

The complaint

Mrs S complains about the way John Lewis Financial Services Limited (“JLFS”) handled her request for a refund.

Mrs S husband is an additional cardholder and made the purchase, he has also been involved with trying to resolve the complaint, but as the main account holder, I’ll refer to only Mrs S for ease of reference.

What happened

On 14 July 2021 Mrs S ordered a quantity of quarry tiles and a bag of grout from a supplier, I’ll refer to as “R”. She used her JLFS credit card to pay £1,215.12 for the items. Upon delivery Mrs S found several of the tiles were damaged. R agreed to send replacement tiles, which were received in August 2021, but Mrs S found that these were also damaged.

Mrs S contacted JLFS on 12 August 2021 to ask it to assist with getting a refund, it sent her a dispute form and advised her to keep hold of the tiles whilst the dispute was still ongoing. Mrs S was still in negotiations with R, who eventually offered to a reduced refund of £1,000, after deducting carriage and handling costs. Mrs S declined R’s offer.

In August 2021 JLFS sent Mrs S a letter requesting copies of documentation regarding the dispute. Mrs S sent the supporting documentation to the address on the letter on 9 September 2021. She tried calling the number on the letter, but it was no longer in service. As Mrs S hadn’t heard from JLFS, she followed this up, and was told the address on the letter was no longer in use, and it hadn’t received the supporting documentation. Mrs S had to resend her documentation.

On 3 November JLFS raised the chargeback with R’s bank on Mrs S’ behalf and subsequently credited £1,215.12 to her account. On 15 December 2021 the chargeback was defended and declined by R’s bank. R said it had provided replacement tiles, Mrs S hadn’t requested a refund and its usual process would be to provide a refund once tiles were collected and inspected.

JLFS sent Mrs S an email and several reminder emails with a link requiring her to complete its declaration form and comment on R’s defence via its online system, so it could continue with her claim. For security reasons Mrs S didn’t want to click on links sent in emails, so she requested JLFS send her a letter outlining what she needed to do next by post. JLFS explained there wasn’t enough time to do this by the deadline, 30 December 2021.

JLFS said its records showed Mrs S had viewed the documentation on the online system but hadn’t completed it. Mrs S denied this and explained there was a delay in getting the required passcodes, so when she tried to access the documents, they were deleted. When Mrs S contacted JLFS, it told her not to worry about the deadline and agreed she could send the documentation by post, which she did.

JLFS still contested R’s defence without Mrs S’ comments and raised a second chargeback (pre-arbitration), which R’s bank declined in January 2022. Having considered R’s defence,

JLFS took the decision to not pursue the matter further under the VISA chargeback scheme. It re-debited the account and advised Mrs S that the chargeback had failed.

JLFS then considered Mrs S dispute under section 75 Consumer Credit Act 1974. It didn't think the claim met the required financial limits, because the tiles were priced individually for less than £100. JLFS didn't advise Mrs S of the outcome of her section 75 claim.

Mrs S raised a number of complaints about the way her dispute was handled. She was given the incorrect contact details to send her supporting evidence. She was given conflicting information by different advisers about whether the funds would be re-debited. She was unhappy she couldn't contact anyone in the dispute team directly, she had issues accessing the documents on the online dispute system. And even when she asked for the documents to be emailed as attachments, this didn't happen. Mrs S felt she had to resend her documentation on several occasions and doesn't think JLFS considered the evidence provided.

JLFS didn't uphold Mrs S complaint. It was of the view the chargeback wasn't successful because Mrs S had failed to complete the declaration and provide her comments in time. Unhappy with the outcome Mrs S referred her complaint to our service. JLFS later offered to refund the total cost of the transaction as a goodwill gesture. Our investigator was of the view the offer was fair, in the circumstances she didn't recommend JLFS do anything else.

Mrs S disagreed; she said JLFS had all the evidence it needed to pursue her chargeback. She wants JLFS to pay a *substantial* sum in compensation to reflect the level of customer services received, in her earlier submissions she requested over £7,000 in compensation. Mrs S has also requested an apology and wants JLFS to arrange for the collection of the tiles and grout at no cost to herself.

I asked JLFS for further information about what it said in response to R's defence that Mrs S hadn't asked for a refund following the delivery of the replacement tiles. It didn't provide any additional information. I let both parties know I was minded to uphold the complaint, because I thought Mrs S had provided sufficient evidence to support her claim, including an email sent to R, requesting a refund following the delivery of the replacement tiles, and R's response offering £1,000 refund. In the circumstances I thought there was enough evidence for JLFS to progress the dispute to arbitration and had it done this, I thought it was more probable than not that the chargeback would've been successful. I also thought it was more likely than not, that Mrs S did face difficulties when she tried to access the online documentation and so was unable to complete it.

In the circumstances, I thought JLFS' offer to refund the transaction was fair. I said that due to the customer's journey I thought it should pay her £250 compensation and provide her with an apology. I also thought it was fair JLFS pay for any costs incurred for the disposal of the items ordered (upon proof) as Mrs S only retained them because JLFS asked her to.

JLFS said it agreed with the resolution I'd outlined. Mrs S didn't think £250 compensation went far enough to reflect the distressed caused, she wants a *substantial increase* to the 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.

Mrs S has provided very detailed submissions in support of her complaint. I want to assure the parties that I've reviewed everything on file (including the call recordings). And have considered the points raised by Mrs S. However, I do not intend to respond to every point

raised, no discourtesy is intended by this instead, I've focused on what I think are the key issues here and our rules allow me to do this. And this simply reflects the informal nature of our service as a free alternative to the courts.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

JLFS considered this matter under both chargeback and section 75- as I'd expect it to do. I've considered its approach to both separately.

Chargeback

Chargeback is the process by which a bank or credit card provider looks to resolve a settlement between a consumer and a merchant under the relevant card scheme. Initially the card provider will temporarily refund the payment back onto the card account and will raise a dispute with the merchant. The merchant is then required to respond within a prescribed period of time with any further information it wishes to provide and set out why it thinks the chargeback shouldn't go through. The cardholders bank can make further representations if it thinks the merchant's defence is weak or invalid. Ultimately the cardholder's bank can ask the card scheme provider to arbitrate on the outcome.

There is no right for a consumer to require that a chargeback claim be made. But if the right to make a chargeback claim exists under the applicable scheme rules – and if there is a reasonable prospect of success – we consider it to be good practice for a chargeback claim to be made.

JLFS did submit a chargeback on Mrs S' behalf under the VISA reason code 53 *Not as Described or Defective Merchandise*. Which I think was the appropriate code. In defence R said it had provided Mrs S with replacement tiles, and she hadn't subsequently requested a refund, so it assumed the matter was resolved. JLFS sent Mrs S a link to an online declaration form for her to sign and comment on R's defence, but she didn't complete it by 30 December 2021, as requested. It said it had evidence to show Mrs S accessed the document. Despite this JLFS did progress a second chargeback (pre-arbitration) without Mrs S' comments, which was rejected on 17 January 2022, R's bank raised the same defence as it did with the first chargeback.

JLFS says Mrs S chargeback failed because despite viewing the declaration form online, Mrs S failed to sign it and complete it by 30 December 2021, so it had to proceed without her comments.

Mrs S has explained that due to her concerns about security she didn't initially click on the links in the emails sent by JLFS. However, once she was informed what she needed to do and by when, she did attempt to access the document via the link. JLFS has provided evidence to show the document was viewed but not completed. But Mrs S has been consistent about not being able to access the document because there was a delay in getting the passcodes, so when she tried to view it, the document was already deleted. She has provided us with a screenshot to confirm the document deleted message she received. In the circumstances, I think it's more likely than not that if Mrs S had viewed the declaration form, she would've completed it, in order to progress her claim. So, on balance I'm satisfied Mrs S faced problems when she tried to access the documentation online.

Having considered R' defence JLFS decided not to pursue the chargeback to the final stage of arbitration. The key question as I see it is whether JLFS did enough here, or whether it

should have reasonably pursued this matter further. And if it had done so, what is likely to have happened.

I've considered the information Mrs S provided and what happened here. Mrs S sent JLFS her supporting documentation in September 2021, she then followed this up with R's terms and conditions in October 2021. She had resent the same documentation on several occasions by email and post by 27 December 2021. The evidence provided included photographs of the damaged tiles. An explanation of the damaged tiles and copies of emails between Mrs S and R, in particular the email dated 12 August 2021, where Mrs S expressed, she was unhappy with the replacement tiles, requested a full refund and asked R to collect both sets of tiles. She also provided R's response email where it offered the reduced refund of £1,000, after it had delivered the replacement tiles.

Having considered the requirements under the reason code, I think Mrs S had provided JLFS with sufficient evidence in support of her claim, moreover I think the evidence she'd provided clearly countered R's defence that it was unaware she was unhappy with the replacement tiles, because she hadn't requested a refund.

In the circumstances, I think JLFS already had the evidence it needed to counter R's defence, so I think it would've been reasonable for JLFS to pursue the claim to arbitration. And I think that had it done this, it's more likely than not that Mrs S' chargeback would've been successful. JLFS has already offered to refund the £1,215.12 transaction which I think is fair. Mrs S no longer has a credit card account with JLFS, so in line with our approach JLFS should also add interest at an annual rate of 8% simple to the refund from the date the chargeback was initially refunded, to the date of settlement. Due to her security concerns Mrs S has requested JLFS provides direct contact details so she can provide her account information for the refund over the phone, and I think this is fair.

Mrs S has also requested JLFS arranges for the collection of the tiles/grout or pays for the items to be disposed. Under the chargeback scheme Mrs S would've only been entitled to a refund for the transaction and not any consequential costs associated with disposing of the tiles. However, I can see that Mrs S was arranging for R to collect the tiles, but only retained them because JLFS asked her to. In the circumstances, I think it's fair for JLFS to reimburse Mrs S any costs incurred for disposing of tiles and grout once she has provided it with a receipt/invoice.

Section 75

JLFS also considered Mrs S dispute under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services if there has been a misrepresentation or breach of contract on the supplier's part.

JLFS declined Mrs S section 75 claim because it didn't think it met one of the technical conditions due to the tiles being priced individually under £100, but it didn't tell her this. Section 75 only applies to individual items being claimed that exceed £100 and are less than £30,000. Looking at the sales invoice I can see the quarry tiles were priced individually under £100. And there isn't any indication on the invoice that she was buying a job lot, or a package of items presented for sale at an inclusive price. In the circumstances, I don't think section 75 protection applied to this transaction, so I don't think JLFS made a mistake when it declined Mrs S' section 75 claim.

Customer services

I do think Mrs S experienced some frustration and inconvenience due to the handling of her dispute. She was initially given the incorrect address to send her supporting evidence and had to resend this, the letter also contained a number which was no longer available. She was given contradicting information by different advisors about the money being re-debited to the account. She also had trouble accessing online documentation and when she called, advisors were unable to tell her what the document said. And she was also told by the complaints team that she would be sent the documentation as an email attachment in an email, but this didn't happen. The consumer also had to speak to various advisors, to try to sort this all out and she has told us how frustrating it has been to try to get this resolved and I recognise this has taken some time. And although JLFS did subsequently consider Mrs S claim under section 75, it didn't inform her of the outcome.

Mrs S has requested an apology from JLFS for the level of customer service received and it agrees to do this, so I think this is fair.

In addition to an apology Mrs S has asked for a *substantial sum* in compensation and wants JLFS to make changes to its processes. However, I think I should clarify that it isn't our role to punish or penalise a business for its performance or to tell it how to run its business—that's the role of the regulator, the Financial Conduct Authority. Taking Mrs S' journey into account I think the JLFS should pay her £250 compensation to reflect the inconvenience and frustration caused. I appreciate Mrs S may not think this enough, but I think this is fair and reasonable in the circumstances here.

My final decision

My final decision is I uphold this complaint and I direct John Lewis Financial Services Limited to:

1. refund Mrs S £1,215.12, adding 8% simple interest per annum from the date the chargeback was initially refunded, to the date of the refund
2. provide Mrs S with direct contact details so she can provide her account details over the phone for the refund
3. reimburse Mrs S any costs incurred (upon proof) for disposing of the tiles and grout
4. pay Mrs S £250 compensation and provide her with a written apology for the level of customer services experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 3 July 2023.

Karen Dennis
Ombudsman