disputes team. It says there was a software problem which meant that the data was "essentially wiped" and as a result it wasn't sent to the Disputes team. It says that if there is any of the data still on its systems, any such data would be encrypted, and it hasn't been transferred to or shared with any third parties.

M & S Bank has also provided evidence to our service which shows that it has a data retention policy for its webforms. I've looked at the audit log for Mr D's data and it shows that

in line with that policy all of his documents (webforms) were deleted on 20 June 2020. So, any information on the webform submitted in April 2020, which may still have been held on M & S Bank's systems, would've been deleted at that time.

Mr D says that M & S Bank should be able to provide an incident log detailing what happened to his data in April 2020. But, M & S Bank says there was no bank wide fault in April 2020. It's confirmed that no other customers reported any issues at this time. It says that what happened to Mr D's form was an isolated incident. For that reason, no incident log was produced.

M & S Bank sent explanations about what had happened to his personal data in its emails to Mr D dated 4 August and 5 August (which I'll comment further about below). It told him that his data hadn't been transferred to any third parties and explained that, after it had received the data, there was an issue which meant it hadn't been able to transfer the data to its Disputes team.

Having thought about what M & S Bank has said and considered the evidence that's been provided, I'm satisfied, on balance, it's done enough to explain to Mr D what happened to the data he sent to it in April 2020.

#### *Fraud attempt using his card details*

I've also considered whether Mr D has suffered any loss as a result of what happened.

Mr D told us about the fraud on his card in May 2020. I can see at that time there'd been an unsuccessful attempt to make a purchase using his card details. His card details were on the form that'd been submitted in April. But, it is the case that the attempt to use his card details was not successful. And, M & S Bank cancelled his card and issued him with a new one at that time.

M & S Bank told us that the data he submitted in April wasn't given to any third parties and wasn't accessible by any third parties. So, although I can understand his concerns about the attempted fraud, I don't think, on balance it was related to what happened when he submitted the form in April. And, as I've mentioned above, he didn't suffer any loss as a result of his card details having been used.

#### *Compensation*

Mr D has also told us about the stress he experienced because of what had happened to his personal data. I can understand why he would've felt that way. So, I've thought about the compensation M & S Bank has already paid.

M & S Bank paid Mr D £50 because of issues he'd experienced contacting it by telephone in July 2020. It acknowledged these issues in its letter of 24 July 2020. That amount was credited to his account on 24 July 2020. I think this was fair and reasonable compensation for the issues he'd experienced when trying to contact M & S Bank.

M & S Bank subsequently agreed to pay him a further £75 by way of compensation. That compensation is referred to in its email dated 28 July 2020 where it says it was because of "further comments" he'd made to M & S Bank that day. It subsequently clarified in its email of 4 August 2020 that this payment was

*"actually based upon the fact that you had returned the documentation and there may have been an issue at our end. As mentioned above, this did turn out to be correct."*

So, I think this £75 compensation was paid because M & S Bank had accepted that the dispute form had been submitted in April, but M & S Bank had an issue - which meant it wasn't processed on receipt.

The email dated 4 August also explained to Mr D there'd been a fault in its software which meant the data on the form hadn't transmitted correctly. So, it hadn't reached its Disputes team. Having read this explanation, I can understand why it didn't immediately allay Mr D's concerns about his personal data. But, M & S Bank sent a further email the next day which did set out further clarification. It said there'd been a system error. The data hadn't been transmitted correctly to the Disputes team, and essentially had been lost within M & S Bank's own system. It confirmed that no third party had been able to access the data and no third party had received it.

Having read the emails dated 4 August and 5 August I'm satisfied M & S Bank did enough to provide Mr D with assurances to help allay his concerns about the security of his personal data. It's already paid him £75 by way of compensation because of this issue. I think that's fair and reasonable. And, having considered everything here, I don't require it to have to do anything more to resolve this complaint.

### **My final decision**

For the reasons given above, I do not uphold this complaint about Marks & Spencer Financial Services plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 May 2021.

Irene Martin  
**Ombudsman**