

## **The complaint**

Mrs A complains Marks & Spencer Financial Services Plc (M & S) reported missed payments and a default on her credit card account, despite a payment deferral having been agreed.

## **What happened**

Mrs A holds a credit card account with M & S.

Due to the financial impact of the global pandemic, she contacted M & S to request deferral of the contractual monthly payments to her account. M & S agreed her request. They deferred her payments for three months from May until July 2020. M & S told Mrs A the deferred payments wouldn't be reported on her credit file.

Upon expiry of the agreed payment deferral, Mrs A says she applied to M & S again to request a further deferral. She believes this was agreed until 27 October 2020, so she didn't make any contractual payments. However, she then received letters and calls from M & S about the missed payments. Mrs A says she spoke to M & S several times and told them she had a payment deferral. She says M & S told her to ignore the letters. But she remained concerned as these hadn't been received previously.

In September 2020, having received further letters and calls, Mrs A called M & S. They said a further payment deferral wasn't in place. They agreed to consider her application subject to completing an income and expenditure analysis. If agreed, they said they'd backdate it. But the income and expenditure analysis suggested that Mrs A didn't have sufficient income to meet essential bills or to clear any arrears on her account once any payment deferral ended. So, they didn't agree her application.

M & S did agree a six month hold on Mrs A's account and suspended interest and charges. They told Mrs A that if she couldn't bring her account up to date, a default may be registered. But they said this was unlikely to happen before the end of the six months.

Mrs A then received letters from M & S to say that a default would be registered. That wasn't what she'd been told, so she contacted M & S to complain. In M & S's response, they explained why a further payment deferral hadn't been agreed. They didn't think they'd done anything wrong. But they did agree they'd misinformed her about when a default might be recorded. They apologised and agreed to send her a payment of £125 to recognise the confusion caused.

Mrs A wasn't happy with M & S's response. She thought they should've agreed a further payment deferral, when requested. She was also unhappy they'd recorded a default, despite what she'd been told. She said this meant she was unable to secure a re-mortgage and it would have a negative financial impact on her. Mrs A wanted M & S to remove the missed payments and default recorded on her credit file. So, she referred her complaint to this service.

One of our adjudicators looked at Mrs A's complaint. Our adjudicator thought M & S needed remove the adverse data reported between July and September 2020. But they thought the compensation offered was fair here and didn't think M & S needed to remove the default. Mrs A remained unhappy. She wanted M & S to remove the default recorded on her credit file.

As an agreement couldn't be reached, Mrs A's complaint has been referred to me in order to reach a final decision.

I reached a different outcome to that of our adjudicator. Because of that, I issued a provisional decision on 3 February 2022 – giving both Mrs A and M & S the opportunity to respond to my findings below before I reached a final decision.

In my provisional decision, I said:

The Financial Conduct Authority (FCA) issued guidance to lenders on 2 April 2020 which explained what it expected from businesses during the exceptional circumstances arising out of the global pandemic. It provided guidance asking businesses to consider payment deferrals of up to three months under regulated credit agreements.

The FCA said their guidance applied where consumers were already experiencing or reasonably expect to experience temporary payment difficulties as a result of the pandemic. They said, *"firms should ensure that there is no negative impact on the consumer's credit file because of the payment deferral"*.

Further guidance issued by the FCA on 1 July 2020 extended these measures, and where consumers were still struggling due to the global pandemic, businesses were advised to consider freezing or reducing their payments for a further three months.

M & S agreed an initial payment deferral for 3 months and didn't report any missed payments for this. Mrs A says she'd then applied for a further deferral. I haven't seen any evidence of this, and I can't see that M & S confirmed it to her in writing. But I'm persuaded Mrs A believed one was in place. Mrs A said she received multiple calls from M & S about the missed payments. On each occasion, she told them she had a further payment deferral and M & S told her not to worry about the letters. But at no time was she told a deferral wasn't in place. Again, I've seen no evidence of these calls, but equally, M & S haven't suggested these calls weren't made. So, I'm persuaded by Mrs A's recollection of events.

I've listened to a call from September 2020 where M & S told Mrs A that a further deferral wasn't in place. Mrs A told M & S her income wasn't likely to improve before January 2021. She also said her own income was more likely to improve before any other sources of household income did. An analysis of her income and expenditure was completed, a copy of which I've seen. It shows Mrs A's indebtedness, at the time, together with her monthly income and outgoings. It suggests Mrs A had a substantial shortfall in her income and was unable to cover her existing commitments and essential bills.

Under the FCA's guidance, M & S needed to consider whether a payment deferral was appropriate, particularly where the problems experienced by Mrs A may be more than just temporary (i.e. for the period of the deferral). Mrs A's credit card statements for July through to September show that her balance was close to or in excess of her credit limit each month. This coupled with her ongoing income problems suggested a longer-term problem. So, M & S decided Mrs A wasn't eligible for a further deferral. I think they were entitled to do that here.

It's important, having identified Mrs A's financial problems, that M & S then considered her situation with forbearance and due consideration. M & S agreed to place a six month hold on her account. This meant no further charges and interest would be applied and provided time for Mrs A to review her situation and consider alternative proposals. I think this was the right thing to do here.

Accepting this, it appears Mrs A wasn't previously told a further payment deferral hadn't been agreed, despite the conversations Mrs A says she had with M & S on

multiple occasions. So, I think this misunderstanding could've been identified by M & S sooner and should be reflected in any compensation paid to Mrs A.

M & S have refunded all charges and interest from when the original payment deferral expired. I think this was appropriate here and also ensured that M & S complied with their obligations under the FCA's rules and standards detailed in their Consumer Credit Sourcebook, Section 7 (CONC 7). But given Mrs A's financial circumstances, I think it unlikely that M & S would've agreed a further deferral in July. So, I can't reasonably conclude that M & S were wrong to report any missed payments since then. Had the account hold been applied at that time, they would've still been reported.

Although a six-month hold was agreed, this meant Mrs A wasn't complying with the original terms of her credit card agreement. Contractual payments weren't being met and her account was in excess of the agreed credit limit. The Information Commissioner's Office (ICO) says when a consumer is at least three months behind with their payments then a default may be registered. And it would expect a default to be registered by the time the consumer is six months behind with their payments. That is what M & S did, so I can't reasonably say they did anything wrong here. What they reported was an accurate reflection of what actually happened.

It's unfortunate that M & S appear to have misinformed Mrs A when she spoke to them in September 2020. They told her that any default wouldn't be recorded until much later. M & S have accepted their mistake here and apologised. They also offered Mrs A compensation of £125 for the confusion caused. And this feels fair to me in these circumstances. But I also think M & S should've acted sooner to correct Mrs A's belief that she had a further payment deferral. I think they had opportunity to do that during calls with her. Because of this, I shall be asking M & S to pay further compensation of £75 taking the total to £200.

In their view, our adjudicator suggested that M & S should remove any adverse data reported on Mrs A's credit file from when the original deferral finished to the point when she was told her subsequent request had been declined. As I mentioned above, I don't believe M & S would've agreed a further deferral. So, I don't think this would put Mrs A back into the position she should've been.

In reality, I believe M & S would've introduced a payment hold sooner. So, the missed payments would still have been reported. They've already refunded interest and charges. But it's unclear whether M & S have reflected these refunds in the balances reported on Mrs A's credit file between July and September. So, I shall be asking them to ensure they do that.

### **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 my provisional decision, I asked both parties to respond with any new information or comments they wanted me to consider.

M & S have accepted my provisional decision. They've confirmed that a cheque for £125 was sent to Mrs A in November 2020. Subject to Mrs A's acceptance, they've agreed to pay a further £75.

Mrs A originally accepted my provisional decision on the basis she thought the missed payments would be removed from her credit file. So, clarification of my provisional decision has been provided to her. As I've explained above, given Mrs A's financial situation at the time, I don't think M & S would've agreed a further payment deferral in July.

The FCA's guidance was clear that deferrals should only be granted where the difficulties experienced were as a direct consequence of the global pandemic and were considered to be temporary. Mrs A made it clear to M & S that she didn't expect her situation to improve before January 2021. So, this would've been after any further deferral had expired and so wouldn't be considered temporary.

On this basis, I don't believe M & S would've agreed a further deferral in July. They could only have offered a payment hold sooner, as they did in September 2020. This means Mrs A would've still missed payments and M & S would've been required to report these on her credit file.

Mrs A has told this service that the only outcome she would accept was for M & S to remove the reported missed payments. But as I don't believe a COVID payment deferral was appropriate here, I can't reasonably say that M & S made a mistake by reporting them. I completely understand Mrs A's disappointment, and I agree M & S did make mistakes here. I've reflected these in my final decision. But I shan't be asking M & S to remove either the missed payments or the default from her credit file.

### **My final decision**

For the reasons set out above, I uphold Mrs A's complaint.

I require Marks & Spencer Financial Service Plc to:

- pay Mrs A further compensation of £75 in addition to the £125 already offered, making a total of £200; and
- ensure that any balances reported on her credit file between July and September reflect the interest and charges they've refunded.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 7 April 2022.

Dave Morgan  
**Ombudsman**