

complaint

Mr G complains that Marks & Spencer Financial Services Plc (M&S) won't refund several transactions that were made on his credit card. He says he didn't authorise them.

background

Mr G's complaint involves a complicated background with several business and professional relationships relevant to what's happened. For ease of understanding the following table summarises who's who:

Mr G	The complainant and holder of the M&S personal credit card used to make the disputed transactions
Company I	An electrical engineering business for which Mr G was a Director
Company F	Mr G's financial brokerage business
Mr R	Mr G's employee – he worked for Company F
Company M	A building development firm for which Company F brokered a loan with Company A
Company A	A financial intermediary/commercial money lender that lent to Company M
Mr J	A Director of Company M and Company I

In December 2017 a transaction of £6,573 debited Mr G's personal credit card account to a building supplies merchant. A further transaction of £360 debited the account in January 2018 to a plumbers' merchant. A few days after that, £4,550 debited Mr G's account in favour of a commercial money lender, Company A. Mr G says he didn't authorise these transactions.

In mid-February 2018 M&S telephoned Mr G as part of their "*know your customer*" obligations. They asked him a number of questions about his work and income and asked if everything was "*running ok*" with the credit card. Mr G said that it was, and explained he mainly used it for business expenses.

A couple of weeks later Mr G telephoned M&S. When the agent read out the recent transactions (which didn't include the transaction to the building supplies merchant) Mr G said he recognised the plumbers' merchant but had no knowledge of Company A. It's worth noting at this point that the merchant name appearing on Mr G's statement, and read out to him during this call, was slightly different to the name Company A used for its money lending activity, although both included the same first word.

M&S agreed to raise a chargeback against Company A, and a temporary credit of £4,550 was applied to Mr G's account. On 2 March 2018 M&S told Mr G that if he didn't hear from them within 60 days, that would mean his chargeback claim had been successful.

In March 2018 Mr G wrote to M&S attaching his destroyed card and telling them he also didn't recognise the £360 transaction to the plumbers' merchant. He also changed the name on his business bank account (not held with M&S) from "Mr G" to "Company F/Company M".

Someone on behalf of Company M wrote to Company A in March 2018 stating that Mr G's card had been used "*in error*", and that the amount of £4,550 was now subject to a chargeback. They offered £27,500 to clear the loan and said no chargeback requests would be made in respect to other card payments "*made on the company credit card of [Company M]*".

Company M went into administration in early April 2018.

On 9 April 2018 Company A emailed Mr G's employee, Mr R. They said that they'd accept £27,500 in full and final settlement of Company M's outstanding loan. The offer was subject to no further chargebacks on credit card payments previously made. Mr G, on behalf of Company M, then paid Company A the final settlement amount from his business bank account.

On 19 April 2018 Mr G wrote to M&S disputing the £6,573 payment to a building supplies merchant. He said this was the second time he'd written to them about it.

Company A defended the chargeback for £4,550 explaining to M&S that Mr G's business, Company F, had brokered the loan for Company M, and then paid the loan each month. Company A produced an email purporting to be from Mr G to Company A, dated 6 December 2017, which read:

"[Company M are having problems, I] contact you to see if you would be kind enough to leave the payment due today for payment late Monday afternoon as the problems should be sorted by then. If you are not happy with this, do let me know and I will make payment to you personally on my credit card ..."

As the chargeback had been defended, M&S re-debited the temporary credit from Mr G's account.

With regard to the £6,573 disputed payment, M&S contacted the building supplies merchant. They said that the transaction was made by Mr R, working for Company F, who'd said he was taking over a project of Company M's. The invoices from the buildings supplies merchant referenced Mr R's first name.

M&S wrote to Mr G advising him they'd found no evidence of fraud and suggesting he resolve matters with Company A and the building supplies merchant directly.

Mr G complained to M&S. Within several letters he made the following points:

- He gave Company A his card *"merely as security against a payment due from [Company M] ... The fact the merchant obtained the details does not provide consent from myself the card user for them to take payment ..."*
- He was not party to the agreement between Company A and Company M.
- Mr R was working for him and had access to the *business* credit card.
- He didn't provide Company A with his credit card details.
- The email Company A had produced was false – his email address had been used without his knowledge.
- The final settlement paid by Company M to Company A was paid on the basis of £4,550 being successfully charged back to his credit card – Company A had ended up being overpaid.
- He suspected someone at Company M had purported to be Mr R and used his card with the building supplies merchant.
- Mr R had no access to Mr G's *personal* credit card.
- The goods supplied by the buildings supplies merchant were delivered to an address he didn't recognise.

M&S issued their final response on 22 June 2018. They didn't accept there had been any fraud and told Mr G he'd have to pursue Company A for a refund.

In a letter to M&S dated August 2018 Mr G said he'd first disputed the payment to the building supplies merchant on 20 January 2018.

In October 2018 after M&S received details of Mr G's complaint from us, they noted that they'd not investigated the disputed payment to the plumbers' merchant and asked Mr G to contact them with more details about the transaction.

What Mr G told us

When Mr G contacted our service, he initially only complained about the disputed transaction to Company A. He later included the £6,573 to a building supplies merchant and the £360 to a plumbers' merchant. He said he'd raised disputes about these with M&S on 30 December 2017 and 28 January 2018 respectively. He said all the disputed transactions resulted from his card being "*compromised*". When asked for more detail about how his card came to be used by a third party or parties, Mr G has said the following:

- His card was given to Company A as security.
- There had been a "*misrepresentation or breach of contract*" by Company A which entitled him to a refund of the £4,550 payment under s.75 of the Consumer Credit Act 1974.
- His card details were obtained by Company M and were used in "*error*" and without his knowledge.
- He was travelling out of the country around the time of these transactions and so paid the balance without seeing his statements.

Mr G also provided us with an email from Company A, dated 13 September 2018, addressed to "Mr R/Mr G" which read:

"... The fact the £4,550.00 charge back was reversed is a problem for you and your credit card company. The settlement figure agreed was based on the chargeback been [sic] undertaken by your credit card company and as such we have at no material time asked you to pay any amount greater than what as agreed and the error is with your credit card company and not us."

Our investigator's view

Our investigator upheld Mr G's complaint. He didn't think Mr G had given M&S enough information about the £360 payment to a plumbers' merchant, so he didn't think they should have done more about that. But he thought they should refund him the transactions to Company A and the building supplies merchant because there wasn't enough evidence that he'd authorised them.

He said, although Mr G may have provided his card details to Company A, there is evidence that he withdrew his consent to any transactions. He pointed to a copy of an email (provided by Mr G to M&S), dated 18 December 2017, from Company A to Mr R which said:

"... I hope you're well and have passed on your requests for your credit card details not to be used in respect to payment on behalf of [Company M]."

So, our investigator thought Company A had taken the payment without Mr G's consent.

With regard to the transaction to the building supplies merchant, he said only Mr R had been linked with this transaction, not Mr G, and he didn't think it likely Mr G had given his personal credit card details to Mr R. He concluded that either Mr R, or someone posing as Mr R, made this payment without Mr G's knowledge.

M&S didn't accept our investigator's view. In particular, they pointed out there's no evidence Mr G disputed the £6,573 payment before April 2018, despite having had several opportunities to raise it before then. So, they asked for an Ombudsman to review everything afresh.

Further information

Due to the complex business and professional relationships involved in this case I asked Mr G to explain more about his business, his relationship with Company M, who Mr R is, and how he thinks his M&S credit card details were "*compromised*".

Mr G explained:

- His business, Company F, sourced business loan facilities for Company M and was contacted by Company A when Company M fell into arrears.
- Mr R was an employee of Company F and was the account manager for Company M; he arranged the loan from Company A.
- Mr G agreed to get involved in helping Company M fund a large project on the basis that a new company would be set up which he would take a stake in "*so to ensure all repayments were made as any issues would affect our credibility with our lending partners*".
- He had looked to take over and run a number of contracts run by Company M and so changed the name on his business bank account in March 2018 to reflect Company M's name, as well as that of Company F, for continuity of invoicing. However, he didn't end up taking over any of Company M's contracts.
- He said he was shown evidence that Company M were expecting a large payment (£3-4million) and on that basis he said his *business* credit card (Company I's card) could be given to Company A as security for the loan, but someone either in error or deliberately gave Company A his *personal* credit card details.
- He thinks a Director of Company M, Mr J, or Mr R accessed his email, without his knowledge, and sent the email to Company A on 6 December 2017 offering payment on Mr G's personal credit card.
- Mr R had access to and was authorised to use a credit card for Company F purposes – "*My card could be used for any business-related expense for Company F and at no time for Company M or Company I as they all had their own company credit card*".
- His M&S credit card (or a copy of it) was kept with Company I's finance records, in a locked cupboard, and Mr R could have got the details from there or from Company I's Secretary.
- Company I's Secretary was paying Mr G's credit card balances for him while he was away – "*The transactions should have been for personal use and or business-related expenses as part of my duties for Company I to be reclaimed.*"
- When asked whether Mr R had permission to use Mr G's M&S card he said, not for Company M, but he could use it for Company F if the business credit card could not be found when needed.
- He thinks Mr R may have been pressured by Mr J to use Mr G's personal credit card.

- He first found out his card had been used to make the £6,573 payment to a building supplies merchant at the end of February/beginning of March 2018.
- Before raising any dispute he first sought to establish whether the goods bought were related to work being carried out at Company F's offices. He said he was not initially aware of who the building supplies merchant were and whether they had supplied goods for the works being done at his property.
- Payments were made to Company M's creditors via Mr G's business account because Company I and Company M shared some Directors and they wanted to make sure the creditors were paid.
- Mr R left the business (Company F), did not provide a promised "statement on oath" about what happened and "his mobile is no longer connected".

I also asked Mr G to explain why he's often communicated with us from a personal email address (i.e. one not associated with Company F) in the name of Mr R. Mr G explained that he diverts his emails to Mr R when he's not in the office and so his replies to our emails will sometimes come out from Mr R's personal email.

Other available information

To better understand the relevant relationships I've looked to publicly available information such as the edited electoral roll, historic domain registration records, the Companies House register, and also information we hold on file. I think the following information is relevant:

- There are some records relating to Mr R that can be linked to Mr G – for example, records for Mr R give Mr G's home address – in 2015 and 2018.
- Records suggest Mr G uses several variations of his name.
- Website domain registration records show Mr R, not Mr G, as the registered owner of Company F's website.
- Mr G was a Director of Company I until May 2018. Company I's previous registered address was the subject of a charge registered against Company M.
- Company I shared at least three company officers with Company M.
- Mr G has previously made a witness statement for court proceedings giving his address as an address which was the registered address of Company M from August 2017 to April 2018.
- In that witness statement, dated June 2018, he said he'd agreed to be a personal guarantor for another of Company M's loans for a short period, and that he'd made payments towards that loan when Company M faced difficulties.
- The signature of Mr R's Company F email address gave a mobile telephone number which is the same number Mr G has given us to contact him on.
- Mr G corresponded with us from Mr R's personal email address (i.e. not one associated with Company F) in February 2019, July 2019 and August 2020.
- Mr G has disputed three transactions on another personal credit card to Company A – these happened in December 2017, January 2018 and March 2018.

my provisional decision

I issued a provisional decision on 23 October 2020. In that decision I acknowledged that when considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. I'll set out the relevant considerations below.

Of particular importance to my decision about what is fair and reasonable in the circumstances of this complaint, are the Payment Services Regulations 2009 (the PSR 2009) and 2017 (the PSR 2017) which apply to transactions like the ones Mr G disputes. The PSR 2009 applied to transactions made before 13 January 2018, and the PSR 2017 apply to transactions made on or after that date. Among other things the PSR 2017 include the following (similar wording was used in the PSR 2009, Regulation 55):

Regulation 67 of the PSR 2017 explains:

67.—(1) A payment transaction is to be regarded as having been authorised by the payer for the purposes of this Part only if the payer has given its consent to—

(a) the execution of the payment transaction; or

(b) the execution of a series of payment transactions of which that payment transaction forms part.

Whether a payment transaction has been authorised or not is important because account holders will usually be liable for payments they've authorised and, generally speaking, banks will be liable for unauthorised payments.

Where credit is involved, as in this case, the PSR 2017 (and the PSR 2009) make provision for the Consumer Credit Act (CCA) 1974 to apply in place of certain sections of the PSR. These provisions can't be excluded by the account terms. A consumer's liability for payments involving a credit facility is therefore set out in section 83 of the CCA 1974.

Section 83 of the CCA 1974 says that a consumer isn't liable for "*any loss arising from use of the credit facility by another person not acting, or to be treated as acting, as the debtor's agent.*"

The PSR 2017 also include information relevant to when a payer wishes to revoke a payment order. Regulation 83 (in the PSR 2009, Regulation 67) says:

83.— ... (2) In the case of a payment transaction initiated ... by or through the payee, the payer may not revoke the payment order after ... giving consent to execute the payment transaction to the payee ...

Terms and conditions of Mr G's account

The terms and conditions of the credit card agreement included the following:

2.3 If you, or an additional cardholder, allow someone else to use a card or the card number, you will be liable for all transactions they make until you tell us that the card may be misused using the contact details set out below ...

Having set out the relevant considerations in my provisional decision I said:

"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 currently persuaded that it would be fair and reasonable to say M&S should refund Mr G. I'll explain why.

Taking into account the above relevant considerations, I think the key question here is whether Mr G, or someone that can be treated as acting as his agent, made the disputed transactions.

Authorisation isn't limited to transactions for which explicit permission has been given; M&S would also be entitled to hold Mr G liable for any transactions which were done by someone to whom he gave authority to act on his behalf. In other words, if a payer has permitted the use of his payment instrument by a third party (an agent) so that it looks to the bank like the payment transaction has been authorised by the payer, the payment can be considered authorised for the purposes of the PSR 2009 and 2017.

That isn't to say that Mr G would be responsible for any transactions where the payment instruction received by the bank is indistinguishable from one he gave actual authority for. For example, a payment transaction carried out by someone who'd stolen Mr G's card details would still rightly be described as unauthorised, even though it might have the same appearance from the bank's perspective as a genuine transaction.

The important consideration here is what part Mr G played in permitting the transactions he disputes. So, I've thought about whether Mr G authorised these transactions himself or whether by his actions Mr G held Mr R, or another agent, out as having his authority to make payment transactions using his credit card. I'll look at each disputed transaction in turn.

The £6,573 payment to a building supplies merchant

M&S established by speaking with this merchant that it was someone purporting to be Mr R that made this transaction and that it was linked to a planned takeover of Company M, or its contracts, by Mr R/Company F. I think it's possible that although the merchant thought they were dealing with Mr R, they might well have been dealing with Mr G directly here. I think there's evidence that Mr G and Mr R have, on occasion, corresponded with others using each other's email addresses and contact details. Indeed, Mr G has corresponded with us from Mr R's personal email address very recently, even though he's also said Mr R no longer works for Company F and is not contactable.

Mr G has also explained that he was planning to take over some of Company M's work, and that fits with what the merchant said they were told about the circumstances of the transaction by Mr R. I've thought about whether Mr R might be an alias that Mr G uses. This would explain why Mr R seems to own the domain name for Company F and has given Mr G's home address as his own in the past. If that's the case, then I think Mr G is firmly linked to this transaction by what the merchant said, and that he gave actual authority for it. But if I'm wrong about that, and Mr R is not an alias for Mr G but a genuine employee of Company F, I'm still minded to say it would be fair and reasonable to treat this transaction as authorised by Mr G.

This is because I think Mr G clothed Mr R with the authority to use his card. In other words, he gave him the status of his agent. Although Mr G hasn't always been consistent about whether Mr R had access to his personal credit card, from what he's said I think it's more likely than not the arrangement was that Mr R could use Mr G's

M&S credit card for business purposes so long as he asked permission first. I don't think there's any evidence Mr R stole Mr G's credit card details. I think Mr G willingly gave Mr R access to them. As such, I think it's reasonable for M&S to hold Mr G responsible for what Mr R then did.

Ultimately M&S would not have suffered this loss if Mr G hadn't permitted Mr R to use his card. And it's a loss I think M&S are entitled to recover from Mr G. It is, after all, reasonable to contemplate that if you allow someone to use your credit card for transactions with the mere expectation that they'll ask your permission before doing so, they might go further and make more transactions than you know about. There's an obvious risk that flows from leaving your work colleagues with a copy of your credit card to use when the need arises, and it wouldn't be fair to say the credit provider, M&S, should be liable for what the colleagues spent.

I also think it's likely Mr G knew that Mr R was using his card to pay for building supplies because he's said that before disputing any transaction he'd check to see whether the supplies bought were connected to works being carried out at Company F's offices. Although he's said he disputed this transaction before 19 April 2018, he's given several different dates for when he did so. And if he did raise the dispute in January or February, I find it odd that he didn't make any mention of it, or ask for an update, in his telephone conversations with M&S staff in February 2018. I think this suggests Mr G knew about this transaction and was comfortable with it at the time because the supplies bought were connected to his plan to take forward some of Company M's contracts.

So, on balance, I currently think Mr G, or his agent, authorised this transaction.

The £360 payment to a plumbers' merchant

This payment is one that we know little about as neither M&S nor Mr G contacted the merchant to establish any details about what it was for, or the identity of who made the purchase. It is disappointing that M&S didn't spot that Mr G was disputing this transaction earlier, as they missed an opportunity to find out more about it and possibly raise a chargeback. However, it's a payment that Mr G originally, in a call with M&S on 28 February 2018, said he recognised. It wasn't until 17 March that Mr G wrote to M&S and said this wasn't authorised by him.

Mr G has explained that some of the delay to his raising disputes was due to the fact he would check transactions to see whether the merchant had supplied goods for the works being done at his property. This suggests to me that Mr G was expecting transactions on his M&S credit card related to building and plumbing works, and that he wasn't always the person making those transactions. He allowed his colleague, or colleagues, to use his card for this purpose.

So, as I've explained above, I think Mr G, by his actions in leaving his credit card at their disposal, clothed his colleagues or employees with an appearance of authority. If his colleagues made more transactions than Mr G was expecting, or made transactions without first seeking his approval, I can see why Mr G feels he shouldn't be liable for them. But there's no basis here on which to hold M&S liable. It was Mr G that exposed M&S to the risk of loss through the way he managed his card and security details. It's fair that M&S hold him liable for the spending of those persons he made his agents.

The £4,550 payment to Company A

Mr G has sought to show that he was merely the broker or an intermediary for the loan agreement between Company A and Company M. But I think the evidence points to Mr G having a more complicated relationship with Company M than that of broker and client. He's used a previously registered address of Company M as his own; he changed the name of his business bank account to include the name of Company M; he had plans to take over some of Company M's contracts; he acted as personal guarantor for another of Company M's loans; and a business he's a Director of, Company I, shared at least three company officers with Company M. So, I think Mr G was more interested in making sure Company M's debts were paid than he's suggested.

Mr G has said I should disregard as evidence the email purporting to be from him to Company A, dated 6 December 2017, in which Company M's cash flow problems were acknowledged and an offer was made to "make payment to you personally on my credit card ...". He thinks this was sent either by Mr R or Mr J. But I'm not persuaded that's the case. As I've already said, I think Mr G had left his credit card details at the disposal of his colleagues. In those circumstances, they'd have had no need to pretend to be Mr G when communicating with Company A. Mr R was already in regular communication with Company A about Company M – Mr G's described him as the account manager.

On balance, taking into account his links to and involvement in Company M's affairs, I think it's likely Mr G made this offer to Company A himself. I appreciate he may have later regretted doing so and tried to withdraw his consent. But I don't find the email dated 18 December 2017, from Company A to Mr R, which refers to a request for Mr R's credit card details not to be used to pay Company M's debt, sufficient evidence that Mr G asked for his M&S credit card not to be debited. It's even possible the M&S credit card details were supplied to Company A after this email and closer in time to 25 January 2018 when this transaction occurred.

I say this because in December 2017 and earlier in January 2018 Company A initiated payments from another of Mr G's personal credit cards (those transactions are the subject of a separate complaint and I'll address those in a separate decision). If they'd had Mr G's M&S credit card details before mid-January 2018 it seems likely Company A would have used them. I also think the fact that more than one of Mr G's personal credit cards was involved in transactions with Company A suggests he knew about and authorised payments to them.

I can see that Mr G is very upset that Company A defended the chargeback because his understanding was that the settlement figure reached for Company M's loan took into account the £4,550 being refunded to him. Having looked at the information available to me about that negotiation, I don't think it's entirely clear whether the final settlement figure assumed a successful chargeback or not; although it's clear Mr G intended it to.

But even if that were clearer, I don't think it would be possible for Mr G to raise a claim under s.75 of the Consumer Credit Act 1974 for "misrepresentation or breach of contract" on the part of Company A. And that's because, as he's said himself, he

didn't have the requisite relationship with Company A; Mr G had no contract with Company A, he was paying on behalf of Company M.

So, taking everything into account, I am currently persuaded that M&S is fairly entitled to hold Mr G liable for the disputed transactions in this case."

responses to my provisional findings

In response to my provisional decision M&S agreed with the outcome and made no further comments.

Mr G didn't accept what I'd said. He said that leaving his card details in the office does not make him liable for the transactions; *"this has been a straight forward abuse of trust by others"*. He also provided some further evidence.

Telephone calls

Mr G provided a copy of an itemised telephone bill for his home landline, covering the period 11 January to 9 February 2018, which included two calls to an M&S telephone number; one on 13 January and one on 18 January 2018. He said this is evidence he contacted them and that following that contact *"no further payments should have been allowed to have been made on my card"*.

For reference, the £6,573 payment to a building supplies merchant debited on 12 December 2017 (included on the statement dated 24 December). The £360 payment to a plumbers' merchant debited on 22 January 2018 (included on the statement dated 23 January). The £4,550 payment to Company A debited on 25 January 2018 (included on the statement dated 23 February).

I asked M&S about these calls. They were able to provide a recording of the call which took place on 18 January 2018, but they couldn't provide one for the call on 13 January. They explained there are no memos on the account from that date, and their call log showed it as having *"no associated adviser"*. M&S also provided a recording of a call which took place on 19 December 2017.

I've listened to both of these recordings. The call on 19 December 2017 was made by M&S to Mr G and the purpose was to confirm, in response to a letter he'd sent them, that his credit limit was now £10,000 (recently increased from £2,000).

As for the call Mr G made on 18 January 2018, the purpose was to query why M&S had taken a payment for the balance by direct debit when he'd already paid the balance of his December statement (£6983.54) by bank transfer on 13 January. The agent explained the timings involved in stopping the balance being paid by direct debit and refunded Mr G the amount of the bank transfer. Mr G didn't mention any dispute about the transaction which was largely responsible for the balance – the £6,573 payment to a building supplies merchant.

Statement from Mr R

Mr G also submitted a statement from Mr R, acquired through a private detective. In the statement Mr R said:

- He worked for Company F and from the offices of Company I.

- He worked with suppliers who requested payment and was asked *“to use the company credit card as security, in Mr G’s name, whilst he got [the company secretary/Mr J] ... to directly settle these liabilities.”*
- *“At no time did I intend to use the personal credit card of Mr G, and only used the details as provided to me by [the company secretary] ... I am of the view that Mr G’s card was deliberately provided to me ...”*
- He didn’t make all of the disputed transactions and Mr G was not aware of them either.
- *“... the card details must have been provided by someone else in the office, who had access to the credit cards of Mr G without his knowledge and consent.”*

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 do not uphold Mr G’s complaint.

For all the reasons set out in my provisional decision (reproduced above) I still think it’s more likely than not that Mr G either made the disputed transactions himself or, by his actions, authorised someone else to make them.

I’ve thought carefully about whether the new evidence Mr G has provided changes anything. But I don’t think it does. I still don’t think there’s any evidence Mr G disputed the £6,573 payment to a building supplies merchant before April 2018.

It’s unfortunate that M&S can’t provide me with any more detail about the call Mr G made to one of their numbers on 13 January 2018. But having listened to the call from 18 January I think the earlier call more likely than not related to Mr G arranging his payment of the December balance by bank transfer. And I don’t think it’s likely he’d have done that – paid the balance a few days before it was even due, on 13 January – if he’d been concerned about any of the transactions which had created that balance.

I also think that if the call on 13 January 2018 involved Mr G disputing that payment, M&S would have a record of it and their usual disputed transaction processes would have been started, just as they were when Mr G disputed the £4,550 payment to Company A when he spoke with M&S staff in February 2018. On that occasion M&S agreed to raise a chargeback, applied a temporary credit of the disputed amount to Mr G’s account, cancelled his card and issued a new one with a new PIN. So, if Mr G had disputed the £6,573 payment on 13 January, I think similar actions would have been taken.

The fact that M&S didn’t start their disputed transaction processes on 13 January 2018, the fact that Mr G paid the balance of his December statement on that day, and the fact he didn’t mention this dispute during the call on 18 January (a call that was specifically about the payment of this balance) all lead me to conclude it’s unlikely Mr G disputed the £6,573 payment around this time.

I also remain mindful that Mr G gave no indication of any problems with this account during M&S’s *“know your customer”* call in February 2018. And he’s given an inconsistent account about when he first disputed this transaction. So, on balance, I’m not persuaded he did dispute the £6,573 payment until April 2018, even though he had a number of opportunities to do so. And this strongly suggests that, even if he didn’t make the transaction himself, he

was comfortable with it at the time. This was, I think, a transaction Mr G knew about, and which related to his relationship with Company M and his plans to take over some of their projects.

Turning to the statement Mr G has provided from Mr R, I don't find this sufficient evidence to change what I said in my provisional decision. Although I accept the statement indicates Mr R isn't an alias for Mr G, I still think, if someone other than Mr G made these transactions, it was a colleague or colleagues who Mr G had clothed with his apparent authority to transact by allowing them to access and use his personal credit card.

Mr G hasn't been consistent in what he's said about the access colleagues had. But what he's said suggests they had access and his permission to use the card in a limited way and went beyond what he expected. He's described what happened as an "*abuse of trust*".

I accept it is possible that Mr G asked Mr R to give some security to Company A, and Mr R unintentionally gave Company A Mr G's M&S card details rather than a "*company*" credit card. But that doesn't mean the transaction on the M&S card was unauthorised. The risk of an error like this is one that Mr G exposed himself to by giving Mr R permission to use the M&S card for Company F if the business credit card could not be found when needed. It's a risk he exposed himself to by allowing Company I's Secretary to manage his personal credit card.

That said, I still think it's likely Mr G intended his personal credit card to be used at the time. The email from Mr G's Company F email address to Company A, dated 6 December 2017, strongly suggests this. And I think the complex relationship Mr G had with Company M meant that he was personally interested in their loan being repaid. I don't doubt that he thought he'd get his £4,550 back from Company M. But the fact that he didn't get his money back from Company M, doesn't mean he didn't authorise the payment and doesn't mean he's entitled to a refund from M&S.

For completeness, the new evidence Mr G has provided doesn't change what I said in my provisional decision about the £360 payment to a plumbers' merchant either. The telephone calls that he's evidenced he made were both before the date of this transaction (22 January 2018), so couldn't have related to a dispute about it. It's also a payment that Mr G originally, in a call with M&S on 28 February 2018, said he recognised. So, I think he either made the transaction himself or this is one of the transactions he'd allowed a colleague to make using his card.

In conclusion, on the balance of the evidence, I think it's more likely than not that Mr G made or otherwise authorised the transactions that he disputes. On that basis, I find M&S's refusal to refund Mr G fair and reasonable.

my final decision

My final decision is that I do not uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 9 March 2021.

Beth Wilcox
ombudsman