

## **Complaint**

Mr D has complained that Marks & Spencer Financial Services Plc (trading as “M&S” Bank) unfairly continued applying charges to his overdraft when he was in financial difficulty.

## **Background**

One of our adjudicators looked at this complaint and thought that M&S ought to have realised that Mr D was struggling by January 2020 at the latest. M&S disagreed and asked for an ombudsman to review his complaint.

## **My findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

M&S will be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So I don't consider it necessary to set all of this out in this provisional decision.

Having carefully considered everything provided, I think M&S acted unfairly when it continued adding interest, fees and charges to Mr D's overdraft from January 2020. By this point, it was evident Mr D was struggling. His statements leading up to this period show that he'd spent increasing time in his overdraft and was regularly exceeding his limit. I also think that, despite the attempts to mask it, it was clear that Mr D was gambling heavily.

So at this point, I think that M&S ought to have realised that Mr D was unlikely to be able to sustainably repay his overdraft and should have stopped providing it on the same terms. It should have instead treated Mr D with forbearance, even if this meant taking corrective action in relation to the facility. All of this means that M&S should have realised that Mr D wasn't using his overdraft as intended and as the account conduct had suggested it had become unsustainable shouldn't have continued offering it on the same terms.

In reaching my conclusions, I've thought about what M&S has said about the fact that this is a current account and as a result won't have been monitored in the same way as a credit card, as Mr D was spending his own money. But I don't think this is true as Mr D was using an overdraft on his current account. And when doing so he was using M&S' money rather than his own. In these circumstances, in much the same way as if Mr D had a credit card, M&S had a clear obligation to monitor Mr D's account and act appropriately in the event it appeared Mr D might be struggling.

As M&S didn't react to Mr D's overdraft usage and instead continued charging in the same way, I think it failed to act fairly and reasonably. Mr D ended up paying additional interest, fees and charges on his overdraft at a time when he was already experiencing difficulty. So I think that Mr D lost out because of what M&S did wrong and that it should put things right.

## **Fair compensation – what M&S needs to do to put things right for Mr D**

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr D's complaint for M&S to put things right by:

- Reworking Mr D's current overdraft balance so that **all** interest, fees and charges applied to it from January 2020 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made M&S should contact Mr D to arrange a suitable repayment plan, Mr D is encouraged to get in contact with and cooperate with M&S to reach a suitable agreement for this. If it considers it appropriate to record negative information on Mr D's credit file, it should reflect what would've been recorded if it had started the process of taking corrective action on the overdraft in January 2020. M&S can also reduce Mr D's overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his limit.

OR

- If removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr D along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then M&S should remove any adverse information from Mr D's credit file. M&S can also reduce Mr D's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires M&S to take off tax from this interest. M&S must give Mr D a certificate showing how much tax it has taken off if he asks for one.

## **My final decision**

For the reasons I've explained, I'm upholding Mr D's complaint. Marks & Spencer Financial Services Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 March 2022.

Jeshen Narayanan  
**Ombudsman**