

The complaint

Mrs M complains that Marks & Spencer Financial Services Plc trading as M&S Bank has unfairly recorded adverse information on her credit file in regard to her loan account after she agreed to a payment arrangement.

What happened

Mrs M has explained that she contacted M&S Bank as she was experiencing financial difficulties and couldn't make her monthly repayments. She was placed on a long term no affordability arrangement for six months and told that no payments were expected until February 2024. However, following this she received 'missing payments' notices. She then noticed that further adverse information had been recorded on her credit file, including a default. She said that when she contacted M&S Bank, she had explained her financial situation was short term. She said this issue is causing her a lot of stress.

M&S Bank issued a final response letter dated 11 December 2023. It said that when the long term no affordability arrangement was set up in August 2023 it was explained to Mrs M that the arrears would continue to build on the account and would be recorded on her credit file. It was then explained that a default notice and final demand would be sent if Mrs M was unable to bring the account up to date. It said that as the terms of the arrangement were correctly explained the default had been recorded correctly.

Mrs M wasn't satisfied with M&S Bank's response and referred her complaint to this service.

Our investigator didn't uphold this complaint. He said that having listened to the call when the long term no affordability arrangement was set up Mrs M was told about arrears building on her account and this being reported to the credit reference agencies, and about a default notice and final demand being sent. He further noted that when Mrs M contacted M&S Bank on 9 September 2023 she was told that even though the account was on hold the loan would default as payments weren't being made. Given this he thought M&S had followed the correct processes and applied the default correctly.

Mrs M didn't agree with our investigator's view. She said that she had wanted a six-month break to allow breathing space before resuming her payments and she had kept M&S Bank informed of her situation. She said the default shouldn't have been applied while she was in the arrangement. She said she hadn't been listened to and had been treated unfairly by having her account defaulted while she had explained her situation and was in an arrangement after which she would have resumed her payments.

Mrs M contacted this service to say that her family had agreed to settle her outstanding loan balance in full if M&S Bank agreed to remove the missed payments and default from her credit file. M&S Bank didn't agree to Mrs M's offer.

As a resolution hasn't been agreed, this complaint has been passed to me, an ombudsman, to issue 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.

I can understand why Mrs M is upset that adverse information has been applied to her credit file and I do not underestimate the stress this issue will have caused. I have considered Mrs M's comments that M&S Bank didn't show her any empathy and that she thinks it unfair for M&S Bank to have taken the actions it did when she had kept it informed of her circumstances. However, having done so, I do not find I can uphold this complaint and I have set out my reasons for this below.

Mrs M has said that her payment history from the start of the loan should be considered alongside her actions to keep M&S Bank informed of her circumstances. As part of my assessment, I have considered this. Mrs M was provided with a £25,000 loan in July 2022 repayable over 60 months. She maintained her repayments until April 2023 when a payment was returned. M&S Bank spoke with Mrs M and a debit card payment was made and she confirmed at that time she wasn't in financial difficulty. Mrs M's May 2023 payment was made.

In June 2023, following an income and expenditure assessment being undertaken, a payment break was applied to Mrs M's account. I have listened to the call on which the payment break was set up and Mrs M is told that during the payment break, arrears will still build on the account. A letter was sent with the details of the payment break and this explained that while no payments were expected during the time the payment break was in place, arrears would increase. On the call it was explained that neither a default notice nor final demand would be issued while the payment break was in place but once this had finished if a suitable repayment arrangement for the arrears wasn't agreed these notices would be issued. Considering the information provided to this point, I find that M&S Bank treated Mrs M fairly by assessing her income and expenditure and providing a payment break and that it provided clear information about when a default notice could be issued.

Following the end of the payment break, Mrs M contacted M&S Bank as she said she couldn't afford to repay the arrears. She explained that she was behind on other bills and had an arrangement for her mortgage. An income and expenditure assessment took place and due to Mrs M having minimal disposable income it was agreed that a long term no affordability arrangement would be put in place. Based on the information received on the call, I find this was a fair option.

Mrs M's complaint is that during the time the arrangement was in place adverse information was recorded on her credit file, including a default. I can understand that this will have been upsetting but having listened to the call when the arrangement was put in place, it was explained to Mrs M that while she wasn't expected to make payments, her arrears would continue to build and would be reported to the credit reference agencies. It was also explained that a default notice could be sent. The letter that was sent to Mrs M to confirm the arrangement also included information explaining that as part of the usual recovery process Mrs M could receive a default notice and that this would explain the action she needed to take. It further said if the payment required in the default notice couldn't be made a default could be recorded with the credit reference agencies. So, based on both the call and the subsequent letter, I find that Mrs M was provided with the information she needed to be aware that even though an arrangement was in place for her loan account that the arrears would continue to build and that the account could be defaulted.

Due to the arrears on Mrs M's account, a default notice was issued dated 29 August 2023. Mrs M called M&S Bank on 9 September to discuss this. I have listened to the call, and it

was explained that while a hold had been placed on Mrs M's account, this wouldn't stop a default being applied. Mrs M raised the issue of making a payment given her account was on hold and was told she didn't need to make a payment. While I can understand she may have thought this meant that further action wouldn't be taken, as M&S Bank had already explained that the account would default without the payment, I do not find I can say M&S Bank did anything wrong by taking further action.

On 23 September 2023 a final demand was issued. So, while I understand that Mrs M feels M&S Bank should have given her more time and not applied adverse information to her credit file while her loan account was in an arrangement, I do not find that it did anything wrong by taking the action it did. Mrs M was told that her account would continue to build arrears and could default and was sent letters setting out the action she needed to take to prevent this. So, I cannot say that M&S Bank didn't follow its usual process or didn't treat Mrs M fairly through this.

I know my decision will be a disappointment to Mrs M, but in this case, I do not find I can uphold this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 19 July 2024.

Jane Archer
Ombudsman