

## **complaint**

Mr C complains that Marks & Spencer Financial Services Plc allowed the balance on his account to exceed his credit limit. Mr C doesn't agree that his ex-wife used her additional credit card to buy a car.

## **background**

Mr C has concerns about unauthorised transactions on his credit card account. He says M&S didn't help him when he complained about thefts from his account.

Mr C's ex-wife, Mrs A is an additional card holder. M&S says Mrs A used her credit card to buy a car in June 2015. The bank reversed a series of credits to Mr A's account after the paying banks said they were made fraudulently.

Our adjudicator didn't recommend that Mr C's complaint be upheld. He thought Mr C or Mrs A used the card to pay for the car. Our adjudicator explained that Mr C's account exceeded its' credit limit because some credits were reversed and a direct debit payment was returned unpaid. Our adjudicator didn't consider M&S treated Mr C unfairly. And in the circumstances he thought the bank was entitled to close Mr C's credit account.

Mr C is unhappy with our adjudicator's conclusions. He thinks the bank should've done something to stop his account from exceeding the credit limit. Mr C wants M&S to give further evidence that it was Mrs A who used her credit card to buy a car.

## **my findings**

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 agree with the conclusions of our adjudicator.

In cases like this, where the evidence is inconclusive, I reach my decision on the balance of probabilities. That means I'll look at all the available evidence and decide what I think is most likely to have happened.

### *purchase of car*

Mr C appears to have given M&S conflicting information about the car in various calls to the bank. At one stage he agreed his ex-wife bought the car. I appreciate Mr C now says she didn't use her card but I can't reasonably find to be the case. I say this as the car was paid for using Mrs A's additional M&S card via Chip and PIN. The showroom says it has a receipt and a copy of Ms A's driving licence.

As Mr C is the main account holder, he is liable for purchases made by the additional cardholder.

### *fraudulent transactions and credit limit*

M&S reversed a number of credits made to Mr C's account. Various banks recalled the payments on behalf of customers whose accounts had been compromised. And a direct debit payment of over £4,400 was returned unpaid. I can't reasonably find the bank has

done anything wrong even though this has caused the balance on Mr C's account to increase.

*lost and stolen cards*

Mr C says he reported his card as stolen. But M&S doesn't have any record of this and Mr C hasn't given this service any details of how or when the theft occurred.

Mr C also says his ex-wife reported her card as lost. But when M&S spoke to Mrs A in July 2015, she confirmed she still had her card.

Mrs A later said she didn't have the card and instead had taken a photo of it. But as the card was used to make a purchase via Chip and PIN a few days after it was used to pay for the car, I'm not persuaded the card was lost. Again, M&S doesn't have a record of the loss being reported.

Based on the evidence I've seen, I can't reasonably find Mr C isn't liable to repay the balance on his credit card account. If Mr C remains certain someone other than Mrs A somehow gained access to his credit card or account details I suggest he contacts the police if he hasn't done so already.

**my final decision**

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 April 2016.

Gemma Bowen  
**ombudsman**