

## **The complaint**

Mr R complains that Marks & Spencer plc (“M&S”) didn’t do enough in response to his claim for money he paid for flight tickets bought using his credit card.

## **What happened**

Mr R used his M&S MasterCard credit card to pay for international flights (and prebooked seats) with a third party carrier, “A”. Unfortunately, before Mr R was due to travel A contacted him – firstly to reroute, and later to cancel his flights. A said the cancellation was due to the Covid-19 pandemic.

Mr R contacted A to see if it would refund his payment. But A was willing only to offer him a voucher redeemable against future travel. It said its policy was to provide refunds only against refundable fares. Mr R was unhappy with this position and turned to M&S to see if it could assist in recovering his money.

M&S told Mr R it was out of time to raise a chargeback claim against A. And it said because the flight was cancelled because of the pandemic, it wasn’t liable to refund him under the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 (“section 75”).

Mr R was belatedly able to get his refund from A, after the government in A’s home country stepped in to provide financial assistance. However, he remains dissatisfied with the way M&S dealt with his claim.

Our investigator didn’t think M&S had treated Mr R fairly in dealing with his claim. She accepted that it was right to say it was out of time to raise a chargeback. Mr R hadn’t contacted it within the timescale set out in MasterCard’s rules.

But the investigator thought it was unreasonable for M&S to deny Mr R’s section 75 claim on the basis the flights were cancelled because of Covid-19. She was satisfied the cancellation amounted to a breach of contract on A’s part. Noting that Mr R had already been refunded his flight costs, she proposed that M&S rework Mr R’s credit card account as if he’d been refunded in November 2020. The investigator said that if that would have resulted in a credit balance owed to Mr R between that point and May 2021, when he received the refund, M&S should pay interest on that credit balance.

M&S hasn’t responded to the investigator’s proposal. Mr R did respond. He said he’d been refunded the seat booking charges from the outset and this, coupled with the fact his other credit card provider had refunded similar costs without delay, showed that M&S had been wrong.

As M&S hasn’t accepted our investigator’s findings, the case has been passed to me for review and determination.

## **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.

Based on the evidence available to me, Mr R's transaction meets the requirements set out in section 75 of the CCA. Section 75 has the effect that where there has been a breach of contract or misrepresentation by A, Mr R has the same claim against M&S as he does against A.

I've thought about what M&S has said, and I accept A's cancellation notice does cite the Covid-19 pandemic as the reason for cancelling Mr R's flights. However, it doesn't expand on the reasons why that meant A was able only to issue him with a voucher rather than to refund him. M&S hasn't offered any persuasive evidence that A was entitled to give Mr R a voucher or to retain his money and not provide the flights.

A's general conditions of carriage don't seem to me to suggest either of these options were available to A in the circumstances that led to the cancellation. Rather, they say that if a flight is delayed by more than three hours or cancelled because of a situation that's outside of A's control, it will rebook the passenger on the next available flight with it or any other carrier via reasonable route. In the first instance, that's what A did, changing Mr R's original booking to and from a different UK airport.

But after that, A said it couldn't provide the flights at all. In this respect the conditions of carriage say that if the departure time of the new flight is more than three hours from the original departure time (as it would have been in this situation) and the passenger chooses not to travel (as Mr R did), he can request a refund of the unused portion of his ticket. That wasn't an option A offered to Mr R – at least, not until much later down the line – so I can see how the position A originally took amounts to a breach of contract.

That the breach has since been remedied doesn't mean that M&S dealt with the claim appropriately. It just means Mr R's claim has been addressed. It follows that there's now no need for M&S to be held liable to refund him. But I'd have expected a more robust approach from M&S towards considering its potential liability when Mr R made his claim. The absence of persuasive evidence to support the position M&S took suggests to me that it didn't properly consider the situation, and while that ultimately hasn't caused Mr R financial loss, there's little doubt it caused him avoidable distress and inconvenience in having to pursue the claim.

It's only fair that M&S recognises that distress and inconvenience by paying Mr R suitable compensation to reflect it. I hold with the general principle our investigator adopted in this respect. However, I don't think the remedy she proposed quite achieves that aim, and it's perhaps a little more complicated than it needs to be. In my view, to reflect the problems Mr R was caused by M&S's handling of his claim and the time he was without the use of his funds while awaiting the refund, it should pay him £100.

## **My final decision**

For the reasons I've set out here, my final decision is that I uphold this complaint. To settle it Marks & Spencer plc must, within 28 days of receiving Mr R's acceptance, pay Mr R £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 29 August 2022.

Niall Taylor  
**Ombudsman**