

The complaint

Miss M believes that Marks & Spencer Financial Services plc (trading as M&S Bank) have wrongly classified her credit card account as being in persistent debt. She says that they're unfairly coercing her into either setting up a repayment plan or applying for a personal loan.

What happened

Miss M is assisted in bringing her complaint by a third party. However, for simplicity, I shall refer to all comments as being made by Miss M.

Miss M holds a credit card account with M&S. She was making minimum monthly repayments and some additional repayments from time to time.

M&S wrote to Miss M in September 2018. They said that they'd reviewed her account over the previous 18 months. This showed that she'd paid more in interest and charges than she'd repaid from the capital amount she owed. They explained that this can be described as persistent debt, following a study by the Financial Conduct Authority (FCA).

M&S suggested options to help Miss M repay her debt over a reasonable period. They said they would continue to monitor her account and if there were no changes over the following 18 months, they may need to take further steps. This included cancelling or restricting the use of her account. M&S also provided details of where Miss M might be able to seek help, if she felt that she couldn't afford the repayments.

M&S wrote to Miss M again in April 2019. They said that she'd continued to pay more in interest and charges than she'd repaid off the capital amount owed. They provided options to help with reducing her debt with them. M&S said they would continue to monitor Miss M's account. They said that if she was still in persistent debt in nine months' time, they would provide further options. They also said that if Miss M didn't choose one of these options, they would generally have to suspend her card.

M&S sent a further letter to Miss M in January 2020. They confirmed that over the previous 18 months, Miss M had continued to pay more in interest and charges than she'd repaid off the capital amount owed. M&S explained they were required by the FCA to provide options for repayment of the debt within 3-4 years. The letter included repayment options and asked Miss M to contact them within 21 days to discuss these.

M&S wrote again to Miss M in October 2020. They said that they hadn't heard from Miss M, despite their previous letters. They said they would suspend use of her card if they didn't hear from her within five weeks. The letter also explained the options for repayment that were available to Miss M.

On 14 October 2020, Miss M contacted M&S by telephone. She said that she'd been paying additional payments off the balance she owed. She didn't agree that she was in persistent debt. M&S said that they'd have to suspend her card. Miss M wasn't happy with this. She wanted M&S to leave things as they were and assured them, she would make additional payments each month. She believes that M&S were coercing her into taking a personal loan.

Miss M wrote to M&S on 26 October 2020 to complain. She said that in the 18 months from March 2019 to September 2020, she'd paid more off the capital owed than she'd repaid in interest and charges. She didn't agree that she was in persistent debt. She also said that she'd taken no notice of their letters as she believed persistent debt didn't apply to her. Miss

M felt that M&S's agent on the call of 14 October refused to *"deviate from her script"* and her *"goal appeared to be signing me up for an M&S personal loan or agreeing to her payment plan under threat of having my account suspended"*.

M&S replied to Miss M on 6 November 2020. They didn't agree that they'd done anything wrong here. They confirmed that Miss M's card would be suspended. To avoid this, they said that her account *"balance had to go to zero for one calendar day"* within the next six months. They also said that if this wasn't achieved, the account would be automatically closed once the balance was cleared. M&S said that Miss M could reapply 12 months after that.

Miss M wasn't happy with M&S's response. So, she referred her complaint to this service. One of our investigators looked into Miss M's complaint. He didn't think that M&S had acted unfairly. So, Miss M asked for her complaint to be referred to an ombudsman 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.

The rules relating to persistent debt on credit cards were brought about following the FCA's Credit Card Market Study (CCMS) published in July 2016. The outcome of the study brought about changes in the Consumer Credit Sourcebook (CONC), part of the FCA's handbook. Under the new rules, businesses are required to take a series of escalating steps to help customers break the cycle of persistent debt and ensure customers who can't afford to repay more quickly are given help. Firms also need to take steps to help customers in danger of falling into debt.

M&S wrote to Miss M as part of their obligations under CONC 6.7.27 – 6.7.28. The requirements are that M&S must tell Miss M if she's paid more in interest, charges and fees in the preceding 18 months than she'd paid off her borrowing. They should also explain that increasing payments will reduce Miss M's borrowing costs and encourage her to contact them to discuss her financial circumstances. They should warn Miss M about the implications of reaching a position of 36 months in persistent debt.

Having read M&S's first letter from September 2018, I believe its contents met all of these requirements. The letter shows that of the total £1,674.40 paid by Miss M during the period, £979.45 covered Interest and charges. So, I agree it appears Miss M's account did meet the FCA's criteria for persistent debt at that time. M&S also said that they would include a *"Voluntary Payment"* figure on each of Miss M's statements. Paying this amount would help to ensure that the situation was reversed. I think that this was helpful and the right thing to do in the circumstances.

M&S's letter from April 2019 confirms that they'd completed a further nine-month review of Miss M's account. This ensured that they met their obligations under CONC 6.7.29. They said that the situation hadn't changed, and they further explained the options available to Miss M. M&S said they'd review Miss M's account again in nine months. They made it clear that if Miss M's account was still classified as being in persistent debt, they'd present her with options to repay her balance more quickly. They warned that if Miss M didn't choose one of these options, they'd generally have to suspend her card. So, I believe this letter ensured that M&S met all of their requirements under CONC 6.7.29.

M&S wrote to Miss M again in January 2020 in order to meet their obligations under CONC 6.7.30 – 6.7.40. They said that Miss M's account had now reached the end of the second 18-month period and she'd continued to pay more in interest and charges than towards the amount borrowed. This letter shows that of the total £1,384.26 paid by Miss M during the period, £811.12 covered Interest and charges.

M&S explained that increasing repayments would reduce borrowing costs and provided contact details for free debt advice. They also set out options for increasing repayments. CONC suggests that options may include a repayment plan or transferring the balance owed to a fixed-sum unsecured personal loan. That's what M&S suggested here. They also said that where Miss M can afford higher repayments but chooses not to take up one of the options offered, the firm must suspend the card. The same course of action also needs to be taken in the event that Miss M doesn't respond. Again, I believe that M&S's letter meets all of the FCA's requirements here.

I have also considered M&S's letter of 11 October 2020. They said that they hadn't heard from Miss M about any of their letters. So, they said that if they didn't hear from her within five weeks, they would suspend the use of her credit card account. They also repeated the options that were available to Miss M.

I can find no record of Miss M responding to any of M&S's letters until a telephone conversation on 14 October 2020. I've listened to a recording of that call.

The M&S agent explained the level of repayments required to ensure that the debt was repaid over a reasonable period (3-4 years) – as required by CONC. She also tried to explain the option of restructuring the debt onto a personal loan. Miss M said that she neither wanted a repayment plan or a personal loan. She was not willing to listen fully to the options available to her. She insisted that she'd already increased her monthly payments, sufficient to ensure that more capital was being repaid than interest or charges.

Miss M said that M&S's agent had no *“decision-making authority, would not or could not deviate from her script or put us through to someone with authority”*. But I think that M&S tried to cover all that was required of them here in order to comply with the rules laid down in CONC.

Miss M then sent a letter to M&S dated 26 October 2020. She said that during the 18 months between Mar 2019 and September 2020, she'd repaid £928.68 in capital owed and paid interest for the period of £763.93. She said that she *“should not have been classified as being ‘in persistent debt’”*. While this appears to be the case during this period, payments were not increased to enable this to be achieved until after the 36-month review period was complete. Miss M's account had already been identified as being in persistent debt for the 36 months up to January 2020. So, M&S were obliged to ensure that they complied with the rules as laid down in CONC 6.7.27 – 6.7.40.

In her letter to M&S, Miss M also states that she *“took no notice of previous references to ‘persistent debt’ as they appeared to me to be ‘form letters’ and not specifically directed at me because clearly, the concept of persistent debt did not apply to me”*. Unfortunately, I don't agree with Miss M here. The guidelines laid down by the FCA are clear on this point, as are M&S's letters. Miss M's account appears to have met the FCA's definition of persistent debt for two consecutive period of 18 months. So, I think that M&S's letters were appropriate so that they met their regulatory obligations.

Miss M told this service that M&S's response to her *“proper administration of her credit card account has been to label her, based upon a computer algorithm and historic data, as a persistent debtor, suspend the account, demand repayment in full within six months...”*. But I believe M&S completed all of these assessments and acted so as to meet their regulatory obligations as defined by the FCA in CONC.

Miss M says that M&S's proposals were limited to either taking out an M&S loan or adhering to the bank's payment plan. She said that a plan was never actually proposed in their letters. But from what I've read and heard, the options for repayment presented by M&S to Miss M met the requirements laid down in CONC 6.7.32. M&S's letters continually asked Miss M to contact them so that these could be discussed. The only discussion took place by telephone on 14 October 2020 – nine months after the 36-month period had ended. During that call,

Miss M made it clear that she didn't want to discuss these options. So, while I understand that Miss M, will be disappointed, I can't see that M&S have done anything wrong here.

Miss M says that M&S didn't choose to suspend her account until October 2020, despite her increasing payments each month since March 2020 to the point where she was paying more capital off her debt. M&S have explained that they were due to suspend Miss M's account in March 2020 *"but due to COVID-19 this was delayed until October 2020"*. The FCA issued guidance in March 2020 during the Coronavirus pandemic. They said that customers would have until 1 October 2020 to respond to their bank's communications about their persistent credit card debt. As a result of this, firms were not obliged to suspend customers' credit card accounts due to persistent debt until then, even if they'd already received communication from their bank about this. But Miss M hadn't replied to any of M&S letters before then.

While I accept that Miss M has now acted to increase her monthly repayments, unfortunately, this wasn't until after her account met the FCA's persistent debt definition. So, I believe that M&S's decision to suspend her account was the right thing to do in order to comply with their obligations under CONC 6.7.31. This may have been avoided if Miss M had previously discussed the situation and reached an agreement with M&S before the end of the 36-month period.

I can fully appreciate Miss M's frustrations here. Particularly now that she has acted to address the situation. But on balance, I can't agree that M&S have done anything wrong or treated Miss M unfairly in these circumstances. The FCA's rules under CONC are specifically designed here to require lenders to provide support and options to consumers to ensure they avoid potential debt problems in the future. I believe that's what M&S were trying to do here. So, I won't be asking them to do anything more.

My final decision

For the reasons set out above, I don't uphold Miss M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 26 July 2021.

Dave Morgan
Ombudsman