

## **The complaint**

Miss H complains that Marks & Spencer Financial Services plc (M&S), trading as M&S Bank, won't fully refund the cost of a faulty laptop she bought using her M&S credit card. She would like a full refund.

## **What happened**

Miss H says she bought the laptop in 2018 and immediately had issues with it not working. To use it she has told us she had to keep on putting the laptop back to its factory settings which was inconvenient as she lost data doing so.

She has told us that as she lived partly in the UK and partly abroad this, and COVID, delayed her returning the laptop for investigation. She says when she was able to bring the laptop back to the UK in 2022 it was repaired. The repair note stated the issues were due to a manufacturing defect, so no charge was made.

She says she continued to have issues with the laptop. The retailer verbally agreed to a full refund but the store she took the laptop to refused this. It said further investigation was needed. She now no longer has the laptop as it was lost in transit from the store.

M&S said there was no evidence the retailer offered a full refund. It expressed surprise it would do so as the laptop was out of warranty, and Miss H had had it for some years. It offered an ex-gratia payment of £425.50 based on the laptop having a 3–5-year lifespan with a reduction for 4 years use.

Our investigator considered Miss H's complaint but didn't uphold it. She found the laptop did have a manufacturing default but no evidence the retailer offered a full refund. Given the time Miss H had the laptop she felt that M&S' offer was fair.

Miss H didn't accept this view. She reiterated the manufacturing defect and the verbal offer of a refund. Although our investigator considered these points, she didn't change her view, so Miss H asked for an Ombudsman's final 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.

I appreciate Miss H's frustration. There is no dispute that a manufacturing issue was identified with the laptop. The issue for me to decide is whether M&S' offer is fair. In terms of a breach of contract, Miss H could have expected to be supplied with a fit for purpose and fault free laptop at the point of sale. It's clear there was an issue with the laptop and an attempted repair failed.

Miss H bought the laptop in 2018. She has told us she had issues soon after getting it. She hasn't evidenced an exact date issues arose. Had she had problems within 30 days she

would, subject to certain conditions, have had a short term right to reject it. I have seen no evidence she pursued this.

Miss H has advised us that she had to bring the laptop back to the UK to be inspected and repaired, she couldn't do this abroad. I accept bringing it back in person during the pandemic would have been an issue, however I am not sure why Miss H couldn't have sent it back by other means.

Whilst I appreciate all the difficulties of living in two countries, and the limitations imposed by COVID I have no evidence Miss H brought issues with the laptop to the attention of the retailer prior to 2022 when she put in her claim to M&S stating her first contact with the retailer was on 12 October 2022. By this time, she had use of the laptop for 4 years and it was out of warranty which are factors I must consider.

Miss H has additionally told us the retailer agreed to a full refund. I have seen correspondence from a representative helping Miss H with her complaint in which the representative refers to such an offer.

I am persuaded a verbal offer of a full refund was, at least, suggested as I have seen an email from the call handler apologising for building up 'false hope'. It seems that when the situation was investigated more thoroughly, specifically around the timings of the purchase of the laptop (2018) and raising of an issue (2022), that the retailer took the view that the issue arose too far from the time of purchase to warrant a full refund.

Based on this correspondence, I don't think it's reasonable to say a full refund is appropriate. Firstly, I can't be sure that such an offer was made or just suggested. But also, it seems the call handler hadn't appreciated the full details of the situation when that offer was suggested or made.

Taking all the information I have seen into account I think M&S's offer of a partial refund of £425.80 is fair. I think this reflects there was a problem with the laptop but recognises the age and usage of the laptop which are issues that we would consider.

### **My final decision**

My final decision is that M&S has made a fair offer.

In full and final settlement Marks & Spencer Financial Services plc trading as M&S Bank should pay Miss H £425.80

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 25 November 2024.

Bridget Makins  
**Ombudsman**