

The complaint

Mrs M makes a number of complaints about Marks & Spencer Financial Services Plc trading as M&S Bank following her financial difficulties.

What happened

Mrs M says she wrote to M&S Bank on 30 October 2018 telling it she was about to enter a Debt Management Plan (DMP) but says she was still charged a late payment fee of £12 for November 2018 and interest of just over £40. She says she made token £5 payments per month to M&S Bank and in May 2019 her account was defaulted. Mrs M says that arrangement should have been reported on her credit file rather than missed payments and says she would like compensation for what took place as well as having the £52.01 refunded. She also says a default should have been registered after three months not six, as it was obvious the account would default.

M&S Bank says it received a letter from Mrs M on 21 November 2018 telling it she was on a DMP. It says the interest and fee was charged before that. M&S Bank says it applied breathing space when told of the DMP and paid £50 compensation in early 2021 for poor service. It says it will refund the £52.01 but says it has correctly reported the account position to the Credit Reference Agencies (CRA's).

Mrs M brought her complaint to us and our investigator didn't uphold it. The investigator thought M&S Bank had followed the Information Commissioners Office (ICO) guidance by registering a default between three and six months of missed payments. And that it had acted fairly by refunding the £52.01 as well as by paying compensation of £50. The investigator thought M&S Bank was entitled to record the payments as missed as they were less than the contractual amount and that there no requirement to record the DMP.

Mrs M doesn't accept that view and in summary says there is no distinction between making a payment or not on her credit file which can't be fair. She says it obvious her account would be defaulted and questions why the £52.01 was not refunded in early 2021.

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 have come to the overall view that I don't uphold this complaint. I appreciate Mrs M will be disappointed by my decision and appreciate how strongly she feels about this complaint.

I am sure Mrs M appreciates that M&S Bank, like any other financial business, must report accurate account information to the CRA's. I'm satisfied that here Mrs M didn't make required minimum payments, which would have been agreed when her account was opened, from November 2018 until April 2019. So, I don't think M&S Bank made a mistake or acted unfairly by reporting those missed payments to the CRA's. I make clear that it's not our role to direct how payments or arrangements are reported.

I appreciate that Mrs M says that is unfair as she was on a DMP and that arrangement should have been registered. But I'm satisfied that it is up to M&S Bank to decide when exercising its commercial judgement how it reports such matters to the CRA's. I don't think it makes any real difference in any event as it likely the token payment would have been reported and recorded on Mrs M's credit file. I also think Mrs M could have added a note to her credit file if she wished. So, I think it would be obvious to a potential lender that Mrs M was making token payments but that they were less than the contractual required amount. It follows that I think there would have been an obvious distinction in this case for Mrs M making token payments compared to someone who did not.

I also appreciate Mrs M says the default should have been registered at the three month point rather than after six months. I can see that Mrs M is aware of the ICO guidance which says it should be between three and six months. So, I don't think M&S Bank made a mistake or acted unfairly by registering the default after six months. And I don't think M&S Bank could have known what would happen with the account or if Mrs M was able to resume contractual payments.

It is not entirely clear why M&S Bank paid Mrs M the £50 compensation in early 2021. It says it was for poor service and so I understand why Mrs M questions why she didn't receive the refund of £52.01 then. I agree with Mrs M that M&S Bank ought to have considered that issue at the time, in early 2021. But I'm satisfied that M&S Bank has acted fairly by now agreeing to refund that amount. I don't think that issue justifies additional compensation.

Overall, I'm satisfied that M&S Bank acted positively and sympathetically when it was made aware of Mrs M's financial difficulties by agreeing a repayment plan and by allowing a breathing space of 60 days. I find that it was obliged to report the accurate account position to the CRA's which I'm satisfied it did and was entitled to register a default after six months of missed payments. It follows that I can't fairly order M&S Bank to do anything further in the circumstances of this complaint.

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 Mrs M to accept or reject my decision before 20 April 2022.

David Singh
Ombudsman