



## **The complaint**

Mr B complains that Marks & Spencer Financial Services Plc (M&S) recorded adverse information on his credit file.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them here. Instead, I'll focus on the reasons for my 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.

Having done so, I've reached the same overall conclusions as the investigator. I know Mr B will be disappointed as he found himself in financial difficulty due to an unprecedented event. And I'm genuinely sorry to hear what has happened will now impact him for several years to come. But I can only uphold this complaint if I concluded M&S had done something wrong or treated Mr B unfairly, and I don't think it did. I'll explain why.

M&S provided Mr B with six months payment deferrals from around April 2020 to October 2020, when his income was impacted by the Covid 19 pandemic. This was in line with the temporary Covid relief guidance issued by the Financial Conduct Authority (FCA) at the time. So, I'm satisfied that M&S did what it was expected to do at this point.

During the time the Covid payment deferral was in place, lenders were also told not to record any adverse information about missed payments with the credit reference agencies (CRA). And I haven't seen anything to suggest any adverse data was recorded on Mr B's credit file by M&S during this period. So, I don't think M&S did anything wrong here.

In November 2020, M&S' records show that when the Covid payment deferrals ended, Mr B's circumstances hadn't improved. I've seen that he told M&S that he couldn't meet his November payment and, ultimately, an income and expenditure breakdown showed that his monthly outgoings exceeded his income. So, I'm persuaded that Mr B wasn't in a position to recommence his monthly repayments to his loan based on the information he provided to M&S at the time.

The FCA guidance said the maximum number of monthly payment deferrals under the Covid relief scheme was limited to six. So, by November 2020, Mr B had exhausted the temporary Covid relief. But lenders still had a duty to treat consumers positively and sympathetically in line with the usual regulations which apply when a consumer is experiencing financial difficulties. But these regulations also require accurate information about the conduct of an account to be passed to the CRA.

In Mr B's case, M&S offered him an 'unaffordability hold' (the arrangement) – otherwise known as a payment break or breathing space. This meant that interest wouldn't be added to the outstanding loan balance and Mr B wasn't required to make a payment for a further six months. I'm satisfied that in offering such an arrangement to Mr B, M&S was meeting its obligations as he was still experiencing financial problems. I appreciate Mr B was hoping to reschedule the loan to reduce his payments, but the income and expenditure breakdown provided showed he had no disposable income to make any loan repayments. And it's not in dispute that Mr B ultimately accepted the arrangement that was offered.

In December 2020, M&S issued a default notice to Mr B which was later registered in February 2021 and recorded on Mr B's credit file. Mr B says M&S didn't tell him that accepting the arrangement in November 2020 would result in a default being issued or that this and the additional arrangement would negatively impact his credit file.

M&S has provided several call recordings for the period the Covid relief payment deferrals were put in place until the default notice was sent. I have listened to the calls which relate to the arrangement agreed in November 2020. Having done so, I'm satisfied that Mr B was made aware that taking the arrangement would have an impact on his credit file. And that ultimately a default could be recorded on his credit file.

M&S offered Mr B the 'unaffordability hold' as mentioned above during a call on 13 November 2020. It's not in dispute that M&S set out how the arrangement would work and that it would last for six months. But I'm satisfied that that it was also explained to Mr B that the arrangement would be recorded with the CRA and that during the six months a default notice could be issued and the default registered with the CRA if he was unable to bring the account up to date.

At this point, Mr B didn't agree to the arrangement – he wanted time to think about it because he was concerned about the impact on his credit file. But Mr B called M&S on 21 November 2020 to set up the arrangement. During this call, I'm satisfied that, when talking about the arrangement, the M&S representative reconfirmed that the arrangement would *"show up as an arrangement"* on his credit file. And Mr B responded with *"Yes, I've got that"*. So, I'm satisfied Mr B knew the arrangement would impact his credit file.

I accept that in this call M&S did provide Mr B with some contradictory information about a default notice. The M&S representative said *"during this time you will receive a default notice"* and then later said *"during this time you won't be issued with a default notice"*. M&S has acknowledged this, and it has since offered £75 compensation for any inconvenience this caused. So, I've thought about this carefully to decide if I think the contradictory information impacted on Mr B's decision on whether to go ahead with the arrangement. Having done so, I don't think it did.

In addition to what Mr B was told during the phone calls, I'm satisfied that the correspondence issued to Mr B at the time made it clear what that the arrangement he entered would impact his credit file and his ability to borrow in the future. So, if there had been any confusion following the calls, I would have expected Mr B to contact M&S to query the information provided in the follow up correspondence. But I haven't seen anything to suggest he did.

So, notwithstanding the contradictory information given on 21 November, overall I'm satisfied M&S did enough to let Mr B know that the assistance it was offering could lead to his account being defaulted and the impact this and the arrangement would have on his credit file.

M&S issued a default notice in December 2020. By this time Mr B was just over six months' in arrears – when considering the earlier Covid payment deferrals. This timescale is in line with the guidance set out by the Information Commissionaries Office (ICO) which says an account can be defaulted when three to six months payments have been missed. So, I don't think M&S did anything wrong when it registered the default as Mr B wasn't able to bring his account up to date.

Mr B has suggested that he didn't receive the default notice. But M&S' records show that he phoned M&S having received the default notice. So, I'm satisfied that he did receive the default notice and would have known what he needed to do to avoid the default from being registered.

M&S has offered £75 compensation in recognition of the contradictory information provided. Given I'm satisfied Mr B was given enough information overall, I think this is fair. I'm not going to tell M&S to take any further action in respect of this complaint. So, I'm not going to tell M&S to take any further action or increase its offer of compensation in respect of this complaint.

### **My final decision**

For the reasons given above, I uphold this complaint in part.

Marks & Spencer Financial Services Plc should now pay Mr B – if it hasn't already done so, £75 in recognition of the contradictory information provided in a phone call as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 September 2022.

Sandra Greene  
**Ombudsman**