

The complaint

Mr M complains that Marks & Spencer Financial Services plc trading as M&S Bank ('M&S') mistakenly declined his application for a credit card and won't remove their hard search from his credit file.

Mr M wants the record of M&S's hard search on his credit file to be removed.

What happened

On 3 May 2024 Mr M applied online for an M&S credit card, but his application was rejected. Mr M rang M&S on 9 May 2024 and was told he didn't meet M&S's internal lending criteria. He raised a complaint, saying he'd like his application to be approved or the hard search on his credit file to be removed.

M&S's underwriting team agreed to review Mr M's application but didn't change their lending decision.

M&S responded to Mr M's complaint on 16 May 2024, saying they had relied on their internal scoring criteria to reach their lending decision, and listed some of their considerations. M&S wouldn't remove the record of their hard search on Mr M's credit file because he'd agreed to it as part of their application process, and it accurately reflected they'd checked his credit file.

Mr M referred his complaint to our service, saying M&S's system had made an error declining him for the credit card. He said his income and expenditure evidenced he could afford the credit card, so M&S's hard search should therefore be removed. He no longer wanted the credit card.

Our investigator didn't uphold Mr M's complaint, as they didn't think M&S had treated him unfairly by acting in accordance with their usual processes and good industry practice.

My provisional findings

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

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so I've taken into account the relevant law and regulations, the regulator's rules, guidance and standards, codes of practice and, where appropriate, what is considered to have been good industry practice at the relevant time.

I recognise this will disappoint Mr M, but I don't intend to uphold his complaint, although for slightly different reasons to our investigator. I'll explain why.

I acknowledge Mr M's depth of feeling that M&S's system encountered an error when it declined his application for a credit card. However, I've not seen evidence to suggest this is the case.

The regulator, the Financial Conduct Authority ('FCA'), requires firms to undertake creditworthiness assessments in order to lend responsibly, but ultimately it is for M&S to decide the criteria they apply to their lending decisions, and this is not something I can interfere with.

However I can look to see if M&S treated Mr M fairly and reasonably when assessing his application for a credit card.

I can see from M&S's records that M&S's system applied their internal lending criteria to Mr M's application and declined it because he didn't meet their lending score threshold. I can't see anything to suggest M&S's system went wrong or that Mr M has been treated differently to any other applicant when he applied for the credit card.

The Information Commissioner's Office ('ICO'), an independent body set up to uphold information rights, says when a consumer has been subjected to an automated process to decide an important matter – like Mr M's credit application here – they have a right to human intervention.

M&S's records provide evidence that their underwriting team looked over their automated decision and didn't find any reason to overturn it. I'm satisfied there was some human involvement and I'm inclined to say M&S followed good industry practice here.

I recognise that Mr M doesn't accept M&S's lending decision and maintains he can clearly demonstrate he can afford the card. Affordability is only one of M&S's considerations here and ultimately they can decide who they want to lend to – just in the same way Mr M can decide who to apply to.

The ICO says Mr M has a right to understand the reasons behind automated decisions, and this is mirrored by the Lending Standard Board's 'Standards of Lending Practice for Personal Customers', which M&S should follow. This says, amongst other things, that firms should give customers the main reason for refusing credit, where possible.

I'm minded to say M&S have done what I'd expect here. M&S explained that Mr M hadn't met their internal score threshold for lending on this occasion and said he could re-apply in six months. And M&S told Mr M what they'd considered when they assessed him. I wouldn't expect M&S to give more details than they have here, given this will be commercially sensitive information.

I consider the expectation that firms will engage with customers in the way I've described above is reinforced by the introduction of the Consumer Duty, set out at Principle 12 of the FCA's Handbook of rules and guidance, which requires firms to "act to deliver good outcomes for its customers." In the context of Mr M's case this means I'd expect M&S to consider what they could reasonably do to support Mr M to move forward with a credit card application elsewhere, if Mr M didn't know what his options were or where to get advice.

I'm inclined to say that giving the reasons behind Mr M's declined application goes part way to achieving this. I think M&S could have considered going further, by signposting Mr M to a reliable and independent third party source of help, such as MoneyHelper.

Overall, I'm minded to say that M&S have assessed Mr M's application fairly, in line with their processes.

I acknowledge Mr M wants the hard search on his credit file to be removed, given he doesn't have the credit card.

The ICO places a responsibility on M&S to report accurate and up to date information to the credit reference agencies. I wouldn't expect M&S to remove the hard search as Mr M intended to apply for the credit card and I haven't seen evidence of any system error.

And I'm minded to say Mr M was reasonably made aware that M&S's hard search would appear on his credit file, regardless of the outcome of his application. I say this because on the credit card application page of M&S's website, there is a 'before you apply' information box, which states:

"Before you apply

To apply for an M&S credit card you must:

- Be happy for us to undertake a credit search and credit scoring"*

The box contains links to 'Important Documents' – namely the account terms and conditions, the credit card summary box, and M&S's privacy notice.

M&S's privacy notice says:

"When CRAs receive a search from us, they'll place a search footprint on your credit file that may be seen by other lenders."

Below the 'before you apply' box, there is a menu of 'Other Important Documents' containing a document about credit scoring, which states:

"If your application is declined this will not be disclosed to the CRAs. However the CRAs will keep a record of the search on your credit file which may be seen by other organisations."

I understand Mr M is concerned about the impact the hard search may have on future credit applications. However any potential lenders will have their own lending criteria so it's up to them whether the hard search would have an impact, amongst all the other factors they may consider. It may reassure Mr M to know that hard searches normally disappear after 12 months and any lenders checking Mr M's credit file won't see the outcome of his application to M&S.

In the circumstances I don't think it's unreasonable for Mr M's credit file to reflect M&S's hard search.

For the reasons I have given, I intend to say that M&S have treated Mr M fairly and reasonably in the circumstances of this complaint, and I won't be asking M&S to take any action."

Responses to my provisional findings

I asked both M&S and Mr M to let me know if there was anything further they wished me to consider before I issued a final decision.

M&S had nothing to add. Mr M said he strongly disagreed with my provisional findings which he thought were wrong.

Mr M said that my provisional decision was essentially that M&S could reject his application "just because they can." Mr M maintained that M&S shouldn't be able to reject a credit card application where it was financially incorrect to do so, and he expressed frustration that this would leave consumers like him with black marks on their credit files.

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.

Having done so, I'm not persuaded to depart from my provisional findings and I've decided not to uphold this complaint. I'll explain why.

I understand Mr M's frustrations here given what he says about his financial standing. It may help Mr M to know that a credit score is a tool produced for consumers to gauge their general financial health and isn't used by lenders who will have their own scoring systems for assessing their lending decisions. These scoring systems are based on their lending criteria, which they set as a business to attract the customers they wish to do business with.

So just because Mr M has a high credit score, this doesn't guarantee that he will automatically satisfy M&S's lending criteria for a credit card. And even if we put credit score to one side and looked at the ins and outs of Mr M's financial situation, this would only be part of M&S's assessment, which will consider more than just affordability.

As I've said above, I can't interfere with M&S's lending criteria, as this is something for the FCA to consider as the regulator. I can, however, consider whether M&S's lending criteria has been fairly applied to Mr M and whether it's fair for Mr M's credit file to reflect that M&S performed a hard search to assess his application.

Having reviewed this matter I am satisfied that M&S have treated Mr M fairly in the circumstances of this complaint, for the reasons set out in my provisional findings. So, I won't be asking M&S to take any action here.

My final decision

For the reasons I have outlined, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 February 2025.

Clare Burgess-Cade
Ombudsman