

## The complaint

Mr H complains that Marks & Spencer Financial Services Plc (“M&S”) applied a default to his credit card account.

## What happened

Mr H says he agreed a repayment plan on his M&S credit card after struggling financially due to the pandemic. It was agreed that he would pay £50 per month between July 2020 and July 2021, although Mr H actually paid £65 per month. Mr H says M&S told him that any arrears letters could be ignored during this period, however he contacted them when he received a default notice in April 2021 asking him to pay the arrears. He says he was advised he did not need to pay that amount, but then received a final demand in May 2021 asking him to pay the full outstanding balance.

Mr H says that due to previous advice and the fact his repayment plan was still in place, he did not respond to the final demand. M&S then defaulted Mr H’s account and transferred it to a debt collection agency in June 2021. Mr H says M&S did not communicate to him about the transfer and subsequently refused to reconsider the default. Mr H adds that M&S paid him £75 for incorrect information he received, despite his insistence that he did not wish to receive it as he felt it was an insult given the impact on his credit file. He says the case has caused him significant psychological and mental distress and has impacted the wellbeing and financial health of himself and his family.

M&S says it gave Mr H the correct information in its communications and that the default was correctly applied. It said the one exception to this was when Mr H was told in a call that he would not receive the default or pre-demand notices and for that it paid Mr H £75.

Our investigator recommended the complaint should be upheld. She found that M&S gave Mr H incorrect information on a number of occasions, including telling him that he’d have nothing to worry about if he continued to make payments and that he’d only receive default letters once his payment plan had ended. She said that Mr H made regular payments and did what was expected of him, including making contact when he received the default notice, when he was told he didn’t need to pay the arrears. She considered it more likely than not that had Mr H been correctly advised, he would have attempted to clear the arrears to avoid the default.

Whilst our investigator found the £75 to be fair compensation for the error made by the agent who told Mr H he would not receive the default and pre-demand letters, she found that M&S needed to do more to put things right. Our investigator said M&S should remove the default, and if there was still an outstanding balance, it should buy back the debt and agree a mutually acceptable repayment plan.

M&S accepted the investigator's recommendation, but said it was having difficulty obtaining an income and expenditure analysis from Mr H. It confirmed the account had been bought back from the debt collection agency, the default removed and the credit file updated.

Mr H explained that he'd been signed off work for four weeks, due to stress, and that M&S could contact him after 7 June 2022. He remained dissatisfied with the compensation he'd received and was unhappy with the level of personal information M&S was requesting in order to continue with the monthly repayments. Mr H acknowledged that the default had now been removed from his credit file, but he said that the payment status remained incorrect.

### **Provisional findings**

I issued a provisional decision to Mr H and to M&S on 17 October 2022. I've summarised my findings below:

- I wasn't satisfied that Mr H's credit file was a fair reflection of his account and found M&S needed to amend it to reflect the fact Mr H was making regular payments from October 2020 to September 2021;
- I considered £200 was more appropriate compensation for the times Mr H received inaccurate information;
- I encouraged Mr H to engage with M&S going forwards to agree an ongoing repayment plan.

M&S responded to say it accepted my provisional decision – it re-confirmed that the default had been removed, agreed to amend the credit file for the missing payments and said it will send the additional compensation. It added that it had also removed the late payment markers from September 2022 and the account is now showing as up to date. M&S says it has also requested an income and expenditure form to be completed in order to be able to discuss a repayment plan.

Mr H responded to say, in summary that:

1. The provisional decision says "*M&S says it gave Mr H the correct information...and that the default was correctly applied*" when this was not correct and was acknowledged as such by the investigator;
2. A default can never be correctly applied when a customer has an active repayment plan and is continuing to make the agreed payments;
3. If M&S believe the registered default was correct, why has it now removed it if it isn't just an attempt to get away with a data breach? Furthermore, Mr H said it was unfair for the provisional decision to say that aspect of the complaint wouldn't be considered further;
4. His credit file should not be showing any missed payments whilst his complaint is ongoing;

5. He has already suffered financial consequences as a result of the registered default, including having to take out two short-term loans to sustain his living costs. He adds that the actions of M&S have caused damage to his financial reputation, accounts to be registered with debt collection agencies, reductions in credit limits and a higher cost of credit;
6. This has caused severe psychological distress to himself and his family.
7. He has never refused to engage with M&S, but has requested it wait for a final decision before discussing a repayment plan;

Mr H wants the outstanding missed payments to be corrected on his credit file and fair and adequate compensation.

### **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 shall address Mr H's points above in turn:

1. The wording to which Mr H refers is in the background to the complaint which merely outlines each party's stance, without any findings;
2. The actions required to prevent a default are always outlined in the default notice;
3. I understand Mr H has contacted the ICO regarding the potential data breach, so I won't address that here. As M&S had agreed to remove the default, I did not need to consider that specific aspect as a resolution to the complaint;
4. M&S is obliged to ensure that Mr H's credit file is an accurate reflection of the account and Mr H has said he's missed payments whilst this complaint has been ongoing;
5. I acknowledge what Mr H says about the financial consequences of the default and I have seen evidence of the short-term loans he's taken out. However, there is no evidence to show that the status of his M&S account has had a direct impact on his existing credit or that it is the sole reason for the cost of new credit;
6. I accept this has had an impact on the mental health of both Mr H and his family, but I find £200 is fair compensation for the mistakes made by M&S;
7. I acknowledge that Mr H will be willing to engage with M&S about a repayment plan following the receipt of this decision.

I'm satisfied M&S's response is in line with my provisional decision.

As neither party has provided any new information, I see no reason to depart from my provisional decision.

### **My final decision**

My decision is that I uphold Mr H's complaint. Marks & Spencer Financial Services Plc should:

- Remove the default from Mr H's credit file, as it has already done;

- Amend Mr H's credit file to reflect the payments he made up to and including September 2021, which it has now done;
- Pay Mr H a further £125 to reflect the distress and anxiety caused by the incorrect information provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 December 2022.

Amanda Williams  
**Ombudsman**