

## **The complaint**

Mrs D is unhappy with how Marks & Spencer Financial Services Plc, trading as M&S Bank, managed the situation when she informed them that she was struggling to meet the payments on her loan account because of the financial impact of Covid-19.

## **What happened**

Mrs D has a personal loan with M&S. On 30 March 2020, Mrs D contacted M&S and explained that because of the financial impact of the Covid-19 pandemic her household had incurred a significant reduction in monthly income such that she would now struggle to meet the monthly payments required by the loan.

M&S discussed this issue with Mrs D and agreed to place a 60-day hold on the account. M&S explained to Mrs D that during this period interest and charges wouldn't be incurred on the account and that there would be no obligation on Mrs D to make payments towards the account, but that any payments Mrs D wasn't able to make would be considered as being missed and as constituting arrears on the account and would be reported to the credit reference agencies as such.

A few days later, on 2 April 2020, the Financial Conduct Authority ("FCA") published temporary guidance regarding the provision of 3-month payment holidays to personal loan holders who couldn't afford to meet the repayments due on their loan because of Covid-19. These FCA mandated 3-month payments holidays included that consumers who benefited from these holidays wouldn't incur adverse reporting on their credit files as a result.

Mrs D spoke with M&S again in July 2020, at which time her financial position and the position of her loan account was reviewed and discussed. This resulted in Ms D agreeing to resume making the contractual monthly payments on the loan as well as arranging a repayment plan to clear the arrears that had grown on her account during the hold period.

In November 2020, Mrs D raised a complaint with M&S because she felt that M&S should have provided assistance similar to the FCA prescribed payment holidays which would have meant that she wouldn't have incurred adverse credit reporting on her credit file by M&S and which Mrs D felt had had a significant impact on her financial position since that time.

M&S looked at Mrs D's complaint. But they didn't feel that they acted unreasonably or unfairly towards Mrs D in how they'd managed Mrs D's loan account, including regarding the form of financial assistance they'd provided Mrs D. Because of this, M&S didn't uphold Mrs D's complaint.

Mrs D wasn't satisfied with M&S's response, so she referred her complaint to this service. One of our investigators looked at this complaint. They felt that Mrs D was effectively being punished for contacting M&S a few days before the 3-month payment holidays were announced by the FCA, which they didn't feel was fair. So, they recommended that M&S remove all adverse reporting from Mrs D's credit file and make a payment of £200 to Mrs D to compensate her for any upset and inconvenience she'd incurred.

M&S didn't agree with the recommendation put forwards by our investigator, so the matter was escalated to an ombudsman for a final decision.

### **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 issued a provisional decision on this complaint on 27 May 2022 as follows:

*On 2 April 2020, the FCA announced temporary guidance regarding the provision of three-month payment holidays to eligible consumers who were having difficulty meeting the payments due on their loan accounts because of financial difficulties brought about by the impact of Covid-19.*

*The FCA guidance included that, for these three-month payment holidays only, the reporting of these payment holidays to the credit reference agencies would be suspended, so that an eligible consumer who benefited from such a payment holiday didn't have their credit file impacted by doing so.*

*The FCA explained that the purpose of the guidance was to protect consumers who had been able to meet the repayments on their credit accounts without incident until that time, but who were at risk of incurring adverse reporting for missed or late payments on their credit files solely as a result of the impact of Covid-19.*

*In this instance, Mr D notified M&S that she would struggle to meet the payments required on the loan because of the impact of Covid-19 on 30 March, which was a few days before the FCA published its first guidance on 3-month payment holidays. Because of this, M&S maintain that the form of financial assistance that they did provide to Ms D was, and remains, appropriate and fair.*

*I'm not convinced by M&S's position here, and I feel that the spirit of the FCA guidance is clear and that it was put into place to prevent precisely the situation that Mrs D has experienced here – to prevent consumers such as Mrs D who hadn't struggled to meet the repayments on their loan accounts previously from incurring adverse reporting on their credit files as a result of the Covid-19 pandemic.*

*Additionally, while the first guidance relating specifically to loans wasn't published by the FCA until 2 April 2020, similar guidance for other financial products was published by the FCA from mid-March onwards, and it was widely understood that the FCA were seeking to apply such protection to further categories of consumers, such as credit and loan account holders.*

*While I can appreciate that M&S themselves would have been under considerable operational stress at that time, such that I wouldn't have expected them to have undertaken an immediate review of customers such as Mrs D that might potentially have been disadvantaged by the timing of their contact to M&S, I do feel when Mrs D contacted M&S again in July 2020 that M&S had the opportunity at that time to have put in place any corrective or retrospective action necessary to ensure that Mrs D didn't incur an unfair outcome.*

*And I do feel that Mrs D has incurred an unfair outcome here, given that had she been less proactive and contacted M&S a few days later that she would have benefited from a different form of financial assistance, which didn't involve the reporting of adverse information to her credit file. And I can confirm that I'll be*

*provisionally upholding this complaint and instructing M&S to remove all adverse reporting for the period March 2020 to February 2021 from Mrs D's credit file on that basis.*

*In their view of this complaint, our investigator also recommended that M&S should make a payment of £200 to Mrs D to compensate her for the inconvenience and upset that she's incurred here. In response, Mrs D highlighted the trouble that having this adverse information on her credit file has caused her, and included correspondence between her mortgage advisor and herself which confirmed that the adverse credit file reporting was having a significant effect on Ms D's ability to obtain a favourable re-mortgage rate.*

*Given that I feel, as explained above, that M&S should have taken corrective retroactive steps to have ensured that Mrs D wasn't unfairly adversely affected by requesting financial assistance from M&S a few days too early, it follows that I also feel that by not taking such corrective action that M&S have contributed to the struggles that Mrs D experienced when trying to re-mortgage, and I don't feel that the £200 compensation amount suggested by our investigator takes sufficient account of this.*

*As such, my provisional decision will also include that M&S must make a higher compensation payment of £500 to Mrs D, which I feel more fairly recompenses Mrs D for the trouble and inconvenience that she's experienced here.*

*I'm aware that M&S feel that they've followed the correct process, given that the FCA hadn't published information about the prescribed 3-month payment holidays for loan account holders at the time that Mrs D first contacted them. I can appreciate M&S's position here, but it can be the case that an adherence to technically correct process can lead to an unfair outcome, and I'm satisfied that this is what's happened in this instance.*

*As explained earlier in this letter, I feel that the spirit of the FCA guidance was clear, and I also feel that M&S have had numerous opportunities following the end of the 60-day hold period to have realised that Mrs D had been unfairly disadvantaged by the timing of her initial contact with M&S and to have put matters right. And given that Mrs D's re-mortgaging discussions didn't take place until the latter part of 2021 – significantly after Mrs D had raised her complaint about this matter with M&S – I'm satisfied that M&S have had every opportunity to ensure that Mrs D's credit file was returned to a fair position before that time, and that the £500 compensation amount I'm provisionally instructing is warranted here.*

In my provisional decision letter, I gave both Mrs D and M&S the opportunity to provide any comments or new information they might wish me to consider before I moved to a final decision. However, both Mrs D and M&S confirmed that they were happy to accept my provisional decision, and so I see no reason not to issue a final decision upholding this complaint in Mrs D's favour on that basis. And I can confirm that I do uphold this complaint in Mrs D's favour accordingly.

### **Putting things right**

M&S must remove all adverse reporting for the period March 2020 to February 2021 from Mrs D's credit file.

M&S must also make a payment of £500 to Mrs D to compensate her for the trouble this ongoing matter has caused.

**My final decision**

My final decision is that I uphold this complaint against Marks & Spencer Financial Services Plc, trading as M&S Bank, on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 7 July 2022.

Paul Cooper  
**Ombudsman**