

## **The complaint**

Mr and Mrs N complain that Mark & Spencer Financial Services Plc (M&S) are responsible for financial losses they suffered because of funds, that were intended to be credited to their joint account, being credited to a third-party foreign currency account.

Although this complaint relates to both Mr and Mrs N I'll refer to Mr N throughout as he has been dealing with the issues relating to this on behalf of both of them.

## **What happened**

I issued my provisional findings upholding this case on 15 August 2022 and invited both parties to respond.

I have copied my provision decision below, which forms part of this decision.

### ***The complaint***

*Mr and Mrs N complain that Mark & Spencer Financial Services Plc (M&S) are responsible for financial losses they suffered because of funds, that were intended to be credited to their joint account, being credited to a third-party foreign currency account.*

### ***What happened***

*Following the sale of a property Mr N instructed their solicitor to send a payment of £300,000 to their joint M&S account and provided them with the sort code and account number. In turn the solicitor instructed their bank, who for the purposes of this decision I'll call L, to make a CHAPS payment.*

*L processed the payment and sent the funds on 3 November 2020. M&S says it received a query pre-payment, but it rejected the query as Mr and Mrs N's initials were quoted rather than their full names and it only accepts the payments if the name on the account is quoted in full.*

*Mr N called and spoke to an adviser at M&S who told him the payment had been rejected by it. So, Mr N contacted his solicitor who queried what had happened with L. L investigated the matter and said it had sent the funds to the correct sort code and account number as given to it.*

*In the meantime, the solicitor was contacted by a third-party (TP) who said they had received the payment. They had an account with a bank, I'll call H for the purposes of this decision, the account they have has the same account number as Mr and Mrs N's M&S account but a different sort code. TP's account was a foreign currency account so when the funds reached the account, they were converted to UAE Dirham. TP tried to return the funds but were unable to do so.*

*Mr N spent the next two months liaising with, his solicitor, M&S, L, H and TP working to get the funds returned to him. During that time, he was advised that H process*

*large payments on behalf of M&S as H is the parent company of M&S. He raised complaints with M&S and with H in a bid to help get the funds returned.*

*In summary, H said it had received the funds and applied them to the correct account as instructed by L. But wasn't able to assist Mr N further as he wasn't a customer of it.*

*M&S said they had given incorrect information to him when he called on 3 November 2020, and that it had never received the funds so couldn't have rejected them. It paid him £30 in compensation for the misinformation, but it didn't assist him in retrieving the funds.*

*Following the efforts of Mr N, his solicitor, L and TP the funds were received into Mr N's solicitor's account on 4 January 2021. Before the return the funds had to be converted back to GB pounds and was subject to the exchange rate. The amount following exchange was £290,254.18. This meant Mr and Mrs N suffered a loss of £9,745.82.*

*Mr N brought the complaint to this service. He told us that he and Mrs N were intending to use those funds for the cash purchase of a property. This has caused severe stress and worry to them both and Mr N has had to go to considerable lengths himself, to retrieve the funds.*

*Our investigator upheld Mr N's complaint, in summary she said:*

- L was able to show it process the CHAPS request using the correct sort code and account number for Mr N's account as instructed by the solicitor. This was also evidenced by the fact that M&S received the payment query.*
- It's more likely than not that the mistake was made by H but as that is the parent company of M&S, M&S should take responsibility for H's mistake.*
- To put things right M&S should pay Mr and Mrs N:
  - o £9745.82 plus 8% simple interest*
  - o Pay 8% simple interest on £300,000 from 2 November 2020 until 4 January 2021**

*M&S didn't agree, in summary it said:*

- it had never received the funds so couldn't have returned them.*
- If L hadn't sent the funds to the incorrect place, then how would TP have known who to return them to*
- Mr N had said in a call to it that L had sent the funds to the incorrect account. The investigator said the call between Mr N and M&S was not relevant as Mr N really didn't know what had happened at this stage and was trying to locate his money. So, his words can't be construed as fact. She maintained that H was likely responsible for the error and M&S should take responsibility for this and put things right in the way she'd previously suggested.*

*M&S still disagreed and so the matter has now been passed to me to decide.*

### ***What I've provisionally 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.*

*Having done so I'm intending to uphold this complaint, I'll explain why.*

*Where there's a dispute about what happened, I've based my decision on what I think's more likely to have happened in light of the evidence.*

*Before I speak about the specifics of this case, I think it will be useful to explain how the CHAPS system works.*

*CHAPS is a high value payment system, that allows banks to efficiently make payments between each other. Institutions that use CHAPS are divided into two categories: "direct participants" (DP) and "indirect participants" (IP). DPs can use the system to move funds between one and other without the need for any other business to be involved. IPs need to have a relationship with a DP in order to be able to use the CHAPS system to send or receive money.*

*Both H and L are DPs of the CHAPS system. M&S is an IP, so as H is its parent company it uses it to access the CHAPS system.*

*L have shown that it processed the CHAPS payment as requested by Mr and Mrs N's solicitor using all of the correct account details. The references on the payment that were sent included the details of the solicitors – including their business name and address.*

*M&S has told us that it did receive an enquiry for the funds to be sent to it, quoting Mr and Mrs N's account number and sort code, but it disputed the details as Mr and Mrs N's full names were not included in the enquiry. So, I think this supports that L was quoting the correct account number when arranging the CHAPS payment.*

*Based on both of these points I'm satisfied that the mistake does not lie with L.*

*The fact the references on the payment included all of the solicitors details should provide some clarification for M&S as to how TP knew who to contact regarding the payment.*

*As explained above, to be able to use the CHAPS payment system M&S is reliant on its relationship with H as a DP. M&S has confirmed that it never received the funds. If L didn't make a mistake, as I've explained I'm satisfied it didn't, and M&S didn't receive the funds, I have to draw the conclusion that the mistake was made by H. This is further supported by the fact that the funds were paid to an account that was held with H.*

*As a result of the mistake Mr and Mrs N have lost out on funds they should have had and have also had a considerable amount of worry placed upon them. Not to mention the inconvenience of chasing three different banks trying to reclaim the money – making various calls and generally being pushed from business to business in the process.*

*The relationship between M&S and H is nothing to do with Mr and Mrs N and they should not be adversely affected by it. They were customers of M&S, and it should have done more to assist them with this problem.*

*I now intend to instruct it to take ownership of H's mistake and put things right for Mr and Mrs N by:*

- Paying 8% simple interest on £300,000 from 2 November 2020 and 4 January 2021. As this was the time Mr and Mrs N were without the entire amount.*
- Paying Mr and Mrs N £9,745.82 for the financial loss they incurred as a result of the exchange rate. It should add 8% simple interest from 4 January 2021 until the date it makes payment. As this is the time that Mr and Mrs N were without this portion of the funds.*
- It should also pay Mr and Mrs N £750 in compensation for the trouble and upset it has caused to them, in failing to assist them in the way it should have. This should be in addition to any payment it has already made to them.*

I invited both parties to respond with their comments.

Mr and Mrs N responded accepting my findings.

M&S didn't respond.

### **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.

Given that neither party has added any new points, I see no reason to depart from my provisional decision that this case should be upheld.

### **Putting things right**

As set out in my provisional findings M&S should now Pay Mr and Mrs N:

- 8% simple interest on £300,000 from 2 November 2020 and 4 January 2021. As this was the time Mr and Mrs N were without the entire amount.
- £9,745.82 for the financial loss they incurred as a result of the exchange rate. It should add 8% simple interest from 4 January 2021 until the date it makes payment. As this is the time that Mr and Mrs N were without this portion of the funds.
- £750 in compensation for the trouble and upset it has caused to them, in failing to assist them in the way it should have. This should be in addition to any payment it has already made to them.

†Her Majesty's Revenue & Customs may require that M&S deduct tax from the interest paid to Mr and Mrs N. If it does and they request it, M&S must provide them with a certificate showing how much tax it has taken off, so they may reclaim it if appropriate.

### **My final decision**

For the reasons set out above, my final decision is that I uphold Mr and Mrs N's complaint about Marks & Spencer Financial Services Plc. It should now put things right for them as described in the "putting things right" section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N and Mr N to accept or reject my decision before 30 September 2022.

Amber Mortimer  
**Ombudsman**