

The complaint

Mr A has complained that Marks & Spencer Financial Services Plc recorded a default on his credit file because he didn't make payments to his credit card and that it now refuses to remove the default.

What happened

Mr A took the credit card out in 2014. At that time he arranged for the minimum monthly payment to be made by direct debit from his and his wife's joint current account. He says that he then separated from his wife in 2016, following which he suffered some years of instability, including being homeless and having mental health issues.

In April 2021 Mr A checked his credit file and discovered that there was a default on the file for the credit card. He then discovered that the regular payments for the card had been coming out of his wife's account and that she had cancelled the direct debit after the May 2020 payment as she didn't know what it was for.

As a result of the direct debit being cancelled, M&S began to write to Mr A about missed payments. Our investigator has previously set out the full list of correspondence and so I don't intend to repeat it all here. It was writing to the address it had for him until February 2021. Then in late February 2021 it wrote to him at an address that it had traced as being associated with him. M&S didn't receive any responses from Mr A and his address was marked as 'gone away'.

Mr A then did make contact with M&S after checking his credit file in April 2021. He rang to complain about the default on the credit file and that M&S should have been taking payments from his current account and not his wife's. He was also unhappy that M&S had never contacted him about the non-payments.

When talking to Mr A, M&S recorded his current address incorrectly and so he didn't initially receive the final response letter about his complaint that M&S sent to him on 5 May 2021. M&S re-sent the letter on 18 May 2021, at the same time apologizing for its earlier addressing error.

M&S said that it had written to Mr A on 2 November 2020 asking him to pay the arrears within 21 days to prevent the account from defaulting. This was followed by a final demand on 23 February 2021. As the balance wasn't brought up to date, a default was applied on 18 March 2021. M&S said it understood that Mr A hadn't received any of the letters but that it was his responsibility to inform it of changes of address. In a further letter dated 28 May 2021, M&S told Mr A that a default was placed on his account in line with its terms and conditions. It also said that, as the account was in Mr A's name, it was his responsibility to ensure payments were maintained and that it wouldn't approach his ex-wife about payments. As Mr A had previously had trouble being transferred to the correct part of the service, M&S credited £25 to the credit card account.

Mr A then proposed to M&S that he would pay off the debt over seven months in return for it removing the default from the credit file. He says that M&S promised to call him back about

this but never did. When Mr A contacted this service, he explained that the issue had worsened his already poor mental health.

Mr A appeared to suggest that he would be happy to settle the complaint if M&S paid him compensation of £75. Our investigator therefore approached M&S who agreed it would be willing to pay £75 for the matter to be closed. However, it then became clear that Mr A considered the payment to be in settlement of his complaint about poor customer service and he still wanted M&S to remove the default from his credit file.

Our investigator thought the default had been fairly applied to the credit file and therefore did not recommend that the file be amended. Mr A disagrees with the investigator's opinion and so the complaint has been passed to me for 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.

As Mr A is happy with the £75 that has been offered for poor customer service, there's no need for me to comment further on this point as that part of the complaint has been resolved. Instead I'll focus on whether it's fair that M&S hasn't removed the default from Mr A's credit file.

The contact details that M&S had for Mr A were the ones that he supplied at the point of opening the card account in 2014. After splitting from his wife, Mr A did not contact M&S to update his details. Therefore, from 2016, M&S had an incorrect address for him. Mr A says that his mobile number had been the same throughout. However, he had only supplied a landline number originally. M&S had an email address for Mr A but he has confirmed that he stopped using that email address when he separated from his wife. Therefore M&S had no way of contacting Mr A and no way of knowing that any correspondence it was sending him wasn't reaching him. So even though Mr A wasn't aware of what was happening with the card, that wasn't M&S's fault.

Mr A says that he and his wife cancelled their joint current account and set up two separate accounts. He says that M&S then decided to take the direct debit from his wife's new account rather than from his new account. He further says that his current account provider knew which was his wife's account and which was his and that M&S should have spoken to them about it.

It'd be unusual for banks to share information in the way that Mr A has suggested they could have here. But even if they did, M&S would have had no reason to contact Mr A's current account provider as it would have been unaware of any changes in Mr A's personal life in 2016. The direct debit instruction remained the same as when Mr A set it up in 2014 and M&S did not change it at any point.

What I think is more likely than not to have happened here is that when the current account provider was informed that the joint account was no longer required, it simply converted the joint account into Mr A's wife's name (retaining the existing account number) and then set up a new account for Mr A. As such, the direct debit was unaffected. Whatever happened though, none of this was the fault of M&S. It had no awareness of what may have happened with the account the payments were coming from and no reason to question this. In these circumstances, I think it was the responsibility of Mr A to make sure any direct debits were amended accordingly.

I say this because Mr A should have been aware that he had this card and the associated debt in his name. I've considered what he said about his situation over the years and the

separation with his wife and I realise he wasn't receiving statements or making payments himself. But while his wife may have been making payments, that doesn't change the fact that the card here was taken out in his sole name and he remains solely liable for it.

So when the direct debit was cancelled, payments to the credit card from June 2020 onwards were not being made and M&S took appropriate steps to contact Mr A, as set out above. The lack of response ultimately led to M&S recording the default on Mr A's credit file, which it was entitled to do under its terms and conditions. I appreciate that the default record will cause difficulty for Mr A going forward. I also understand that Mr A has gone through a very difficult time. However, looking at the circumstances of how the default came about, I'm unable to conclude that M&S did anything wrong. So I won't be asking M&S to remove the default record from the credit file.

My final decision

My decision is that I uphold Mr A's complaint. Marks & Spencer Financial Services Plc should pay £75 compensation to Mr A. As I understand this has already been paid, I don't require Marks & Spencer Financial Services Plc to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 September 2022.

Carole Clark

Ombudsman