

The complaint

Mr and Mrs N complain Marks & Spencer Financial Services Plc failed to comply with their request to send them copies of their credit agreements. They don't think their debts with it are enforceable.

While Mr and Mrs N bring this complaint together, I shall for ease of read refer to Mr N as he has made the majority of the submissions.

What happened

Mr and Mrs N between them held four accounts with Marks & Spencer. In 2005, they entered a Debt Management Plan (DMP) with an organisation that assists customers with paying their creditors. As part of their DMP, Mr and Mrs N arranged to pay Marks & Spencer on a pro rata basis. In 2013, Marks & Spencer sold one of the accounts to a different business who I shall call 'A'. Payments continued until around 2020 when Mr N says he received advice that their debts were unlikely to be enforceable, if Marks & Spencer couldn't provide copies of the original credit agreements.

Mr N says that he had at points questioned whether he should be making payments to Marks & Spencer, but he'd been persuaded to continue. And so, in October 2020 he wrote to Marks & Spencer requesting it send him copies of the original credit agreements and noted that if it didn't comply, this would render the debts unenforceable – he also stopped all payments.

When Mr N didn't get a reply he wrote again, each time reiterating his request. Eventually, he felt he had no alternative but to raise a complaint.

Marks & Spencer looked into things and it issued a response in January 2021. It didn't think it had done anything wrong. In summary, it referred to the account with A and said,

- It had very limited information about it;
- It had no record of receiving a request for the credit agreement until December 2020;
- It would provide a copy to A; and
- The enforceability of the debt was a matter for the courts and not the Financial Ombudsman Service;

One of our investigators looked into Mr and Mrs N's concerns, but she didn't think Marks & Spencer needed to do anything. These were her conclusions:

- The issue of enforceability wasn't something our service could decide.
- The information Marks & Spencer had was extremely limited - this wasn't unusual given the passage of time.
- She had got a copy of the credit agreement for the account that had been sold to A.

Marks & Spencer had sent this to A in July 2021. There had a delay in doing so due to covid. While she felt Marks & Spencer could have done more to keep Mr N updated about this, she didn't think this had caused any material distress and/or inconvenience.

- In any event, Mr and Mrs N appeared to acknowledge they had accounts with Marks & Spencer.

Mr N didn't agree. He said he'd provided evidence of four accounts and not one. He felt Marks & Spencer had misled our service and the investigator had disregarded the information about the accounts. The credit agreement didn't have any terms and conditions attached to it and nor was it signed and dated. Therefore, it couldn't be said to comply with relevant regulation, specifically CONC. Based on this, he questioned how the investigator could be persuaded this was a copy of the original credit agreement or that it was genuine.

The investigator didn't change her mind though she did add Marks & Spencer had located other accounts, a charge card and personal loan. However, it hadn't received a response to its letter requesting payment of a fee for processing the information requests.

The complaint has now been passed to me.

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.

Having done so, I've decided not to uphold the complaint. I'll explain why.

The first thing to say is that only a court can decide whether a debt is legally enforceable or not. It's not something I have the power to determine. With that said, even if it were to be found the accounts aren't enforceable, that would only mean Marks & Spencer or a different entity might not be successful in certain legal action.

The debts still exist and crucially here, based on Mr and Mrs N's actions and their comments, I don't think they have suggested they didn't borrow money from which the debts stem or that the accounts aren't genuine. Indeed, for a number of years they made payments towards them after entering into a DMP. They also hold details about the different accounts involved as they approached Marks & Spencer about this. Taking all these points together, I'm satisfied Marks & Spencer were and are still allowed to ask for repayment. And therefore, whether the debts are enforceable or not, doesn't have a bearing on Marks & Spencer accepting their payments or asking for them.

Turning to other key points. Mr and Mrs N wrote to Marks & Spencer in October and November 2020 (several times) requesting a copy of their credit agreements. I've looked at the contact notes and these do indicate that Marks & Spencer only received notification of the request on the account held with A in December 2020. Also, there's nothing in the contact notes to say that a reply was received to its letter requesting a fee for processing the information request (on the other accounts). I can only assume Mr and Mrs N got this letter as they sent us a copy. So, I can't say Marks & Spencer did anything wrong in not responding on the other accounts.

I've thought about Mr N's concerns in relation to the credit agreement he's now seen in relation to the account with A. It may or may not be enough to comply with the relevant provisions of CONC. But it's of note that the account was sold around nine years ago so it's unsurprising the information is limited. But, overall, I don't think that matters because Marks

& Spencer aren't seeking to take enforcement action on it because they no longer have legal ownership of that debt.

Marks & Spencer might have done more to update Mr N about the delay in sending information to A. But I don't think this warrants any compensation. Because while chasing and awaiting a response would have been frustrating, ultimately Mr and Mrs N have been aware of the existence of their accounts. And one account was certainly with a different business (A).

It follows I won't be asking Marks & Spencer to do anything more.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Mrs N to accept or reject my decision before 13 April 2022.

Sarita Taylor
Ombudsman