

The complaint

Mrs B complains that Marks & Spencer Financial Services Plc (M&S) marked her credit file.

What happened

Mrs B had a personal loan with M&S. It was taken out in October 2018, repayable over 60 months – monthly payments were £322.81. In March 2020, the outstanding balance was £13,880.83. It was paid to date. Mrs B's husband's work stopped because of COVID-19 and on 27 March 2020, she called M&S to ask for help with the payments to her personal loan. A 60 day 'breathing space' was agreed – with no payments in April 2020 and May 2020. Her credit file was marked with missed payments for those months.

On 6 May 2020, Mrs B called M&S as she'd had a notice of arrears and was concerned. M&S went through an income & expenditure form and agreed a six-month 'long term no affordability' (LTNA) hold. Payments to the personal loan were suspended for that period and Mrs B's credit file was marked with missed payments.

On 8 July 2020, a Default Notice was sent to Mrs B – saying the arrears were £1,291.24, to be paid by 29 July 2020. On 24 July 2020, Mrs B called M&S about it. She paid off the arrears.

Mrs B complained. She thought she was getting a 'payment holiday'. She said she hadn't been advised there would be any markers on her credit file. And on 6 May 2020 – she said she was told she could pay off the missed payments to the loan over a period and not go into default. This was now affecting her ability to get credit and would continue to do so in the future.

M&S said that 'payment holidays' weren't bought in until 16 April 2020 – so they couldn't have offered that to Mrs B when she called on 27 March 2020. So, they'd put in place a 60-day 'breathing space' – whereby she could miss two payments to her personal loan, but her credit file would be marked. But they said the call handler made an error – as he said that the markers would be removed later. They agreed to remove the late payment markers from Mrs B's credit file for April 2020 and May 2020, and paid compensation of £100. M&S said that when Mrs B called them on 6 May 2020, they agreed a 'LTNA' hold on her loan because she didn't have sufficient monthly income and didn't qualify for a payment holiday. They said they'd advised Mrs B that late payments would show on her credit file. And that they may eventually record the account as being in default. But they said the marker for June 2020 must stay, as no error had been made in the call on 6 May 2020.

Mrs B didn't agree and brought her complaint to us. Our adjudicator considered M&S acted fairly. She said the option of the 60-day breathing space on 27 March 2020 was the right one – as the payment holiday scheme hadn't then been introduced. And M&S had admitted their error when Mrs B was told the markers on her credit file would be later removed. On the call on 6 May 2020, he thought M&S gave Mrs B the right solution for her circumstances - as they felt that Mrs B's financial situation wouldn't improve in the short

term, and a longer-term solution was needed. And this led to Mrs B's credit file being marked, which was fair.

Mrs B asked that an ombudsman look at her complaint.

I reached a provisional decision where I said:

In March 2020, The Financial Conduct Authority (FCA) announced guidance to lenders in response to the effects on customers of the COVID-19 pandemic. All lenders, including M&S, agreed to put in place 'payment deferrals' on many credit agreements, including personal loans – to help customers who were affected. Customers could ask for a total of two payment deferrals, each of three months – whereby payments could be suspended. Missed payments would not be reported to credit reference agencies, although interest would still be debited to the accounts. This support was provided by firms up to the end of October 2020, after which it changed – but I won't go into those changes as they aren't relevant for this complaint.

The FCA called the arrangements 'payment deferrals' – but as both M&S and Mrs B call them 'payment holidays, for clarity I will do the same.

I've listened to all the calls in question. The issues on which I must decide on are:

- Should M&S have given Mrs B a payment holiday – rather than a breathing space or long term no affordability (LTNA) hold?
- What was Mrs B told about how to clear the arrears on her loan?
- Were M&S sufficiently clear about her options and the effect on Mrs B's credit file?

Call – 27 March 2020:

Mrs B asked for a 'pause' on her payments to the personal loan. This was agreed by the call handler – for 60 days, with no payments to be made in April 2020 or May 2020. He said there would be an effect on Mrs B's credit file – but the markers would be removed – as it "*wasn't your fault*" and M&S were aware of another support scheme coming through (which I assume was the FCA's payment holiday scheme). M&S later apologised for their error – they shouldn't have said the markers would be removed, and paid compensation of £100. That was fair and reasonable. M&S advised Mrs B to cancel the direct debit to the loan – which she later did.

The draft guidance for the FCA payment holiday scheme was published on 2 April 2020 and it was announced on 9 April 2020 – with the date of introduction being 14 April 2020. M&S showed us their procedures and they introduced the scheme on 16 April 2020. But firms were aware that the scheme was about to be introduced – and M&S' call handler indicated that as well. In those circumstances, I think it would've been reasonable for M&S to contact Mrs B after 16 April 2020 – to offer support under the payment holiday scheme. If that had been done – she could've had a three-month payment holiday – for April 2020, May 2020, and June 2020 - with no effect on her credit file. This would've then have enabled her to ask for a further three months' payment holiday for July 2020, August 2020, and September 2020 – and would've avoided the problems she had later. It's fair to note that on the call on 27 March 2020 – the call handler didn't go through an income and expenditure process or ask Mrs B about her circumstances. And that would've had to have been completed to agree a payment holiday. But based on what she later told them in May 2020, I think it's fair to assume she would've qualified when she called in March 2020.

Call - 6 May 2020:

This is the important call. Mrs B had received a notice of arrears and was concerned. The call handler said letters would be sent but said “*don’t worry about that*”. Mrs B said “*phew*”. Mrs B explained her husband was self-employed and had orders for his work – but couldn’t complete these because of the pandemic, as he needed access to customers’ houses to do that. She said once he returned to work things would be OK. Also, she said that they were hopeful that the government’s support for self-employed persons would come through in June 2020 – whereby they would get some income paid.

They completed the income and expenditure process. Mrs B said that the mortgage (£270 per month) was on a payment holiday and there was a small credit card debt – but no other creditors. Priority payments were all up to date. Mrs B was still working and earned £1,600 per month. I listened to the list of monthly outgoings which totalled about £810, plus food of £400. This excluded the mortgage (on a payment holiday). M&S then said that (when including the loan payment of £322) – this showed a deficit. But for me, it totalled £1,532 (excluding the mortgage) against income of £1,600. M&S then offered a ‘LTNA’ hold on payments for six months. This meant that Mrs B’s credit file would be marked with the missed payments.

I’ve looked at M&S’ internal guidance for LTNA. This says it can be used where there’s no prospect of changes to customers’ circumstances within 90 days. And affordability should be less than £1 – i.e. outgoings are greater than income. But – I think it would’ve been reasonable to conclude that while Mrs B’s income was fully committed – there wasn’t a deficit. And – Mrs B had said her husband would go back to work as soon as the restrictions allowed. And he had orders to fulfil. She was also hopeful that the government support scheme for the self-employed would be announced. And so – it was reasonable to think that things would improve for her within a period of three months. I noted also that all priority payments were up to date (including the personal loan up to March 2020), the mortgage was on a payment holiday, there was only one other creditor – a credit card – and Mrs B was working. And so – under those circumstances, it would have been reasonable to offer Mrs B a payment holiday, not the LTNA option.

M&S then gave some fairly confused messages about the effect of the arrangement on Mrs B’s credit file. They said “*this will show on your credit file for six years*” but went on to say “*...in certain cases it will show on your credit file...you will get a default letter but don’t panic...you’re not there yet...we will send you letters before that happens...*” I think what happened here was that M&S confused the communications between the late payments and a possible default showing on Mrs B’s credit file. Mrs B was confused and asked, “*when will it show on my credit file?*” and M&S replied “*now, but not yet a default which is more serious and will last for six years...*”. I think that on balance, Mrs B was left with the impression that either nothing would be added to her credit file, or if it were, then she would be advised in advance. There wasn’t any reference on the call made about interest and charges – but within M&S’ LTNA scheme, interest wasn’t to be charged.

I looked at M&S’s processes and what they say about communications. They say that certain statements should be read out in full. These include clear references to arrears, reporting to credit reference agencies, charges and interest being suspended, and that a default letter may be sent – impacting the credit file and ability to get credit for six years. I didn’t hear these statements made clearly on the call.

The processes also say that a letter would be sent to confirm the LTNA arrangement. I couldn’t see that a letter was sent to Mrs B, or an email. If there had been, then Mrs B could’ve seen what had been put in place and raised any concerns.

Turning to what was said about the arrears on the loan. Mrs B asked how she would make up the missed payments on the loan. The call handler said “*...it’s up to you...you could spread the arrears (if you wish)...*”; and went on to say that a default letter may be

sent but Mrs B was not to worry as “...we will send you letters before that happens”. And so, I agree that M&S should’ve been clearer about what was to take place with the default letter, what it would say, and its consequences. They didn’t say that Mrs B would be required to pay off the arrears at that time and in full to avoid the default. They advised Mrs B that this wouldn’t be needed - and she could make up the arrears over a period of time.

Calls – 24 July 2020:

There were two calls. Mrs B had received a default notice dated 8 July 2020 showing arrears of £1,291.24 – to be paid by 29 July 2020. She said she’d been told on the first two calls that there would not be an effect on her credit file, and that if there was, she would be advised of it in advance. She completed an income and expenditure form – which showed a monthly surplus of £1,895, and in addition her husband would be starting work again soon. Mrs B said she was very keen to avoid any impact on her credit file and said she would borrow money from friends and family to pay off the arrears – which she did on the second call. I won’t go into the call in any further detail – as they aren’t relevant to this complaint.

So – in summary. On 27 March 2020, I think it would’ve been reasonable for M&S to back-date a three months’ payment holiday to cover the period from April 2020 to June 2020. This would’ve had no impact on her credit file. An assessment would’ve been needed – but this would presumably have been the same as that in May 2020 and would have supported a payment holiday. Mrs B could then have been given a further three months’ payment holiday to cover July 2020 to August 2020. This would’ve had no impact on her credit file either.

Therefore – M&S should remove any late payment markers during the period between April 2020 and August 2020. M&S have said only one marker was applied – in June 2020. I’ve considered whether an additional payment of compensation is reasonable. Mrs B would have benefitted from the fact that she should’ve paid no interest on the loan between May 2020 and July 2020 – I worked out this would’ve saved her about £200. So – for that reason, I don’t think it would be fair to ask M&S to pay any more. In responding to this provisional decision, M&S should confirm that no interest was charged for the period.

I emphasise that this is a provisional decision and I invite comments from either Mrs B or M&S. In particular, if M&S were to show us that they sent emails or letters to Mrs B to detail the LTNA agreement and the effects on her credit file, then these would be reviewed.

Responses to the provisional decision:

Mrs B agreed with my findings, but M&S didn’t. They said:

- M&S couldn’t be expected to contact customers about the payment holiday scheme as they had large volumes of customers and had many staff working from home. It was three weeks’ after Mrs B’s call to M&S that the FCA’s scheme was launched.
- The possible government support for self-employed persons hadn’t been agreed – and this was therefore hypothetical. They couldn’t therefore have considered this to be a certain source of income.
- M&S couldn’t provide a copy of the LTNA agreement.

I now need to make a final decision.

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.

I've considered the points that M&S have made - but they don't change the views within the provisional decision.

I accept that M&S couldn't be expected to contact all customers personally about the FCA's payment holiday scheme. But – for example, they could've sent letters/texts to customers who had put in place 60 day holds in the short period before it was launched– including Mrs B.

I accept that the self-employed support scheme wasn't a certainty at the time of Mrs B's call in May 2020. But that wasn't the only factor involved here – as Mrs B's income was continuing. And the income and expenditure figures showed she could just about manage on that – as their mortgage lender had agreed a payment holiday.

And - I must make a decision based on the balance of the various aspects involved in Mrs B's complaint. And as the provisional decision said – the communications in the important call in May 2020 were confusing. And I note that M&S haven't been able to produce any correspondence which set out the terms of the agreements they put in place, particularly the LTNA agreement – so I cannot see if Mrs B was advised of its terms.

And so, on balance, I am not changing my provisional decision.

My final decision

I uphold this complaint. Marks & Spencer Financial Services Plc must:

- Remove late payment markers from Mrs B's credit file for the months between April 2020 and August 2020.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 27 April 2022.

Martin Lord
Ombudsman