

The complaint

Ms M complains Marks and Spencer Financial Services Plc (“M&S”) recorded a default on her credit file despite agreeing a payment holiday for her account.

What happened

Ms M had a credit card with M&S. Between May and July 2020 M&S put a payment holiday in place to help Ms M during the COVID pandemic. The payment holiday meant Ms M didn’t have to make any payments for three months without impact to her credit file. But interest continued to accrue and be added to the debt during this time, so the balance was going up.

Ms M made her contractual payments in August, September and October. In November 2020 Ms M then sent M&S details of her income and expenditure as she wanted to discuss agreeing another payment holiday. After some discussion, a “no affordability” plan was put in place.

Over the following months, M&S sent Ms M correspondence about her credit card, including a default notice and a formal demand. M&S went on to record a default on her credit file.

Ms M complained to M&S and it issued a final response where it said it would not be changing its procedures.

Ms M referred her complaint to this service, and it was passed to an investigator. They thought M&S had dealt with Ms M’s case fairly and didn’t ask it to do anything else. Ms M asked to appeal, so her complaint has been passed to me to make a 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.

In April 2020 the Financial Conduct Authority (FCA) issued guidance to lenders for customers experiencing short term financial difficulties as a direct result of the pandemic. The guidance meant businesses could offer a payment holiday for an initial three-month period without an impact to the customer’s credit file. That’s the approach M&S took in May 2020 when it approved the first payment holiday. But this didn’t stop interest and charges being applied to the debt so the outstanding balance increased each month.

The guidance says lenders should only approve a payment holiday for a maximum of six months. And, if the nature of the financial difficulties the customer is experiencing isn’t reasonably short term, lenders were obliged to consider other options in terms of providing forbearance and breathing space.

I’ve listened to the November 2020 call Ms M had with M&S. Ms M confirmed she wasn’t sure when she would be able to return to work, but hoped that might be in the new year. M&S also discussed Ms M’s income and expenditure with her, which indicated she wasn’t able to afford to make any payments to her credit card.

The FCA guidance at that time was that a lender shouldn't agree a COVID related payment holiday if it was aware that might not be in the customer's best interests. With Ms M's circumstances in mind, I'm satisfied that it wouldn't have been right for M&S to agree another payment holiday at this stage. The "no affordability" plan M&S offered was more appropriate as even though this plan would have an impact on Ms M's credit file, it would also mean that interest stopped accruing on the outstanding balance of Ms M's credit card, and so her debt wouldn't increase.

Regarding what Ms M was told about the "no affordability" plan, M&S has provided phone recordings that show what was discussed when the plan was offered to Ms M. The staff member she spoke to clearly explained the potential impact of the plan on her credit file. This included setting out that M&S would ultimately be issuing a default notice and final demand, and if the amount set out in the final demand was not repaid at that point then a default would be recorded on Ms M's credit file, where it would remain for six years. After this was explained to Ms M she agreed to the "no affordability" plan.

M&S then wrote to Ms M to set out the details of the plan, and this letter also included details of how it might affect her credit file. Ms M says she never received this letter, but from M&S's records, I'm satisfied it was sent, and to the correct address. In any case, I don't consider it makes a material difference because, as set out above, Ms M was given the information verbally.

M&S sent Ms M a default notice in February 2021. The general guidance is that the default process should be started when an account is between three to six months in arrears. So while I appreciate that Ms M was only around three months into her six month "no affordability" plan, I don't think it was unreasonable for M&S to issue the default notice at this stage.

Ms M called M&S to ask what she needed to do when she received this letter, and I've also listened to this phone call. M&S explained that while a plan was in place – and it therefore understood Ms M was not able to make any payments at that time – it still had to send the default notice and final demand. The staff member Ms M spoke to explained if she could make the payment as set out in the letter she'd received then no default would be recorded, but if she couldn't then they would go on to record a default with the credit reference agencies. But as Ms M didn't make the payments set out in either the default notice or the final demand, the account was ultimately defaulted.

I appreciate that Ms M then did make a significant payment towards the debt, but this payment was made too late to avoid the default being registered. Ms M would have had to either clear the arrears by 3 March 2021 – as set out in the default notice – or repay the entire outstanding balance by 2 April 2021 – as set out in the final demand. And she didn't make any payment to the account until 9 May 2021, after the default had already been registered.

I appreciate what Ms M has said about the FCA's guidance that COVID related payment holidays should not be recorded on credit files, but what she agreed with M&S in November 2020 was not a payment holiday - it was a "no affordability" plan. And while I know my decision will come as a disappointment for Ms M, I'm satisfied that M&S did make it clear that the "no affordability" plan she was agreeing to could result in a default being recorded on her credit file. I'm also satisfied that M&S then followed the correct process for a default, giving Ms M the appropriate notice of what would be happening at each stage.

I know Ms M has also expressed dissatisfaction with how M&S has handled her complaint, and I acknowledge that the final response letter she received was lacking in detail and that

this letter was sent to her soon after her initial conversation with M&S where she raised her complaint. But, overall, this doesn't change my decision that M&S has treated her fairly here.

I understand that Ms M has since made a further complaint to M&S about what happened when she set up a direct debit to begin making payments to her credit card again after the default. This decision only addresses the issues Ms M raised when she first referred her complaint to us. If she wishes to raise a new complaint about anything that has happened since then, she should let us know.

My final decision

For the reasons I've explained, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 22 August 2022.

Sophie Mitchell
Ombudsman