

## **The complaint**

Mrs M complains that Marks & Spencer Financial Services Plc trading as M&S Bank gave her misleading information and failed to refund transactions she didn't authorise.

## **What happened**

Mrs M became aware of a series of transactions on her credit card that she didn't recognise. These payments had been taken monthly and weren't noticed for a few months. Mrs M approached M&S about the payments.

M&S agreed to cancel the transactions but the following month the payment left her account again. Mrs M got back in touch with M&S who agreed to cancel the card which stopped further transactions and they made a partial refund to her.

Mrs M was told that some of the payments were out of time for M&S to challenge. Mrs M didn't think this was correct, she thought that she had 13 months to notify M&S about the unrecognised transactions. There was a discussion about various time limits about disputes and what the terms of her agreement said.

Mrs M complained about M&S's approach to her problem, but they declined to make any further refunds. Mrs M then brought her complaint to the Financial Ombudsman Service for an independent review. It was looked into by one of our investigators who thought that M&S had misapplied the relevant legislation and upheld Mrs M's complaint, recommending that she be refunded the transactions that M&S hadn't yet refunded.

As well as the refund, Mrs M wanted M&S to amend their policy to accurately reflect the appropriate timescales for account holders to challenge unrecognised transactions.

M&S didn't respond to the investigator's outcome, so the complaint has now 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.

The crux of Mrs M's complaint is that she didn't recognise these recurring transactions – essentially she's said she didn't authorise them.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that M&S can hold Mrs M liable for the disputed payments if the evidence suggests that it's more likely than not that she made them or authorised them.

M&S can only refuse to refund unauthorised payments if it can prove Mrs M authorised the transactions. Unless M&S can show that consent has been given, it has no authority to make

the payment or to debit Mrs M's account and any such transaction must be regarded as unauthorised. M&S haven't provided details about the authentication of these payments, which would mean Mrs M is due a refund on that basis alone.

Here Mrs M denied authorising the payments and M&S haven't provided any evidence to show she did. Mrs M's testimony about these unrecognised transactions has been clear and consistent, so considering all the information provided by both parties, on balance I think it's more likely than not that Mrs M didn't authorise these transactions.

These payments were made using a credit facility and were classed as "distance contracts" – that is without either party being present, usually made using either the internet/telephone. The regulations say that in such cases and where there's no evidence that Mrs M acted fraudulently (as is the case here), then she's due a refund. So, M&S are required to refund the outstanding disputed transactions that haven't already been refunded including any associated fees.

Mrs M also wanted M&S to change their policy documents to reflect the appropriate rules. My role as an Ombudsman is to deal with individual complaints about how a business has treated their customer. Whilst I agree that Mrs M wasn't given the full range of options available to her to dispute the transactions, it would be for the regulator to deal with this matter if she wished to approach the Financial Conduct Authority about it.

### **Putting things right**

Overall, Mrs M is due a refund of the outstanding disputed transactions and any related fees that she's paid.

### **My final decision**

My final decision is that I uphold this complaint against Marks & Spencer Financial Services Plc trading as M&S Bank and they're instructed to settle this complaint as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 5 December 2022.

David Perry  
**Ombudsman**