

The complaint

Mr D complains that Marks & Spencer Financial Services Plc (M&S) marked his credit file with a default and missed payments.

What happened

Mr D had a credit card with M&S. In April 2020, the limit was £4,800 and the balance was £4,284.01. Minimum monthly payments were £107.59. Mr D's income was affected by the pandemic – he was on furlough. His partner was made redundant. He asked for two payment holidays, each for three months under the pandemic support scheme. M&S agreed to those and they ran for six months up to September 2020. In October 2020, Mr D called M&S again to discuss his options at that time. His furlough payments had reduced from 80% to 67%, and his partner was still out of work. M&S agreed a 'no affordability hold' (NAH) on his account until 27 April 2021 – with no payments needed, and no interest or charges. Mr D's credit file was marked with three missed payments between December 2020 and February 2021. A Notice of Default was sent to Mr D in January 2021, and a default was registered.

Mr D complained. He said he wasn't aware of the consequences of the NAH on his credit file. It hadn't been clearly explained to him when he called M&S. He accepted M&S had said it would affect his credit rating, but that was all. He wasn't told about a 'default' and if he had been, he wouldn't have agreed to the arrangement. He could've borrowed money from his parents to make the payments if that was the case. He said he was told to ignore regulatory letters. He said he'd worked hard to ensure he had a clean credit file, and it was now ruined – with consequences that would last for six years. In April 2022, Mr D told us his account had been passed to a debt collection agency.

M&S said they'd agreed a 'no affordability hold' on Mr D's account in October 2020 as the best solution for his situation – because he couldn't afford the payments. When Mr D called on 27 October 2020, M&S' advisor said his credit history would be affected. But they agreed the advisor didn't mention 'default'. When a no affordability hold was agreed – this didn't prevent arrears arising as the contractual payments weren't being made. The letters such as statutory arrears notices and other regulatory correspondence was sent, including a Notice of Default and Final Demand. They were sorry that the adviser told Mr D to ignore the letters. The default on Mr D's credit file had been notified to the credit reference agencies (CRAs) because he was making a reduced payment of £92.30 for 12 months – and the contractual payment was more than that. They paid compensation of £150 for the service Mr D received from the advisors.

Mr D brought his complaint to us. Our investigator said M&S acted reasonably. He said the no affordability hold (NAH) was the best option for Mr D's circumstances. He said the adviser said the NAH would affect Mr D's credit file. He agreed that the advisors could've explained the NAH better, but the compensation offered was reasonable. He said that Mr D could consider applying for a notice of correction at the CRAs – so prospective lenders could see that and take it into consideration.

Mr D didn't agree. He asked that an ombudsman look at his complaint.

I then reached a provisional decision which said:

In April 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, had to put in place 'payment holidays' on many credit agreements, including credit cards – to help customers who were affected. Customers could ask for a total of two payment holidays 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.

The intention was to provide short term support – usually in cases where customers would be returning to work within a short period of time. And so – where a customer's situation was that they were in longer term difficulty, then payment holidays under this scheme weren't normally agreed.

I've listened to 12 calls made between M&S and Mr D between March 2020 and April 2021. Mr D was put on furlough because of the pandemic and M&S agreed two periods of payment holiday under the pandemic support scheme – up to September 2020. When Mr D called M&S at the end of the two payment holidays – on 27 October 2020 – M&S couldn't agree a further payment holiday as he'd already had the maximum allowed. And at that time, Mr D told M&S that his furlough payment was to be reduced to 67% from 80% - and he couldn't be sure when he might return to work full time. On the call, M&S looked through Mr D's income and expenditure statement (that he had previously completed). M&S said he had negative monthly disposable income of £412 – and after adjusting it for his reduced furlough, they said his situation had got worse. So – in those circumstances, M&S were justified in offering Mr D a NAH on his account – and that was the right thing to do for him. This included a hold on monthly payments, with no interest or charges being made.

But – the important thing to consider in the context of Mr D's complaint is how and what was communicated to him in the call on 27 October 2020, in subsequent calls, and in letters sent to him. On balance, I don't think M&S were clear enough in their communications with Mr D.

In the call on 27 October 2020, M&S offered the NAH. This meant no payments were needed. The call handler said it *"would reflect on credit file"*. Mr D said, *"I've got no option to be honest"*. She then said interest and charges would be suspended. And that *"you will get a letter to explain"*. The call handler said, *"you will get regulatory letters...that's a legal requirement...but no need to take any action...just keep them for reference."* Mr D replied, *"that's great thank you"*.

I've considered what was said on this important call – and for me, M&S didn't go far enough to tell Mr D about what would happen to his credit records. It's reasonable to have expected M&S to have told Mr D - about the probability that a default would be registered, that missed payments would also be notified to the CRAs; and that such actions would affect his ability to obtain credit for six years. I think M&S should've been clearer with Mr D and gone through all the consequences of the NAH - and then checked his understanding. But they didn't.

M&S also said they'd confirm the NAH details in writing. But they haven't shown us a letter or email that was sent to Mr D – so I assume a letter wasn't sent. If it had been – and if it had spelt out the impacts on Mr D's credit file, that would have been helpful.

M&S sent to Mr D arrears notices on 10 December 2020, and 10 February 2021. They sent a Default Notice on 13 January 2021 and then a Final Demand on 11 February 2021. But on the call on 27 October 2020 – the call handler said clearly that Mr D should ignore any ‘regulatory letters’. So, I think it was reasonable for Mr D to assume he could do just that.

I then listened to the call on 19 January 2021. Mr D said he’d just received the Notice of Default. He asked, *“do I ignore that....can I ignore it...as payments are on hold at the moment?”*. M&S’ adviser said *“yes, we are required to send these letters...as the account is on hold.”* So – on that call, M&S could’ve advised Mr D about the impact of the NAH but didn’t. And again, Mr D was told he could ignore the letters.

I then listened to the call on 9 March 2021. Mr D called to ask when the NAH was ending and what he needed to do to restart payments. He also wanted to know when his 0% balance transfer offers expired (which he had previously). The call handler said a direct debit couldn’t be set up because *“your account defaulted on 2 March 2021”*. And the balance transfer offers weren’t applicable *“because of the default”*. Mr D asked *“what does that mean exactly?”* The call handler said, *“you can no longer transfer balances”*. So – Mr D was left with the impression that the default only affected the balance transfers. I think it was reasonable to expect that M&S should’ve gone further and described the effect on his credit file.

Mr D called M&S again on 13 April 2021 to discuss what to do at the end of the NAH on 27 April 2021. By then, Mr D’s income and expenditure showed he could afford payments of £92.30 per month – which he agreed to. The plan was put in place for 12 months. The adviser said *“...default previously registered with CRAs will last for six years...(and will) affect ability to obtain future credit”*. Mr D said “OK”. M&S said they would write to confirm the arrangement. Mr D asked *“I have three missed payments on my credit file. I assume it won’t show again?”*. The adviser replied, *“it will just show what you owe going forward”*. And so, on this call – there was more information given than before. But - he was then advised that his credit file would only show the balance outstanding. He wasn’t told there was a default showing and what that meant. I think it would’ve been reasonable for M&S to go further and do that.

M&S wrote to Mr D on 13 April 2021 – to confirm the new agreement. The letter said *“Thank you for your offer to repay the outstanding balance on your account. We’re letting you know that we’ve accepted this offer. This is an informal arrangement and starts with the first payment of £92.30 to be made by 6 May 2021 followed by monthly payments of £92.30 on 6th of each month.”* But – there wasn’t any reference to any effect on Mr D’s credit file. I think it’s reasonable to expect M&S to have explained that in the letter.

And so – I don’t think M&S acted reasonably during the period between October 2020 and April 2021. I don’t think the communications were clear and not misleading. Mr D wasn’t told about the impact on his credit file clearly enough and was told to ignore letters. And – M&S didn’t write to Mr D about the NAH in October 2020 as they promised they would; and in April 2021, while the revised payment plan was advised in writing – the letter didn’t mention the impact on Mr D’s credit file.

My provisional decision is that I uphold this complaint. And M&S should remove the default and late payment markers from Mr D’s credit file for the period October 2020 to April 2022 (the end date of the last payment plan). Mr D has said that his account has been passed to a DCA and a mutually agreeable repayment plan agreed.

Responses to the provisional decision:

Mr D agreed with the provisional decision, but M&S didn’t. They said:

- The no affordability hold was the best solution for Mr D as he didn't have sufficient income to make the minimum payments.
- He was told that the arrangement would affect his credit file.
- As Mr D didn't have enough income, he was always likely to default because he wasn't making the minimum payments – and he still isn't. So, he is likely to default again as a result. That would mean that a future default would run for six years from then on – which would prolong the situation for a longer period than if the default ran from its original date (in 2021).

I now need to consider M&S's comments and come to 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 thought about what M&S have said. On the first two points – I can accept that a 'no affordability hold' was the best solution in Mr D's situation. But the provisional decision set out that M&S' communications weren't clear enough; and in some respects, they were misleading - as they told him to ignore the letters about default. And – that was the main reason for the provisional decision to uphold Mr D's complaint. So, I don't agree with M&S on those two points.

M&S raise a valid point about the possibility of a default in the future. So - we asked M&S for Mr D's statements. They show that Mr D has made the agreed payments of £92.30 each month from May 2021 to July 2022. But because the contractual monthly minimum payments are about £108 – arrears are building up and there may be a future time when M&S choose to default Mr D's account because of that. If that were the case, then the default from 2021 would leave him in a better place (because it would stay on his credit file for six years from then, as opposed to six years from say 2023). And so, I must be careful here not to put Mr D in a worse position than he would've otherwise have been.

But I can only deal with Mr D's complaint as he has put it to us – and he wants his credit file cleaned up and the default removed. I understand that and so I am not going to vary from the provisional decision – but Mr D must understand that he will need to make the agreed payments (as to be agreed with M&S); otherwise there is a risk of a future default affecting his credit file.

(continued)

My final decision

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

- Remove the default and late payment markers from Mr D's credit file – from October 2020 to April 2022.
- Bring the debt back from the CRA and agree a mutually agreeable repayment plan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 September 2022.

Martin Lord
Ombudsman