

## **complaint**

Mrs B complains that Marks & Spencer Financial Services Plc ("M&S") sold her debt to a third party without telling her.

## **background**

Mrs B said that she got her credit report, and discovered a new account on there, which she didn't recognise. She said that when she rang the debt collection company named on her credit report, it told her that M&S had sold her debt to it some time ago. She said she was shocked that M&S hadn't told her about this. When she looked again at her credit file, she saw that her debt to M&S was no longer there.

Mrs B said that she contacted M&S about this, and it said that she still owed money to M&S. But the amount that M&S said she owed was less than the amount that the debt collection company said she owed. She said she spent a very worried couple of days thinking that perhaps these were two separate debts, so she still owed M&S and owed the debt collection company too, before M&S confirmed that it had sold this debt.

M&S said that it was allowed to sell Mrs B's debt. It made sure it only sold accounts to reputable companies. Mrs B's account had defaulted, and she was making payments towards this debt which were managed by a debt management charity. M&S said that in these circumstances, it wouldn't ask Mrs B to pay off her debt before it was sold.

There was some confusion about who M&S had written to about the sale of the debt. M&S has now confirmed that it didn't write to either Mrs B, or to the debt management charity which is helping her, itself. It said that it asked the debt collection company to write to Mrs B for it. It had given that company the right address for Mrs B. But M&S didn't have her new name. She hadn't updated that with M&S.

The debt collection company didn't send the letter to the right address for Mrs B. M&S says that this company may run a trace when it gets a new account, to try to find out where the person lives. It might then write to the address it had traced Mrs B to, not the one it is given by M&S.

M&S told us that either it or the debt collection company had told the charity that's helping Mrs B with her debts that it ought to start paying the debt management company. It said that it had done this at the time of the sale. But it hasn't been able to show us any letters that said this.

The charity has kept paying M&S, but M&S said that Mrs B didn't need to worry about that, because all those payments had been used to reduce Mrs B's debt. M&S says that the debt collection company that had bought Mrs B's debt has now definitely written to the charity, and the charity would send her payments to that debt collection company from now on.

M&S said that it realised that Mrs B was still receiving statements from it. That shouldn't be happening, it was sorry about that. It asked her to send the statements back, so it could find out what had gone wrong.

Our adjudicator didn't uphold this complaint. She said that M&S had given the debt collection company Mrs B's correct address but it had written to her old address. She said that M&S took the necessary steps when selling her debt. The terms of the account don't require M&S

to give Mrs B advance notice that her debt is going to be sold. And M&S gave Mrs B's details to the debt collection company, expecting that it would contact Mrs B. M&S doesn't have to give Mrs B the chance to pay off her debt before it's transferred either.

M&S has accepted that it sent statements in error, but our adjudicator said that there hasn't been any financial loss or an unreasonable level of distress just because of that. And M&S has forwarded all Mrs B's payments to the debt collection company. So our adjudicator thought that M&S hadn't done anything wrong.

Mrs B didn't agree with that. She said that M&S had failed because it hadn't told either her or the debt management charity that was helping her, about the sale of her debt. She said it had a legal responsibility to do that. And she said that this had caused her significant distress.

Our adjudicator didn't change her mind, so the case was passed to me for a final decision.

### **my provisional decision**

I issued a provisional decision on this complaint and explained why I proposed to uphold it. This is what I said then:

- M&S is responsible, when a debt is sold, for informing the person who owes money that their debt has been sold. It doesn't have to do that before it makes the sale. But it does have to tell Mrs B if there has been a sale.
- In this case, M&S didn't do that itself. It asked the debt collection company to do this for it. It's ok for M&S to ask someone else to do this for it. But M&S is still responsible for making sure this happens.
- In this case, we knew that the debt collection company wrote to the wrong address.
- M&S said that it had given the right address for Mrs B to the debt collection company. But it told us that Mrs B hadn't updated her name with M&S. It still held her old name. So that's the name that the debt collection company looked for. It found that name at one of Mrs B's previous addresses, and sent the letter telling Mrs B about the sale to that previous address.
- I didn't know when Mrs B changed her name, so I didn't know whether she should've told M&S her new name or not. But I did know that M&S had Mrs B's current address, and her full address history. If it had written this letter itself, it would've gone to the right address. Or if the debt collection company had asked M&S about Mrs B's address, then M&S could've told it that the address it had found for her was an old address, and the letter would then have gone to the right address. But M&S asked the debt collection company to do this job for it. And that company sent the letter to the wrong address.
- I could understand how the debt collection company made this mistake. But it was still a mistake, it was a mistake that M&S itself wouldn't have made, and it was a mistake that M&S is responsible for. So I thought that M&S should pay Mrs B some compensation because she didn't receive the required notice from M&S that her debt was sold.
- I thought it was worth saying though, that whether Mrs B got the letter or not, this sale would still have gone ahead. Mrs B couldn't have objected to it, and although I

understood she was hoping at the time that she would shortly have the money to pay the debt off, she didn't quite have it at the time the debt was sold. All that would've been different, if no mistake had been made in this case, is that Mrs B wouldn't have been worried by a new debtor appearing on her credit file.

- I thought that M&S should pay Mrs B £50 for its part in causing her that worry.
- Like our adjudicator, I didn't think that Mrs B was caused extra worry because she was getting statements from M&S, after those should've stopped. So I didn't think that M&S had to pay Mrs B more compensation because of that.
- I knew that Mrs B's payments were still going to M&S, some time after they should've started going to the debt collection company. I didn't know when the debt collection company first wrote to Mrs B's debt management charity to ask it to start making its payments to it, rather than M&S. But if there was a mistake about that, I didn't think that was M&S's fault. The debt collection company wasn't acting on behalf of M&S when it did that.
- I was pleased to see that M&S has confirmed that all the money that Mrs B paid to M&S has been used to reduce her debt. Including the money she paid after the debt had been sold.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Mrs B agreed with my decision, and said she had nothing further to add. M&S didn't agree.

### **my findings**

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

M&S said it gave the debt company all the correct address information when it sold Mrs B's debt on. It said that at that point, it had discontinued the relationship with Mrs B and was not responsible for contacting her.

M&S said it was the debt company's responsibility to send the letter to Mrs B to tell her that her debt was no longer with M&S and it was taking over the balance. That company didn't use the current correct address that M&S had given it, to contact Mrs B. This was the debt company's error. M&S said it's not its responsibility to check that a debt company have proceeded correctly once the debt has been sold.

M&S also repeated its argument that the terms and conditions of the account mean that Mrs B must inform it of any changes within 30 days. It said she'd never told M&S that she had changed her name. The debt company obtained her previous address by doing a search on her previous name.

M&S said therefore Mrs B and the debt company were at fault. Mrs B for not informing M&S of her change of name, and the debt company for not using the correct address to contact Mrs B. M&S said that the debt company was responsible for this error and should compensate accordingly.

My provisional decision set out why I didn't think that was right. I've explained that M&S has a responsibility, under the relevant law, to write to Mrs B to tell her that the debt is being

sold. It can ask a different company to do that for it. But M&S doesn't stop being responsible, under law, for making sure that letter is sent, just because it's asked someone else to send it. And that means that if the company that M&S asked to send the letter doesn't do a good job, for whatever reason, then M&S is still responsible for the mistake.

M&S also said that Mrs B was at fault for not telling it that she had changed her name. I said in my provisional decision that I don't know when Mrs B changed her name. M&S hasn't told us that. So I don't think M&S has actually shown that Mrs B changed her name over 30 days before the letter was issued. But in the end, I don't think that matters to the outcome of this case. As I said in my provisional decision, M&S had Mrs B's current address, and her full address history. If it had written this letter itself, it would've gone to the right address. It didn't. A mistake was made. M&S is still responsible for that mistake, because the company that made it was acting for M&S when it made the mistake. And that's why I still think that M&S must pay Mrs B compensation.

### **my final decision**

My final decision is that Marks & Spencer Financial Services Plc must pay Mrs B £50.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 8 February 2019.

Esther Absalom-Gough  
**ombudsman**