

The complaint

Miss M is unhappy that Marks & Spencer Financial Services Plc trading as M&S Bank ('M&S') declined her application for a credit card when she'd been pre-approved – and then didn't tell her why.

Miss M wants to know why she was declined and for M&S to do more to look after their customers. She's also concerned about how this matter impacted her credit file.

What happened

On 1 April 2024 Miss M used an eligibility tool on a third-party website which said she was pre-approved for a credit card with M&S. But when Miss M clicked through to M&S's website to make an application, this was declined.

Miss M telephoned M&S the same day and was informed she was auto-declined due to a lock on her credit file, and could remove this and try again. Miss M removed her credit lock and re-applied, but M&S declined her application a second time.

Miss M telephoned M&S to ask why, as she thought she'd been pre-approved for the card. M&S said she hadn't met M&S's scoring limit for lending, and this could be due to several factors. M&S refused to give further details and referred Miss M to her credit file. M&S offered to remove the hard search from Miss M's credit file in relation to her first application.

Miss M complained to M&S, saying they shouldn't allow third party websites to spread misinformation about eligibility for M&S credit cards, and that she wanted their full reasons for declining her application. She referred to M&S's responsibilities set out in the Financial Conduct Authority's Handbook of rules and guidance ('FCA Handbook').

On 10 April 2024 M&S rejected Miss M's complaint, saying Miss M hadn't met their business sensitive lending criteria.

Miss M referred her complaint to our service, but our investigator didn't think M&S had done anything wrong. Miss M disagreed and reiterated her concerns – adding that M&S's first hard search remained, and they'd checked her credit file again. Miss M was also concerned she'd been declined because of the voter roll and her address, as she'd recently moved house.

My provisional findings

I recently issued my provisional findings in relation to this complaint, as follows:

"I have looked at all the evidence and information made available to me to decide what is fair and reasonable in the circumstances of this complaint.

In doing so I intend to uphold Miss M's complaint in part. I'll explain why.

I think it would be helpful to say that it is not my role to interfere with a firm's processes, systems or controls, nor to fine or punish businesses, as that is for the Financial Conduct Authority ('FCA') to consider as the regulator.

It's my role to decide what is fair and reasonable in the circumstances of this complaint, and in doing so I've taken into account the relevant law and regulations, the FCA's rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I recognise Miss M's concern that M&S should do more to protect their customers from being pre-approved for their credit cards by third party websites when they'll be declined by M&S. As I've set out above, it's outside my remit to consider and direct that M&S take this sort of action and I'm unable to hold M&S responsible for a third party's actions. What I'm looking at is whether Miss M was treated fairly and reasonably by M&S in the circumstances of her individual complaint. I would note, however, that the third party's website explains pre-approval doesn't mean a credit card from the lender is guaranteed.

On M&S's website, it states:

"If you decide to go ahead with a full Credit Card application after you receive your quote, we will carry out a full credit reference agency check and affordability assessment. We reserve the right to decline any application for credit facilities or to offer to lend on different terms."

So I am inclined to say that Miss M could reasonably have been aware from the information available to her that her application was subject to further scrutiny and wasn't guaranteed to be successful.

I think Miss M's main concern is that M&S's reasons for declining her application don't help her work out what's gone wrong here, which doesn't help her if she wants to apply for a credit card elsewhere.

Looking at the Standards of Lending Practice, which M&S voluntarily subscribe to, I would expect M&S to give Miss M the headline reason for declining her application. I'm inclined to say that M&S have given Miss M the reason – that she didn't meet their internal scoring threshold.

I acknowledge Miss M thinks M&S should be more specific than a headline reason, but I wouldn't expect M&S to disclose any information to the public which reveals specific details of their lending criteria, as this is commercially sensitive and might harm their business.

I can't see that Miss M's second application was reviewed by M&S's underwriting team. Instead, Miss M was told during a call with M&S that as M&S's system had declined her application during an "automated risk assessment process" there was nothing more that M&S could do in these circumstances.

The Information Commissioner's Office ('ICO'), an independent body set up to protect consumer information rights, says that consumers have the right to understand the reasons behind automated decisions made about them. And where those automated decisions affect important matters – such as Miss M's access to credit here – then consumers have the right to some human intervention.

I'm minded to say to say that it would have been good practice for M&S to review Miss M's second declination in these circumstances.

Also as part of their obligations under the Consumer Duty, which the FCA introduced as a higher standard for business's engagement with their customers, I'd expect M&S to consider how they could help Miss M move forward with her financial objective to obtain a credit card. I note M&S signposted Miss M to her credit file which I think was helpful in the circumstances. But they could have gone further than this, and I think it would have been good practice to signpost Miss M to an independent and reliable third-party source of help, such as MoneyHelper.

Turning to the impact on Miss M's credit file, I can see that M&S offered to remove the hard search in relation to Miss M's first application which, due to no other reason than Miss M's credit lock, was auto-declined. I can see from M&S's records that M&S contacted the Credit Reference Agencies on 22 May 2024 to ask that this be removed.

I acknowledge Miss M's more recent concern that three searches remain on her credit file and that M&S searched her again on 11 June 2024. From the information available to me it seems the purpose of this search was to check the first hard search had been removed – and this most recent search won't leave a visible record to prospective creditors.

M&S confirmed to this service on 12 June 2024 that there are now no hard searches by M&S on Miss M's credit file. Miss M can confirm to me in response to my provisional decision whether she agrees this is the case.

Having considered the points set out above, I intend to say that M&S have not treated Miss M fairly here as M&S didn't offer her a manual review of her second application, and didn't signpost Miss M to any third party sources of help that would potentially enable her to move forward with her financial objective. I'm inclined to say that Miss M has spent more time and effort trying to sort this matter out with M&S than I'd reasonably expect.

To put things right I propose that M&S now engage with Miss M and, if she wishes it, undertake a manual review of Miss M's second declined application. Miss M should be aware that I am not requiring M&S to agree to lend to her – rather I propose that M&S give her application human consideration.

Further, I propose M&S pay Miss M £100 for the distress and inconvenience this matter has caused her."

Responses to my provisional decision

In my provisional decision, I asked both M&S and Miss M to respond within a set timeframe if they had any further comments or evidence that they would like me to consider.

M&S accepted my provisional decision.

Miss M said she wanted the manual review but until this was completed, she couldn't say if she accepted the proposal that M&S pay her £100 for distress and inconvenience. Miss M said that had M&S been able to offer her a balance transfer credit card at the time it was questionable if she would have paid interest on other credit cards, and she might be in a better financial position now.

Miss M didn't set out any ongoing concerns about what M&S were reporting on her credit file.

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 acknowledge that Miss M doesn't think my proposal to put things right goes far enough, and she'd like me to consider her potential financial loss.

My remit is to resolve disputes depending on what is fair and reasonable when looking at the circumstances of each case. So where I decide that something's gone wrong, I can make a proposal for the business to put things right as far it is practicable to do so.

I recognise this will disappoint Miss M but I won't consider making any award for any financial loss here.

My main reason for this is that the financial loss Miss M is concerned about is, as she fairly put it, 'questionable' – it hasn't been evidenced. I wouldn't look to make an award for financial loss here without clear evidence that the loss directly flowed from what happened with M&S. And I'd also have to consider whether, in all the wider circumstances, an award for financial loss was fair and reasonable.

I acknowledge Miss M feels she can't consider her position regarding her loss before the manual review takes place. Given we are informal dispute resolution service, and an alternative to the courts, I don't think this would be a proportionate way for this service to resolve this dispute.

Taking all the above into account, my decision remains to uphold Miss M's complaint in part. M&S should now undertake a manual review – the outcome of which isn't guaranteed – and pay Miss M £100 for her distress and inconvenience. This is not to compensate Miss M for any financial loss, rather it is a monetary gesture to recognise that Miss M was impacted by the way her second application was handled.

Putting things right

Marks and Spencer Financial Services Plc trading as M&S Bank should take the following action:

- Pay £100 to Miss M for distress and inconvenience
- Engage with Miss M and undertake a manual review of Miss M's second declined application

My final decision

For the reasons I have outlined, I uphold Miss M's complaint in part and require Marks and Spencer Financial Services Plc trading as M&S Bank to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 16 December 2024.

Clare Burgess-Cade
Ombudsman