

## **The complaint**

Mrs R is unhappy that Marks & Spencer Financial Services Plc trading as M&S Bank (“M&S Bank”) won’t refund her for the cost of a cruise she paid for on her credit card.

## **What happened**

In 2022, Mrs R booked a cruise through a booking agent I’ll call “P” and paid them £80 and £717 on her M&S Bank credit card.

Unfortunately, Mrs R wasn’t allowed to board the cruise ship when she arrived at the terminal. The cruise ship operator said Mrs R hadn’t provided them with the required documentation they needed about her Covid-19 vaccination.

Mrs R complained to the cruise ship operator and asked for a refund of the money she’d paid on her credit card, but they refused her request. So, Mrs R contacted M&S Bank and asked them to refund these transactions.

M&S Bank assessed Mrs R’s claim under section 75 of the Consumer Credit Act 1974 (“section 75”) but told her the requirements to make such a claim hadn’t been met. M&S Bank didn’t uphold Mrs R’s complaint about this and so she referred the matter to our service.

Our investigator didn’t recommend that the complaint should be upheld. He said Mrs R had been out of time to make a chargeback claim and that the requirements for a section 75 claim hadn’t been met.

Mrs R didn’t agree and so her complaint has been passed to me for a decision.

## **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.

There are typically two avenues here that M&S Bank as the provider of credit could have considered.

### *Chargeback*

In certain circumstances, when a cardholder has a dispute with a merchant, as Mrs R does here, M&S Bank (as the card issuer) can attempt a chargeback. The process involves the card issuer disputing payments made on the card through a dispute resolution scheme operated by the companies which run the card networks, which in this case is Mastercard.

I would normally expect a credit card issuer to attempt a chargeback if there was a reasonable prospect of this achieving a successful outcome. M&S Bank didn’t attempt a chargeback in this instance.

I've considered whether that has led to Mrs R being unfairly denied an opportunity to have the money refunded. The chargeback that best suited Mrs R's claim was under the reason code 'goods and services not provided'. I've looked at the applicable card scheme rules and these set out that a claim should be made within 120 days of the 'latest anticipated delivery or performance date', which in this case was in late April 2022, when Mrs R was due to be on the cruise. However, Mrs R didn't contact M&S Bank about what had happened until January 2023. This means that Mrs R was out of time to make a chargeback.

So, even though it's unclear why M&S Bank didn't consider a chargeback, I don't find this disadvantaged Mrs R.

### **Section 75**

In deciding what I think is fair and reasonable I need to have regard to, amongst other things, any relevant law. In this case, the relevant law is section 75 which says that, in certain circumstances, if Mrs R paid for goods and services, in part or whole, on her M&S Bank credit card, and there was a breach of contract or misrepresentation by the supplier, M&S Bank can be held responsible.

For a valid claim under Section 75 there must be a debtor-creditor-supplier (DCS) relationship in place. This normally means the person who owns the credit card account needs to have a claim for breach of contract or misrepresentation against a company they have paid using their credit card.

Mrs R's complaint is one that stems from her not being allowed to board the cruise ship. That is a claim against the cruise line operator for a breach of contract. But Mrs R can't make a claim against M&S Bank for this because she didn't pay the cruise line operator; she paid P to arrange the booking for her. So, there isn't a valid DCS relationship in place with the cruise line operator.

I do think there is a DCS relationship in place for the services provided by P. So, if I find that P breached their contract with Mrs R or misrepresented this, then Mrs R would potentially be entitled to compensation.

However, I've not seen anything within P's terms and conditions that Mrs R sent to us which set out that P assumed any responsibility for decisions made by the cruise ship operator. Indeed, the terms set out that *'your contract is with the supplier and its booking conditions apply. As agent, we accept no responsibility for the actual provision of the arrangements. Our responsibilities are limited to making the booking in accordance with your instructions'*.

So, I'm satisfied that P simply contracted to provide a booking service for Mrs R and that they provided that service to her. As such, I don't think P breached their contract with Mrs R. And I don't think P misrepresented any of the services they provided.

### **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 8 March 2024.

Daniel Picken  
**Ombudsman**