

The complaint

Mrs W complains that Marks & Spencer Financial Services Plc (M&S) won't remove her data from their systems.

What happened

Mrs W had an account with M&S which was later passed to a debt management company (DMC). Mrs W has since settled this debt and she has requested for M&S to remove her data from their systems, but M&S haven't complied with her request. Mrs W made a complaint to M&S.

M&S did not uphold Mrs W's complaint. They said they were unable to uphold Mrs W's request to delete her personal data as they have an ongoing need to retain this data, including to respond to any enquiries or complaints. M&S said they have a legal/regulatory obligation to retain this, and they keep information in line with their data retention policy. M&S said they'll normally keep core application data for a period of seven years from the end of their relationship with an applicant. Mrs W brought her complaint to our service.

Our investigator did not uphold Mrs W's complaint. He said M&S is holding the data on what is called a legitimate interests basis (which is one of six lawful reasons an organisation can use personal data without consent). He said he did not think that M&S had treated Mrs W unfairly by retaining this data.

Mrs W asked for an ombudsman to review her complaint. She said M&S and the DMC certainly do not have legitimate reasons to hold her data. She said she has not given consent for this, she has no relationship/contract with either company, and she has the right to object M&S' legitimate interest to hold her data.

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 must be clear to Mrs W that I'm only able to look into the actions of M&S as part of this decision, and not the DMC involved. This is because Mrs W will need to make a separate complaint to the DMC if she believes they have treated her unfairly. If Mrs W is unhappy with the DMC's response to her separate complaint, then she may be able to bring the separate complaint about the DMC to our service, as long as she does so within the relevant timeframes.

I'd like to explain to Mrs W that it is not within this service's remit to tell a business how they should run their policies and procedures, such as their data retention policies. M&S would be required to follow the General Data Protection Regulation (GDPR).

I've considered what Mrs W has said about her not consenting to M&S holding her data. The weblink that our investigator included in his view of Mrs W's complaint to the Information Commissioner's Office (ICO) shows a question of "*Does an organisation always need my*

consent?”

The answer to the questions says *“No. Organisations don’t always need your consent to use your personal data. They can use it without consent if they have a valid reason. These reasons are known in the law as a ‘lawful basis’, and there are six lawful bases organisations can use”.*

So although Mrs W does not consent to M&S holding her data, this alone does not mean that M&S should destroy all of the data they hold about her. And although she can object to M&S using her data, this alone does not compel them to destroy all of the data they hold on about Mrs W even though their business relationship may have ended.

I say this because M&S’ privacy policy which was in place at the time Mrs W requested M&S remove her data from their systems sets out how long they would keep a customers data for. The privacy policy shows the following:

“We keep your information in line with our data retention policy. For example, we’ll normally keep your core banking data for a period of seven years from the end of our relationship with you. This enables us to comply with legal and regulatory requirements or use it where we need to for our legitimate purposes such as managing your account and dealing with any disputes or concerns that may arise.

We may need to retain your information for a longer period where we need the information to comply with regulatory or legal requirements or where we may need it for our legitimate purposes, eg to help us respond to queries or complaints, fighting fraud and financial crime, responding to requests from regulators, etc.”

So while I note the strength of feeling that Mrs W has about M&S still holding her data, I’m unable to conclude that they have made an error based on their privacy policy, and I’m not persuaded that they’ve treated Mrs W unfairly. So it follows I don’t require M&S to do anything further.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs W to accept or reject my decision before 30 September 2024.

Gregory Sloanes
Ombudsman