

The complaint

Mrs F complains about Marks and Spencer Financial Service Plc's ("M&S") decision to treat her account as being in persistent debt and the service it provided around this.

What happened

In December 2020, Mrs F found that her credit card account had been suspended for use. She contacted M&S, which told her that this is because her credit card had been found to be in 'persistent debt'. Mrs F had a number of calls with M&S about this as she was unhappy with the situation and felt it was unfair. She said she'd never received any letters and had made a large payment in November 2020 and wasn't aware that the account was now blocked.

M&S eventually treated this as a complaint and responded to Mrs F, explaining that it sent her multiple letters about her card being in persistent debt. These letters were sent in line with regulatory obligations and gave all the necessary options that were open to Mrs F in terms of dealing with the situation. M&S acknowledged that she had paid in a large amount recently, but said that by the point she did that she would have needed to have cleared the balance in full, which this payment didn't do. It offered Mrs F some support but she declined this.

Mrs F contacted M&S again after its letter responding to her complaint saying that she wanted to select one of the options, but not with the relevant interest rate. She said she moved in November 2020 and hadn't received any letters before this. M&S explained that she couldn't pursue the option she wanted to on the terms that she suggested and restated the position that it felt it had acted correctly.

Mrs F referred her complaint to this service where one of our investigators looked into the matter. They said that M&S had acted correctly by classing Mrs F's credit card as being in persistent debt, as required by the Financial Conduct Authority ("FCA"). They noted that M&S had sent Mrs F a number of letters about this – in August 2018, May 2019, February 2020 and October 2020.

Our investigator was satisfied that these letters were sent and felt that, while Mrs F had been unclear about which letters she may have received, at the very least Mrs F had received the February 2020 letter. Our investigator said this letter seemed to have prompted a call in March 2020 where Mrs F contacted M&S because of a letter she received about her account being in 'persistent debt'. Mrs F was unhappy with this letter because she felt that all of a sudden she was being asked to make a large payment just to keep her account open. She said that she always makes more than her minimum payment each month and has never made a late payment.

Our investigator also explained why they didn't think that M&S had done anything wrong in terms of how it made Mrs F aware of her options under persistent debt. They didn't feel that M&S needed to do any more in terms of how it presented Mrs F's statements and she explained why she didn't feel that M&S was 'bullying' Mrs F into making a large payment. Instead they were satisfied that M&S was just following its obligations in what it did.

Mrs F disagreed and so the complaint was passed to an ombudsman 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.

In explaining my decision here, I've had regard for all Mrs F has said and sent us, alongside everything that M&S has provided us too – but in reaching my decision here I'll be focusing on what I think the key areas of the complaint are in deciding what's fair and reasonable. That's in line with our role as a quick and informal service.

The starting point here is that I'm satisfied M&S was entitled to treat Mrs F's credit card as being in persistent debt. Persistent debt is defined by the FCA as when a person has paid more in interest, fees and charges than they have towards paying off the balance of a credit card, store card or catalogue account for more than 18 months. Mrs F has explained that she always made at least the minimum payment to her account on time and sometimes made higher payments too.

But despite that, the effect of how Mrs F was maintaining the account was that she was classed as being in persistent debt by M&S – where she had been paying more towards interest and charges, as opposed to the balance of the card. I've seen in various letters that M&S explained this to Mrs F. Where a business becomes aware that a customer is in persistent debt, it has a regulatory obligation to send certain letters to a customer, at certain key points in time, about the situation with their account and the options that are open to them. That's what M&S has shown that it's done here.

M&S has shown that it sent each of these letters to the correct address it held for Mrs F at the time of sending. So if Mrs F didn't receive them, that's not something it'd be fair for me to say that M&S can be held liable for. I realise that in November 2020, Mrs F updated her address with M&S. But she hadn't told it about any changes to her address any earlier than this.

So, M&S has fulfilled its obligations under the persistent debt rules and, strictly speaking, where it's done so – I can't say that it's acted wrongly. But, having considered all that Mrs F says, I note she says that she didn't receive any letters about this and only discovered the situation with her account in December 2020 when she couldn't make a payment.

But Mrs F has said different things to M&S and this service about which letters she received and which she didn't. What stood out to me was a call Mrs F had with M&S in March 2020, which persuades me that she did receive M&S's letter about persistent debt of February 2020. I say this because it's clear that this letter is what prompted the call, as it's the focus of the discussion between Mrs F and M&S during the call.

So, at the very least, I'm satisfied that, as of February 2020, Mrs F had been made aware of the situation with her account and the options that were open to her. That letter explained those options and also that if Mrs F didn't contact M&S, then it'd suspend use of the credit card in line with FCA rules. Mrs F says that she felt like M&S were expecting her to suddenly make a large payment in order to use her account, but the letters it sent (including the February 2020 letter) gave a number of options which were in line with the FCA rules.

Mrs F told M&S that she didn't want to pursue the options that it gave her, but the letter explained that these were the available options. So even though Mrs F contacted M&S as a result of this letter, nothing was agreed as a way forward. That means it's difficult for me to

say that M&S acted unfairly when it eventually took action to suspend the card, as it had warned Mrs F it might do this in the letter of February 2020.

All of this means that I'm satisfied that M&S was entitled to take the actions it eventually did and that it acted fairly in doing so – although I realise Mrs F will see it differently. M&S was under a regulatory obligation to take certain actions based on how Mrs F was conducting her account. It took those steps correctly and I'm persuaded that Mrs F received at least one of these letters which told her what she needed to do and what the consequences would be.

Mrs F has raised a number of other points as to why she thinks M&S has acted wrongly. I haven't seen anything in what she's said that means M&S acted unfairly or should have done anything differently though. I understand Mrs F's point about why she believes that statements should include information around persistent debt, but M&S doesn't need to include that information. In any event, the relevant information here was sent separately by letter anyway, as it should have been.

Equally, while Mrs F made a large payment in November 2020 – I can't see that this was because of any discussions with M&S, or any agreement that this would affect the situation with her account. By this point, she would have needed to have paid the full outstanding balance of the card. But this payment wasn't sufficient to do this in a way that meant she'd gain access to using the card again. So as I've mentioned previously, I'm satisfied that M&S was entitled to have suspended her account in line with the persistent debt rules by this point.

So while I realise this will be disappointing for Mrs F – I'm satisfied that M&S has acted correctly here and treated her fairly and reasonably.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 23 September 2022.

James Staples
Ombudsman