

The complaint

Ms D complains that Marks & Spencer Financial Services Plc (M&S) marked her credit file with missed payment markers and should have agreed a second payment holiday.

What happened

Ms D had a credit card from M&S. Her income was affected by the Covid-19 pandemic and on 7 April 2020, M&S agreed a payment holiday (PH) for three months – under the FCA's pandemic support scheme. On Ms D's statement dated 13 September 2020, the balance was £14,932.92 and the limit was £14,700. In September 2020, Ms D called M&S to ask for an extension to the payment holiday. M&S asked for an income & expenditure (I&E) form. But Ms D didn't want to complete one. She called M&S again on 1 December 2020 and a payment break was agreed for six months – to the end of May 2021. This included no payments, interest, or charges, but credit reference agencies (CRAs) were advised there was an 'arrangement.' In December 2020, Ms D's balance was 14,323 debit.

Ms D complained. She said that she should've been given a second payment holiday (PH) under the FCA scheme without having to complete an income and expenditure form. And then – there would've been no need for the payment break she was given. And because of that, her credit file had been marked. And it was marked with 'missed payments' and not an 'arrangement' – as it should've been. She said this was affecting her career. She also said that M&S's service was poor, and their call handlers weren't empathetic to her situation. She said she was diagnosed as clinically extremely vulnerable (CEV) and M&S were aware of that and should've treated her differently.

In September 2020, M&S said they needed to complete an I&E form to work out what customers could afford to pay before they could agree to a further PH. M&S said Ms D could apply for a PH – but it had to run consecutively from the first PH. On Ms D's second complaint point: in December 2020, M&S said a payment break was the best solution for her, and she was advised then that her credit file would be marked that she had an arrangement with M&S. They said that on the call on 1 December 2020, Ms D accepted that her credit file would be marked. M&S said that all the information had been given to Ms D so she could make an informed decision as to how to proceed.

Ms D didn't agree. She brought her complaint to us. Our investigator said M&S acted reasonably. He felt that Ms D was given the right solution in December 2020 – as she had no income then, nor was it certain when she might return to work. He said that M&S' call handler set out the effect on Ms D's credit file - as he said that the CRAs would be advised there was an 'arrangement'. He had also told Ms D about the process by which a full default could be registered on her credit file.

Ms D didn't agree and asked that an ombudsman look at her complaint.

I reached a provisional decision where I said:

The crux of Ms D's complaint is:

- She believes that M&S didn't need to ask for an income and expenditure form when she asked for a further PH in September 2020; and M&S should've granted her a second PH without one.

- She says she should've been given a PH and not a payment break when she called in December 2020.

- As a result of the payment break, her credit file was marked with 'missed payments' and not 'arrangement' as she was told it would be. She says it's now affecting her professional career.

- She was classed as clinically extremely vulnerable (CEV). M&S were aware of that and should've treated her accordingly.

Income & expenditure form: Ms D says that the FCA's rules for PHs said that a PH should've been agreed if it was asked for – when she called M&S on 10 September 2020. But on this point, I'm afraid I don't agree. To explain, 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 in that way 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 – and firms should then consider whether a longer-term solution would be more appropriate.

In September 2020, the FCA announced that the support scheme would change from the end of October 2020. From then, firms could continue to support customers in difficulty – but it was down to their discretion and customers' circumstances.

Turning to Ms D's specific argument – that M&S should've given her a PH without question. But M&S didn't have to do that. Where a PH might not have been in a customer's best interest – in other words, if the application of interest during the PH would result in greater problems for customers, then a PH wouldn't have been the right solution. The FCA's guidance (dated July 2020) on a second PH says: *"...a further full or partial payment deferral (holiday) would obviously not be in the customer's interests if it would give them a greater overall debt burden compared to other solutions (that might involve reduced or waived interest for example) that could equally meet their needs and that burden would be clearly unsustainable. A payment deferral(holiday) is also unlikely to be appropriate where a customer is unable to repay the deferred amounts within a reasonable time period."* And – for M&S to decide on that, they needed to understand Ms D's financial situation better - by using a I&E form. So - I think that was a reasonable thing to ask for.

On a related point – Ms D says that on the call on 10 September 2020, she found the call handler unsympathetic to her situation and I agree with that. I listened to the call. He didn't explain why a I&E form was needed and was unsure of the requirements of the FCA scheme. He simply read out a section of the FCA regulations. I don't think that was helpful. If he had explained why a I&E form was needed, Ms D may have felt she had received a better service and appreciated what M&S wanted; and the ensuing dissatisfaction and complaint

may not have taken place.

And so – I have considered this and think M&S should pay compensation of £100 for that. I also reviewed M&S' final response dated September 2020. In it, they said that a second PH had to run consecutively after the first PH. That wasn't correct – a second PH could have started at any time, and there's nothing in the FCA's guidance which says otherwise. That was misleading to Ms D.

And so – I think M&S should pay a further £100 for that error.

Payment holiday (PH) Vs payment break: When Ms D called M&S again on 1 December, she was offered a payment break, and not a PH. I've reviewed what happened, and I think that was the right solution for Ms D at that time. I listened to the call. Ms D said she had no income; and she didn't know when she would return to work – she said it might be in March 2021, but she couldn't be certain. In those circumstances, it wouldn't have been responsible for M&S to give her another PH – which would've meant interest (of around £210 per month) would've been added for another three months, with no clear way of knowing if Ms D could afford to pay it. So – M&S proposed a payment break for six months with zero interest and charges, with no payments. On the call, Ms D agreed that was the right thing to do in her circumstances – she said that if things didn't improve for her in terms of a return to work, she may well sell her house to repay her debts. But – I don't think that was a reason for M&S to agree to a PH, as the scheme was designed to bridge a gap in earnings due to the pandemic (rather than repayment by sale of assets). On the call, Ms D said she appreciated M&S' help. And so – I think M&S acted reasonably here.

Credit file impact: On the call on 1 December 2020, M&S' call handler said the payment break would be reported to the CRAs and restrict Ms D's ability to get credit. Ms D asked more questions – and said she couldn't afford for it to show as a default. Ms D accepted there would be a notification on her credit file as she said *"it's getting to the point where my credit file is going to have to take a hit...that's where we are at"*.

The call handler said it would show as *"an arrangement on your credit file"*. We asked M&S more on this - and they confirmed that's what they notified to the CRAs. I also looked at the letters sent to Ms D on 2 December 2020 and 16 December 2020 – and they said *"We have to let the credit reference agencies shown below know that we have entered into an arrangement with you. This could make it more difficult for you to borrow in the future."* And so – I think M&S met their broad obligations – which were to advise Ms D that there would be an effect on her credit file. But Ms D argues that there are 'missed payment' markers on her credit file, and not an 'arrangement' marker.

I considered the relevant guidance on this. The principles for reporting status of accounts is set by the Information Commissioner's Office (ICO) ("Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies"). This states: *"Should a temporary reduction in the payment amount be jointly agreed between you and your lender, this 'arrangement' will be recorded at the CRAs. Depending on the period and amount of the arrangement, arrears may continue to be reported. Such temporary arrangements may last for some time but are generally expected to revert to the contracted terms at some future point. For such accounts arrears may continue to be calculated in accordance with the contracted terms."* This means that firms (such as M&S) should report an arrangement for the period it runs, with arrears also being reported where payments have been missed.

We asked M&S more about this aspect – and they showed us that they advised the CRAs that Ms D's account was in an 'arrangement' for the months of December 2020 through to February 2021 – i.e. three months. Ms D has shown us her credit file – and that's what was recorded on it. But M&S had agreed a payment break for six months – so I think it would've

been reasonable for M&S to report Ms D's account as in 'arrangement' for that six month period, not just for three months. After that, they reported Ms D's account as being in arrears – which it then was, as the monthly contractual payments weren't being made in full. So that was reasonable.

And while I can't say how prospective lenders view a missed payment as opposed to an arrangement – it's fair to say that the effect of a default has much more of an impact on someone's credit rating than arrangement or missed payment. But it is reasonable that M&S change Ms D's credit file to show she was in a 'arrangement' between December 2020 and May 2021. And as M&S made an error in that respect, I think a further payment of compensation of £100 should be made, as it has clearly caused Ms D some anxiety and concern.

And on the calls – it's clear that Ms D wanted to avoid a full default – and I can understand that. She asked about that as she said, "*so it won't be shown as a default?*". The call handler explained that would only happen after six months of missed payments and he recorded Ms D's concerns about that on her customer file – so a default wouldn't be registered without any notice. He explained to her the default process - whereby there would be a notice of default, and then a final demand before any default was registered. And - M&S didn't register a default, which is what Ms D's main concern was.

I listened to the further calls that Ms D had with M&S on 13 January 2021, 14 January 2021, and 20 January 2021. On the calls, Ms D asked that M&S listen to the call on 16 December 2021 – she said M&S said there had been a 'coding problem' and that must have led to the wrong information being sent to the CRAs. So – I listened to the call on 16 December 2020 in the light of that – and the call handler said that there may have been a coding problem - which may have led to them calling Ms D – but I haven't seen anything to suggest that caused the wrong information to be advised to the CRAs.

On the calls between 13 January 2021 and 20 January 2021 – I have to say that Ms D received poor service. M&S' call handlers were indecisive about the payment break that Ms D was on, nor how it affected her credit file. If they had got to grips with Ms D's situation and her concerns, her questions could've been answered more effectively. As it was, she became more frustrated and anxious. Ms D stated to M&S that she had spent four hours on the phone since the beginning of December 2020 – and I can see that was the case. So, for this, I think M&S should pay some compensation – I have included this within the £100 I am awarding for the call in September 2020.

Clinically Extremely Vulnerable: Ms D says she was CEV and shielding. It's not clear to me what she told M&S about her condition – but said to them that it was her CEV status that prevented her from working. And for me, that's the important point – her CEV meant she had no income, and that's what was important for M&S to understand to give her the right solution. We expect firms to act differently and to take into account a customer's vulnerability if it is considered that, for example, they cannot engage with their financial situation and make sensible, informed choices about their finances. But - I don't think that was the case here for Ms D. So – I don't think her CEV meant that M&S should've treated her differently to how they did.

In summary: I don't think M&S made any errors in asking for an I&E form in September 2020; and provided the right solution in December 2020 by agreeing to a payment break. But they should've advised the CRAs that an arrangement was in place for six months (not three months). M&S made a misleading statement in their final response. And I do think that Ms D received poor service on the calls in September 2020 and December 2020. Our service has set down some criteria for deciding awards of compensation. This says an award up to £300 might be suitable where there have been repeated small errors, or a larger single mistake,

requiring a reasonable effort to sort out. I think what happened here falls within that definition. And so, for M&S' errors and for accumulated poor service, I think that a payment of compensation of £300 is appropriate.

Responses to the provisional decision:

Ms D didn't respond. M&S did. They said they agreed to amend Ms D's credit file to show she was in arrangement from March to June 2021. They also said that the build-up of arrears shown on Ms D's credit file from December 2020 to November 2021 was recorded accurately and should remain. M&S said they'd delayed defaulting Ms D's account – which would normally have happened in May-June 2021. M&S agreed to pay compensation of £300.

I now need to make 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.

M&S have agreed with the provisional decision – as they agreed to mark Ms D's credit file as in arrangement from March 2021 to June 2021 (it had already been so marked for December 2020 to February 2021). But they also mentioned that the 'arrears' markers should remain on Ms D's credit file. This is an accurate recording of what happened – so I agree with that. Other than that, my final decision is consistent with the provisional decision.

My final decision

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

- Amend Ms D's credit file to show as in arrangement between March 2021 and June 2021.
- Pay £300 for distress and inconvenience. Ms D should advise M&S how she wishes this to be paid – to her credit card account or bank account. If the latter, she should advise her bank account details.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 20 December 2022.

Martin Lord
Ombudsman